

SECOND REGULAR SESSION

SENATE BILL NO. 985

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

Read 1st time February 10, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5258S.01I

AN ACT

To repeal section 590.650, RSMo, and to enact in lieu thereof one new section relating to prohibitions against discriminatory policing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 590.650, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 590.650, to read as follows:

590.650. 1. **The provisions of this section shall be known and may be cited as the "Fourth Amendment Affirmation Act".** As used in this section ["minority group" means individuals of African, Hispanic, Native American or Asian descent] **the following terms mean:**

(1) **"Benchmark", the number used as a basis of comparison in determining possible disproportions in law enforcement activities, including the following:**

(a) **The benchmark for measuring disproportions in vehicle stops shall be the proportions of drivers in racial or ethnic groups residing or traveling in a jurisdiction;**

(b) **The benchmark for measuring disproportions in post-stop activities shall be the racial or ethnic group's proportion of stops; and**

(c) **The benchmark used to measure disproportions in hit rates shall be the group proportions of drivers searched;**

(2) **"Consent search", a search authorized by the consent of the individual, not by probable cause;**

(3) **"Discriminatory policing", circumstances in which the peace officer's actions are based in whole or in part on the real or perceived race, ethnicity, religious beliefs, gender, English language proficiency,**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 status as a person with a disability, or a person's national origin rather
21 than upon specific and articulable facts which, taken together with
22 rational inferences from those facts, reasonably indicate criminal
23 activity. "Discriminatory policing" does not include investigations of
24 alleged crimes when law enforcement must seek out suspects who
25 match a specifically delineated description;

26 (4) "Hit rate", the rate of searches in which contraband is
27 found. The hit rate is calculated by dividing the number of searches
28 that yield contraband by the total number of searches. Hit rate may be
29 calculated for individual officers, agencies, or multiple agencies;

30 (5) "Investigative stop", any stop, by a peace officer, of a motor
31 vehicle involving at least in part an investigation of a criminal
32 violation other than a motor vehicle violation. Investigative stops can
33 involve calls for service, stops conducted in support of an agency
34 investigation, stops conducted because of a peace officer's observations,
35 stops made at a sobriety checkpoint or other road block, or other
36 investigatory stops;

37 (6) "Minority group", individuals of African, Hispanic, Native
38 American, or Asian descent;

39 (7) "Ratio of disparity", the ratio of the rate of stops or other
40 peace officer activities for a non-white group as compared to the rate
41 for the white group. The ratio of disparity for the white group shall be
42 the white group rate compared to the rate for non-white groups;

43 (8) "Significant disparity", a ratio of disparity that is over one
44 hundred twenty-five percent of the overall state disparity for any
45 minority group for that category of officer activity after controlling for
46 factors other than discrimination that are contributing to the disparity;

47 (9) "Significant disproportion", a ratio of disparity that is over
48 one hundred twenty-five percent of the overall state ratio of disparity
49 for any minority group for that category of peace officer activity.

50 2. Each time a peace officer stops a driver of a motor vehicle, that officer
51 shall report **at least** the following information to the law enforcement agency
52 that employs the officer:

53 (1) The age, gender and race or minority group of the individual stopped;

54 (2) **Whether the driver resides in the jurisdiction of the stop;**

55 (3) The reasons for the stop. **Reasons for an investigative stop**
56 **include, but are not limited to, calls for service, stops conducted in**

57 **support of an agency investigation, stops conducted because of a peace**
58 **officer's observations, and stops made at a sobriety checkpoint or other**
59 **road block;**

60 [(3)] (4) Whether a search was conducted as a result of the stop;

61 [(4)] (5) If a search was conducted, whether the individual consented to
62 the search, **how the individual's consent was documented**, the probable
63 cause for the search, whether the person was searched, whether the person's
64 property was searched, and the duration of the search;

65 [(5)] (6) Whether any contraband was discovered in the course of the
66 search and the type of any contraband discovered;

67 [(6)] (7) Whether any warning or citation was issued as a result of the
68 stop;

69 [(7)] (8) If a warning or citation was issued, the violation charged or
70 warning provided;

71 [(8)] (9) Whether an arrest was made as a result of either the stop or the
72 search;

73 [(9)] (10) If an arrest was made, the crime charged; and

74 [(10)] (11) The location of the stop.

75 Such information may be reported using a format determined by the department
76 of public safety which uses existing citation and report forms.

77 3. (1) Each law enforcement agency shall compile the data described in
78 subsection 2 of this section for the calendar year into a report to the attorney
79 general.

80 (2) Each law enforcement agency shall submit the report to the attorney
81 general no later than March first of the following calendar year.

82 (3) The attorney general shall determine the format that all law
83 enforcement agencies shall use to submit the report. **The attorney general**
84 **may allow the department of public safety to extract the data from**
85 **other reports filed by law enforcement agencies.**

86 4. (1) The attorney general shall analyze the annual reports of law
87 enforcement agencies required by this section and submit a report of the findings
88 to the governor, the general assembly and each law enforcement agency no later
89 than June first of each year.

90 (2) **The report shall identify situations in which data submitted**
91 **by agencies indicate that racial and ethnic groups are**
92 **disproportionately affected by law enforcement activity so that further**

93 analysis may be conducted to determine whether peace officers are
94 engaging in discriminatory policing.

95 (3) The report shall provide group ratios of disparity for all
96 categories of stops, post-stop activities, searches, and contraband
97 found, using appropriate benchmarks as defined in subsection 1 of this
98 section.

99 (4) The report of the attorney general shall include at least the following
100 information for each agency **and for the state overall**:

101 (a) The total number of vehicles stopped by peace officers during the
102 previous calendar year;

103 (b) The number and percentage of stopped motor vehicles that were driven
104 by members of each particular minority group;

105 (c) [A comparison of the percentage of stopped motor vehicles driven by
106 each minority group and the percentage of the state's population that each
107 minority group comprises] **Ratios of disparity for all categories of stops,**
108 **post-stop activities, searches, and contraband using appropriate**
109 **benchmarks as defined in subsection 1 of this section;** and

110 (d) A compilation of the information reported by law enforcement agencies
111 pursuant to subsection 2 of this section.

112 5. (1) Each law enforcement agency shall adopt a policy on [race-based
113 traffic stops] **discriminatory policing** that:

114 [(1)] (a) Prohibits [the practice of routinely stopping members of minority
115 groups for violations of vehicle laws as a pretext for investigating other violations
116 of criminal law] **discriminatory policing**;

117 [(2)] (b) Provides for [periodic] **annual** reviews by the law enforcement
118 agency of the annual report of the attorney general required by subsection 4 of
119 this section that:

120 [(a)] a. Determine whether any peace officers of the law enforcement
121 agency have a pattern of stopping members of minority groups for violations of
122 vehicle laws in a number disproportionate to the population of minority groups
123 residing or traveling within the jurisdiction of the law enforcement agency; and

124 [(b)] b. If the review reveals a pattern, require an investigation to
125 determine whether any peace officers of the law enforcement agency [routinely
126 stop members of minority groups for violations of vehicle laws as a pretext for
127 investigating other violations of criminal law; and] **engaged in discriminatory**
128 **policing**;

129 c. Include a review of complaints received by the law
130 enforcement agency and a breakdown of which complaints were
131 verified, found to be unfounded, remain active, and what steps were
132 taken to address verified complaints. The review of complaints shall
133 indicate the number of complaints alleging discriminatory policing that
134 a law enforcement agency received; and

135 d. The results of the review shall be made public, however, no
136 personnel information prohibited by law shall be disclosed; and

137 [(3)] (c) Provides for appropriate discipline, up to and including
138 dismissal, counseling, and training of any peace officer found to have engaged
139 in [race-based traffic stops] discriminatory policing within ninety days of the
140 review.

141 The course or courses of instruction and the guidelines shall stress understanding
142 and respect for racial and cultural differences, **cultural competency**, and
143 development of effective, noncombative methods of carrying out law enforcement
144 duties in a racially and culturally diverse environment.

145 (2) Each policy shall be in writing and accessible by the
146 public. The attorney general shall certify that the discriminatory
147 policing policy of each agency is substantially equivalent to the
148 requirements of this subsection.

149 (3) Each policy shall put in place procedures to eliminate
150 discriminatory policing.

151 6. When a motor vehicle has been stopped solely for a traffic
152 violation, a peace officer shall request only the following
153 documentation from only the driver of the motor vehicle:

154 (1) A driver's license or other verifiable government-issued
155 identification, including foreign-issued identification;

156 (2) Motor vehicle registration; and

157 (3) Proof of insurance.

158 7. Each law enforcement agency shall establish policies to
159 eliminate discriminatory policing in the administration of consent
160 searches. The procedures shall include the following:

161 (1) A peace officer shall have specific and articulable facts about
162 the individual that, taken together with rational inferences from those
163 facts, lead the peace officer to reasonably believe a search is needed;

164 (2) The peace officer shall document, in writing, such specific
165 articulable facts about the circumstances leading to the request for

166 consent in individual searches and if multiple searches take place
167 under the same circumstances at or near the same time;

168 (3) Prior to requesting consent for a search, a peace officer shall
169 communicate orally or in writing, in a language that the person being
170 questioned clearly understands, that the person's consent must be
171 voluntary, that the voluntary consent authorizes the search even if the
172 peace officer does not have probable cause to search, that the
173 lawfulness of the search cannot be challenged in court if consent is
174 given, and that the person has the right to refuse the request to search;

175 (4) After providing such advisement, a peace officer shall obtain
176 voluntary written or recorded audio or video consent to the search;

177 (5) The peace officer shall document whether the person from
178 whom the search was requested provided written consent, if that
179 consent was recorded by audio or video, or whether consent was
180 denied, and the law enforcement agency will submit this data for
181 compilation in the attorney general's vehicle stop report;

182 (6) The peace officer shall not ask for consent when he or she has
183 probable cause to conduct a search;

184 (7) Any evidence obtained as a result of a search prohibited by
185 this section shall be inadmissible in any judicial proceeding; and

186 (8) Nothing contained in this subsection shall be construed to
187 preclude a search based upon probable cause.

188 8. (1) If a law enforcement agency fails to comply with the provisions of
189 this section, the governor may withhold any state funds appropriated to the
190 noncompliant law enforcement agency.

191 (2) If a law enforcement agency reports for three consecutive
192 years a significant disproportion, the attorney general shall study the
193 efforts of the law enforcement agency to decrease its disproportion
194 during the prior three years. If the attorney general determines that
195 a significant disparity exists, the agency shall be subject to review for
196 a period of three additional years.

197 (3) If, in its second year of review, a law enforcement agency
198 reports a significant disproportion, and the attorney general's study
199 determines that a significant disparity exists, and the law enforcement
200 agency cannot show good-faith efforts, as determined by the attorney
201 general, to remedy the disparity, the attorney general shall require
202 changes in the agency's policies and practices, including techniques for

203 identifying problem officers, requirements that an officer's ratios of
204 disparity along with any mitigating circumstances be a part of the
205 record used to evaluate promotions and reassignments, training of
206 supervisors in the skills necessary to eliminate discriminatory policing,
207 and increasing the quality and quantity of officer training related to
208 discriminatory policing. The attorney general's office shall work with
209 other state agencies to provide financial assistance and expertise to
210 facilitate these changes.

211 (4) If, in its third year of review, a law enforcement agency
212 reports a significant disproportion and the attorney general's study
213 determines a significant disparity exists, the attorney general shall also
214 study the record of the law enforcement agency during the review
215 period to determine if the disparities are of such magnitude that the
216 law enforcement agency should be further penalized. The attorney
217 general shall take into account whether the agency is making a good-
218 faith effort to achieve nondiscriminatory policing. As a minimum
219 penalty, the agency shall remain under review, with ongoing attorney
220 general oversight, until such time as the agency's annual report shows
221 that a significant disparity no longer exists or until such time as the
222 attorney general's study determines that discriminatory policing is no
223 longer a significant cause of the disparity. As a maximum penalty, or
224 after six years of review, the attorney general shall order that the
225 governing body or jurisdiction that the law enforcement agency serves
226 be required, from that point forward, to forfeit twenty-five percent of
227 its annual general operating revenue received from fines, bond
228 forfeitures, and court costs for traffic violations, including amended
229 charges for any traffic violations. The forfeited amount shall be paid
230 to the general revenue fund of the state of Missouri, to be designated
231 as additional funds for the peace officers standards and training
232 commission. This penalty shall continue until such time as the law
233 enforcement agency's annual report shows that a significant disparity
234 no longer exists or until such time as the attorney general's study
235 determines discriminatory policing is no longer a significant cause of
236 the disparity.

237 [7.] 9. Each law enforcement agency in this state may utilize federal
238 funds from community-oriented policing services grants or any other federal
239 sources to equip each vehicle used for traffic stops with a video camera and

240 voice-activated microphone **or to purchase body cameras.**

241 [8. A peace officer who stops a driver of a motor vehicle pursuant to a
242 lawfully conducted sobriety check point or road block shall be exempt from the
243 reporting requirements of subsection 2 of this section.]

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