

SECOND REGULAR SESSION

[CORRECTED]

HOUSE BILL NO. 1935

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

4405H.01I

DANA RADEMAN MILLER, Chief Clerk

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Section A. Section 590.650, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 590.650, to read as follows: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 John Ashcroft 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, which shall include only the following:**

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

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

27 (5) "Investigative stop", any stop, by a peace officer, of a motor vehicle based on
28 reasonable suspicion or probable cause and not a motor vehicle violation. Investigative
29 stops can involve calls for service, stops conducted in support of an agency investigation,
30 stops conducted because of a peace officer's observations, stops made at a sobriety
31 checkpoint or other road block, or other investigatory stops;

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

34 (7) "Ratio of disparity", the ratio of the rate of stops or other peace officer
35 activities for a nonwhite group as compared to the rate for the white group. The ratio of
36 disparity for the white group shall be the white group rate compared to the rate for
37 nonwhite groups;

38 (8) "Significant disproportion", a ratio of disparity that differs significantly
39 from the overall state ratio of disparity for any minority group for that category of
40 peace officer activity. The attorney general shall determine what deviation from the
41 overall state ratio of disparity warrants further scrutiny after considering factors other
42 than discrimination. The attorney general shall find any ratio of disparity that is over
43 one hundred twenty-five percent of the overall state disparity for any minority group for
44 that category of peace officer activity to be a significant disproportion.

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

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

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

49 (3) The reasons for the stop. Reasons for an investigative stop may include, but
50 are not limited to, calls for service, stops conducted in support of an agency
51 investigation, stops conducted because of a peace officer's observations, and stops
52 made at a sobriety checkpoint or other road block;

53 [~~3~~] (4) Whether a search was conducted as a result of the stop;

54 ~~[(4)]~~ (5) If a search was conducted, whether the individual consented to the search,
55 **how the individual's consent was documented**, the probable cause for the search, whether
56 the person was searched, whether the person's property was searched, and the duration of the
57 search;

58 ~~[(5)]~~ (6) Whether any contraband was discovered in the course of the search and the
59 type of any contraband discovered;

60 ~~[(6)]~~ (7) Whether any warning or citation was issued as a result of the stop;

61 ~~[(7)]~~ (8) If a warning or citation was issued, the violation charged or warning
62 provided;

63 ~~[(8)]~~ (9) Whether an arrest was made as a result of either the stop or the search;

64 ~~[(9)]~~ (10) If an arrest was made, the crime charged; ~~and~~

65 ~~[(10)]~~ (11) The location of the stop; **and**

66 (12) **The municipal or state infraction for which the individual was stopped.**

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68 Such information ~~[may]~~ **shall** be ~~[reported using a format determined by the department of~~
69 ~~public safety which uses existing citation and report forms]~~ **submitted to the attorney**
70 **general as a single report indicating for each traffic stop the required information on the**
71 **driver and stop. The format of the report shall be determined by the attorney general.**
72 **No personnel information shall be disclosed.**

73 3. (1) Each law enforcement agency shall compile the data described in subsection 2
74 of this section for the calendar year ~~[into a]~~ **and send the stop** report to the attorney general.

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

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

80 4. (1) The attorney general shall analyze the annual **stop** reports of law enforcement
81 agencies required by this section and submit a report of the findings to the governor, the
82 general assembly and each law enforcement agency no later than June first of each year.

83 (2) **The report shall identify situations in which data submitted by agencies**
84 **indicate that racial and ethnic groups are disproportionately affected by law**
85 **enforcement activity so that further analysis may be conducted to determine whether**
86 **peace officers are engaging in discriminatory policing.**

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

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

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

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

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

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

103 5. (1) Each law enforcement agency shall adopt a policy on ~~[race-based traffic stops]~~
104 **discriminatory policing** that:

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

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

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

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

118 c. **Include a review of complaints received by the law enforcement agency and a**
119 **breakdown of which complaints were verified, found to be unfounded, or remain active,**
120 **and what steps were taken to address verified complaints. The review of complaints**
121 **shall indicate the number of complaints alleging discriminatory policing that a law**
122 **enforcement agency received; and**

123 d. **The results of the review shall be made public; however, no personnel**
124 **information shall be disclosed; and**

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

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

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

136 (3) Each policy shall put in place procedures to eliminate discriminatory
137 policing.

138 6. Each law enforcement agency shall establish policies to eliminate
139 discriminatory policing in the administration of consent searches. The procedures
140 shall include the following:

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

144 (2) The peace officer shall document, in writing, such specific articulable facts
145 about the circumstances leading to the request for consent in individual searches and if
146 multiple searches take place under the same circumstances at or near the same time;

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

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

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

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

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

163 **(8) Nothing contained in this subsection shall be construed to preclude a search**
164 **based on probable cause.**

165 **7. (1) If a law enforcement agency fails to comply with the provisions of this section,**
166 **the governor may withhold any state funds appropriated to the noncompliant law enforcement**
167 **agency.**

168 **(2) If a law enforcement agency's data shows for three consecutive years a**
169 **significant disproportion, the attorney general shall study the efforts of the law**
170 **enforcement agency to decrease its disproportion during the prior three years.**

171 **(3) If a law enforcement agency fails to provide documentation to the attorney**
172 **general that proves the agency's significant disproportions cannot be attributed to**
173 **discriminatory policing, the agency shall be subject to review for a period of three years.**

174 **(4) Documentation provided to the attorney general to analyze significant**
175 **disproportions shall be made public to the extent permitted by law.**

176 **(5) If a law enforcement agency subject to review shows a significant**
177 **disproportion in its data after its first year under review and the attorney general's**
178 **study determines that the law enforcement agency cannot show good-faith efforts to**
179 **remedy the significant disproportion, the attorney general shall require changes in the**
180 **agency's policies and practices, including techniques for identifying problem officers,**
181 **requirements that an officer's ratios of disparity along with any mitigating**
182 **circumstances be a part of the record used to evaluate promotions and reassignments,**
183 **training of supervisors in the skills necessary to eliminate discriminatory policing, and**
184 **increasing the quality and quantity of officer training related to discriminatory policing.**
185 **The attorney general's office shall work with other state agencies to provide financial**
186 **assistance and expertise to facilitate these changes.**

187 **(6) If a law enforcement agency continues to show a significant disproportion in**
188 **its data at the close of its three-year review period and the attorney general's study**
189 **determines that the significant disproportion can be attributed, in whole or in part, to**
190 **discriminatory policing, the attorney general shall evaluate whether the agency is**
191 **making a good-faith effort to achieve nondiscriminatory policing. As a minimum**
192 **penalty, the agency shall remain under review, with ongoing attorney general oversight,**
193 **until such time as the attorney general determines that discriminatory policing is no**
194 **longer a cause of the significant disproportion. As a maximum penalty, or after six**
195 **years of review, the attorney general shall order that the governing body or jurisdiction**
196 **that the law enforcement agency serves be required, from that point forward, to forfeit**
197 **twenty-five percent of its annual general operating revenue received from fines, bond**

198 forfeitures, and court costs for traffic violations, including amended charges for any
199 traffic violations. The forfeited amount shall be paid to the general revenue fund of the
200 state of Missouri, to be designated as additional funds for the peace officers standards
201 and training commission. This penalty shall continue until such time as the attorney
202 general determines that discriminatory policing is no longer a cause of the significant
203 disproportion.

204 (7) A law enforcement agency may petition the attorney general to evaluate the
205 agency's vehicle stops report data using a different benchmark. The attorney general
206 shall determine appropriate benchmarks used in his or her evaluation of the data. The
207 attorney general shall note in his or her annual report if an alternative benchmark was
208 granted and the reasons for using the alternative benchmark.

209 [7-] 8. Each law enforcement agency in this state may utilize federal funds from
210 community-oriented policing services grants or any other federal sources to equip each
211 vehicle used for traffic stops with a video camera and voice-activated microphone **or to**
212 **purchase body cameras.**

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

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