

SECOND REGULAR SESSION

HOUSE BILL NO. 2245

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PETERS.

5937H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 590.650, RSMo, and to enact in lieu thereof eleven new sections relating to racial profiling.

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

Section A. Section 590.650, RSMo, is repealed and eleven new sections enacted in lieu thereof, to be known as sections 590.650, 590.760, 590.763, 590.765, 590.767, 590.770, 590.773, 590.777, 590.780, 590.783, and 590.787, to read as follows:

- 590.650. 1. As used in this section "minority group" means individuals of African, Hispanic, Native American or Asian descent.
2. Each time a peace officer stops a driver of a motor vehicle, that officer shall report the following information to the law enforcement agency that employs the officer:
- (1) The age, gender and race or minority group of the individual stopped;
 - (2) The reasons for the stop;
 - (3) Whether a search was conducted as a result of the stop;
 - (4) If a search was conducted, whether the individual consented to the search, the probable cause for the search, whether the person was searched, whether the person's property was searched, and the duration of the search;
 - (5) Whether any contraband was discovered in the course of the search and the type of any contraband discovered;
 - (6) Whether any warning or citation was issued as a result of the stop;
 - (7) If a warning or citation was issued, the violation charged or warning provided;
 - (8) Whether an arrest was made as a result of either the stop or the search;
 - (9) If an arrest was made, the crime charged; and

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.

17 (10) The location of the stop.

18

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

21 3. (1) Each law enforcement agency shall compile the data described in subsection 2 of
22 this section for the calendar year into a report to the attorney general.

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

25 (3) The attorney general shall determine the format that all law enforcement agencies
26 shall use to submit the report.

27 4. (1) The attorney general shall analyze the annual reports of law enforcement agencies
28 required by this section and submit a report of the findings to the governor, the general assembly
29 and each law enforcement agency no later than June first of each year.

30 (2) The report of the attorney general shall include at least the following information for
31 each agency:

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

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

36 (c) A comparison of the percentage of stopped motor vehicles driven by each minority
37 group and the percentage of the state's population that each minority group comprises; and

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

40 **(3) The report required under this section may, at the discretion of the attorney**
41 **general, be combined with and included in the reports required under sections 590.760 to**
42 **590.787.**

43 5. Each law enforcement agency shall adopt a policy on race-based traffic stops that:

44 (1) Prohibits the practice of routinely stopping members of minority groups for
45 violations of vehicle laws as a pretext for investigating other violations of criminal law;

46 (2) Provides for periodic reviews by the law enforcement agency of the annual report of
47 the attorney general required by subsection 4 of this section that:

48 (a) Determine whether any peace officers of the law enforcement agency have a pattern
49 of stopping members of minority groups for violations of vehicle laws in a number
50 disproportionate to the population of minority groups residing or traveling within the jurisdiction
51 of the law enforcement agency; and

52 (b) If the review reveals a pattern, require an investigation to determine whether any
53 peace officers of the law enforcement agency routinely stop members of minority groups for
54 violations of vehicle laws as a pretext for investigating other violations of criminal law; and

55 (3) Provides for appropriate counseling and training of any peace officer found to have
56 engaged in race-based traffic stops within ninety days of the review.

57

58 The course or courses of instruction and the guidelines shall stress understanding and respect for
59 racial and cultural differences, and development of effective, noncombative methods of carrying
60 out law enforcement duties in a racially and culturally diverse environment.

61 6. If a law enforcement agency fails to comply with the provisions of this section, the
62 governor may withhold any state funds appropriated to the noncompliant law enforcement
63 agency.

64 7. Each law enforcement agency in this state may utilize federal funds from
65 community-oriented policing services grants or any other federal sources to equip each vehicle
66 used for traffic stops with a video camera and voice-activated microphone.

67 8. A peace officer who stops a driver of a motor vehicle pursuant to a lawfully conducted
68 sobriety check point or road block shall be exempt from the reporting requirements of subsection
69 2 of this section.

590.760. 1. Sections 590.760 to 590.787 shall be known and may be cited as the
2 **"End Racial Profiling Act of 2016".**

3 **2. As used in sections 590.760 to 590.787, the following terms shall mean:**

4 **(1) "Governmental body", any department, agency, political subdivision, special**
5 **purpose district, or other instrumentality of state or local government;**

6 **(2) "Hit rate", the percentage of stops and searches in which a law enforcement**
7 **officer finds drugs, a gun, or something else that leads to an arrest. The hit rate is**
8 **calculated by dividing the total number of searches by the number of searches that yield**
9 **contraband. The hit rate is complementary to the rate of false stops;**

10 **(3) "Law enforcement agency", any state or local public agency engaged in the**
11 **prevention, detection, or investigation of violations of criminal, immigration, or customs**
12 **laws;**

13 **(4) "Law enforcement agent", any state or local official responsible for enforcing**
14 **criminal, immigration, or customs laws, including police officers and other agents of a law**
15 **enforcement agency;**

16 **(5) "Racial profiling", the practice of a law enforcement agent or agency relying,**
17 **to any degree, on race, ethnicity, national origin, or religion in selecting which individual**
18 **to subject to routine or spontaneous investigatory activities or in deciding upon the scope**

19 and substance of law enforcement activity following the initial investigatory procedure,
20 except when there is trustworthy information, relevant to the locality and time frame, that
21 links a person of a particular race, ethnicity, national origin, or religion to an identified
22 criminal incident or scheme;

23 (6) "Routine or spontaneous investigatory activities", the following activities by a
24 law enforcement agent:

25 (a) Interviews;

26 (b) Traffic stops;

27 (c) Pedestrian stops;

28 (d) Frisks and other types of body searches;

29 (e) Consensual or nonconsensual searches of the persons, property, or possessions,
30 including vehicles, of individuals using any form of public or private transportation,
31 including motorists and pedestrians;

32 (f) Data collection and analysis, assessments, and predicated investigations;

33 (g) Inspections and interviews of entrants into the United States that are more
34 extensive than those customarily carried out;

35 (h) Immigration-related workplace investigations;

36 (i) Such other types of law enforcement encounters compiled for or by the Federal
37 Bureau of Investigation or the Department of Justice Bureau of Justice Statistics;

38 (7) "Reasonable request", all requests for information, except for those that:

39 (a) Are immaterial to the investigation;

40 (b) Would result in the unnecessary disclosure of personal information; or

41 (c) Would place a severe burden on the resources of the law enforcement agency
42 given its size;

43 (8) "Unit of local government":

44 (a) Any city, county, township, village, or other political subdivision of the state;

45 or

46 (b) Any law enforcement district or judicial enforcement district that:

47 a. Is established under applicable state law; and

48 b. Has the authority to, in a manner independent of other state entities, establish
49 a budget and impose taxes.

500.763. No law enforcement agent or law enforcement agency of this state or
2 political subdivision of this state shall engage in racial profiling.

500.765. If any law enforcement agency receives more than one hundred fifty
2 complaints per year in a three-year period, the attorney general has the authority to take
3 over operations of the law enforcement agency, withhold any grants or funds the state

4 processes for the law enforcement agency and implement new policies for the law
5 enforcement agency if the law enforcement agency is found to be in violation of sections
6 590.760 to 590.787. Once the new policies have been implemented and are being followed,
7 any grants or funds that were withheld may be released to the agency.

2 590.767. 1. The state of Missouri or any person injured by racial profiling may
enforce sections 590.760 to 590.787 in a civil action for declaratory or injunctive relief.

3 2. In any action brought under sections 590.760 to 590.787, relief may be obtained
4 against:

5 (1) Any governmental body that employed any law enforcement agent who engaged
6 in racial profiling;

7 (2) Any agent of such body who engaged in racial profiling; and

8 (3) Any person with supervisory authority over such agent.

9 3. Proof that the routine or spontaneous investigatory activities of law enforcement
10 agents in a jurisdiction have had a disparate impact on racial, ethnic, or religious
11 minorities shall constitute prima facie evidence of a violation of sections 590.760 to 590.787.

12 4. In any action or proceeding to enforce sections 590.760 to 590.787 against any
13 governmental body, the court may allow a prevailing plaintiff, other than the state of
14 Missouri, reasonable attorney's fees as part of the costs, and may include expert fees as
15 part of the attorney's fees.

2 590.770. 1. State and local law enforcement agencies shall:

3 (1) Maintain adequate policies and procedures designed to eliminate racial
profiling; and

4 (2) Cease any existing practices that permit racial profiling.

5 2. The policies and procedures described in subdivision (1) of subsection 1 of this
6 section shall include:

7 (1) A prohibition on racial profiling;

8 (2) Training on racial profiling issues as part of law enforcement training;

9 (3) The collection of data in accordance with the rules promulgated by the attorney
10 general under section 590.777;

11 (4) (a) For state law enforcement agencies, procedures for receiving, investigating,
12 and responding meaningfully to complaints alleging racial profiling by law enforcement
13 agents; and

14 (b) For local law enforcement agencies, participation in an administrative
15 complaint procedure or independent audit program that meets the requirements of section
16 590.773; and

17 **(5) Any other policies and procedures the attorney general determines to be**
18 **necessary to eliminate racial profiling by law enforcement agencies.**

19 **3. The provisions of this section shall be applicable to local law enforcement**
20 **agencies twelve months after the effective date of sections 590.760 to 590.787.**

590.773. 1. No later than six months after the effective date of sections 590.760 to
2 **590.787 and in consultation with stakeholders, including state and local law enforcement**
3 **agencies and community, professional, research, and civil rights organizations, the attorney**
4 **general shall promulgate rules for the operation of administrative complaint procedures**
5 **and independent audit programs to ensure that such programs and procedures provide an**
6 **appropriate response to allegations of racial profiling by law enforcement agents or**
7 **agencies.**

8 **2. The rules promulgated under subsection 1 of this section shall contain guidelines**
9 **that ensure the fairness, effectiveness, and independence of the administrative complaint**
10 **procedures and independent audit programs.**

11 **3. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
12 **created under the authority delegated in this section shall become effective only if it**
13 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
14 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
15 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
16 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
17 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2016,**
18 **shall be invalid and void.**

590.777. 1. No later than six months after the effective date of sections 590.760 to
2 **590.787, the attorney general, in consultation with stakeholders, including state and local**
3 **law enforcement agencies, and community, professional, research, and civil rights**
4 **organizations shall promulgate rules for the collection and compilation of data under**
5 **section 590.770.**

6 **2. The rules promulgated under subsection 1 of this section shall:**

7 **(1) Provide for the collection of data on all routine or spontaneous investigatory**
8 **activities;**

9 **(2) Provide that the data collected shall:**

10 **(a) Be collected by race, ethnicity, national origin, gender, and religion, as**
11 **perceived by the law enforcement officer;**

12 **(b) Include the date, time, and location of such investigatory activities;**

13 **(c) Include detail sufficient to permit an analysis of whether a law enforcement**
14 **agency is engaging in racial profiling; and**

- 15 **(d) Not include personally identifiable information;**
- 16 **(3) Provide that a standardized form shall be made available to law enforcement**
17 **agencies for the submission of collected data to the attorney general;**
- 18 **(4) Provide that law enforcement agencies shall compile data on the standardized**
19 **form made available under subdivision (3) of this subsection and submit the form to the**
20 **attorney general;**
- 21 **(5) Provide that law enforcement agencies shall maintain all data collected under**
22 **sections 590.760 to 590.787 for not less than four years;**
- 23 **(6) Include guidelines for setting comparative benchmarks, consistent with best**
24 **practices, against which collected data shall be measured;**
- 25 **(7) Provide that the attorney general shall:**
- 26 **(a) Analyze the data for any statistically significant disparities, including:**
- 27 **a. Disparities in the percentage of drivers or pedestrians stopped relative to the**
28 **proportion of the population passing through the neighborhood;**
- 29 **b. Disparities in the hit rate; and**
- 30 **c. Disparities in the frequency of searches performed on minority drivers and the**
31 **frequency of searches performed on nonminority drivers; and**
- 32 **(b) No later than three years after the effective date of sections 590.760 to 590.787,**
33 **and annually thereafter:**
- 34 **a. Prepare a report regarding the findings of the analysis conducted under**
35 **paragraph (a) of this subdivision. Such report may, at the discretion of the attorney**
36 **general, be combined with and included in the report required under section 590.650;**
- 37 **b. Provide such report to the general assembly; and**
- 38 **c. Make such report available to the public, including on the attorney general's**
39 **website; and**
- 40 **(8) Protect the privacy of individuals whose data is collected by:**
- 41 **(a) Limiting the use of the data collected under sections 590.760 to 590.787 to the**
42 **purposes set forth in sections 590.760 to 590.787;**
- 43 **(b) Except as otherwise provided under sections 590.760 to 590.787, limiting access**
44 **to the data collected under sections 590.760 to 590.787 to those state or local employees or**
45 **agents who require such access in order to fulfill the purposes for the data set forth under**
46 **sections 590.760 to 590.787;**
- 47 **(c) Requiring contractors or other nongovernmental agents who are permitted**
48 **access to the data collected under sections 590.760 to 590.787 to sign use agreements**
49 **incorporating the use and disclosure restrictions set forth in paragraph (a) of this**
50 **subdivision; and**

51 (d) Requiring the maintenance of adequate security measures to prevent
52 unauthorized access to the data collected under sections 590.760 to 590.787.

53 3. Any rule or portion of a rule, as that term is defined in section 536.010, that is
54 created under the authority delegated in this section shall become effective only if it
55 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
56 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
57 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
58 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
59 grant of rulemaking authority and any rule proposed or adopted after August 28, 2016,
60 shall be invalid and void.

590.780. The attorney general shall provide to the general assembly and make
2 available to the public, together with each annual report described under section 590.777,
3 the data collected under sections 590.760 to 590.787, excluding any personally identifiable
4 information described in section 590.783.

590.783. The name or identifying information of a law enforcement officer,
2 complainant, or any other individual involved in any activity for which data is collected
3 and compiled under sections 590.760 to 590.787 shall not be:

- 4 (1) Released to the public;
5 (2) Disclosed to any person, except for:
6 (a) Such disclosures as are necessary to comply with sections 590.760 to 590.787;
7 (b) Disclosures of information regarding a particular person to such person; or
8 (c) Disclosures under litigation; or
9 (3) Subject to disclosure under chapter 610, except for disclosures of information
10 regarding a particular person to such person.

590.787. 1. (1) In addition to the rules required under section 590.777, the attorney
2 general shall promulgate such other rules as the attorney general determines are necessary
3 to implement sections 590.760 to 590.787.

4 (2) Any rule or portion of a rule, as that term is defined in section 536.010, that is
5 created under the authority delegated in this section shall become effective only if it
6 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
7 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
8 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
9 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
10 grant of rulemaking authority and any rule proposed or adopted after August 28, 2016,
11 shall be invalid and void.

12 **2. (1) No later than two years after the effective date of sections 590.760 to 590.787,**
13 **and annually thereafter, the attorney general shall submit to the general assembly a report**
14 **on racial profiling by law enforcement agencies. Such report may, at the discretion of the**
15 **attorney general, be combined with and included in the report required under section**
16 **590.650.**

17 **(2) Each report submitted under subdivision (1) of this subsection shall include:**

18 **(a) A summary of data collected under subdivision (3) of subsection 2 of section**
19 **590.770 and from any other reliable source of information regarding racial profiling in the**
20 **state;**

21 **(b) A discussion of the findings in the most recent report prepared by the attorney**
22 **general under subdivision (7) of subsection 2 of section 590.777;**

23 **(c) The status of the adoption and implementation of policies and procedures by**
24 **law enforcement agencies under section 590.770; and**

25 **(d) A description of any other policies and procedures that the attorney general**
26 **believes would facilitate the elimination of racial profiling.**

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