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SENATE . . . . . No. 1409

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to Improve the Collection and Analysis of Data Relative to Traffic Stops..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 90C is hereby amended by inserting after Section 6 the following new section:

Section 6A. Improved Systems for Collection and Analysis of Data Relative to Traffic Stops

(A) Findings.

(1) Municipal and state law enforcement officers play a vital role in protecting the public from crime. The vast majority of police officers discharge their duties professionally and without bias.

(2) The use by police officers of race, ethnicity, or national origin in deciding which persons should be subject to traffic stops, searches and seizures is improper unless a specific suspect description is involved.

(3) Statistical evidence from Massachusetts demonstrates that racial disparities in the stopping and searching of cars are prevalent. Specifically, the study authorized pursuant to

Massachusetts Chapter 228 of the Laws of 2000 found that 249 of the Commonwealth's 366 law enforcement agencies issued citations to and/or searched non-white motorists in ratios disproportionate to the portion constituted by those individuals in the corresponding population.

(4) Racial profiling harms individuals subjected to it because they experience fear, anxiety, humiliation, anger, resentment and cynicism when they are treated, without justification, as criminal suspects.

(5) Racial profiling in law enforcement is not merely wrong, but also ineffective. The large majority of individuals subjected to stops and other enforcement activities based on race, ethnicity, or national origin, are found to be law abiding and therefore racial profiling is not an effective means to uncover criminal activity, and engaging in such activity squanders limited law enforcement resources.

(6) Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society.

(7) Racial profiling undercuts law enforcement and the criminal justice system as a whole by undermining public confidence and trust in the police, the courts, and the criminal law, thereby undermining law enforcement's efforts and ability to solve and reduce crime.

(8) Law enforcement efforts to eradicate racial profiling and redress the harms it causes, while laudable, have not been uniform throughout the Commonwealth.

(9) A comprehensive solution is needed to address racial profiling at the state and local levels.

(B) Ban on racial profiling.

(1) No state or municipal law enforcement officer or law enforcement agency shall engage in racial profiling.

(2) As used in this section, “racial profiling” means the practice by a law enforcement agent or agency of relying to any degree on race, ethnicity, or national origin in deciding who should be subject to traffic stops, pedestrian stops, frisks and other types of bodily searches, interviews, and searches and seizures of motorists, passengers, and motor vehicles, except when such characteristics are used in combination with other identifying factors in seeking to apprehend a specific suspect whose racial, ethnic or national origin status is part of the description of the suspect, which description is particularized, timely and reliable.

(C) Traffic Data Review Committee.

(1) There is created a Traffic Data Review Committee, consisting of not more than 12 members, which shall independently exercise its powers, duties, and responsibilities. The Traffic Data Review Committee shall have the authority to allow additional participation from various groups that the Committee deems necessary for additional input.

(2) The membership of the Traffic Data Review Committee shall consist of:

two legislators appointed by the General Court leadership, one member from each house;

the Attorney General or his or her designee;

the Secretary of the Executive Office of Public Safety and Security or his or her designee;

the Registrar of the Registry of Motor Vehicles or his or her designee;

the Director of the Massachusetts State Police or his or her designee;

Chief Counsel of the Committee for Public Counsel Services or his or her designee;

two members of local or municipal law enforcement agencies, representing jurisdictions of varied size and geography, appointed by the Governor;

two members of community and/or civil rights advocacy organizations appointed by the Governor; and

one member of the Massachusetts academic community with specific expertise in both statistical analysis and law enforcement, appointed by the Governor.

(3) All Traffic Data Review Committee members shall serve, without compensation, for two years and until their successors are appointed. Members may be reappointed for an unlimited number of terms. The Traffic Data Review Committee shall meet at least quarterly.

(4) From the membership of the Traffic Data Review Committee, the Governor shall designate the chair and vice chair, who shall serve at the discretion of the Governor. Chairpersons shall serve in that capacity for a term not to exceed two years.

(5) The Traffic Data Review Committee shall have the following powers, duties, and responsibilities:

to operate solely as an advisory body. Any proposed changes to rules and policy promoted by the Traffic Data Review Committee will constitute “recommendations,” which may be reported to the Governor, the Secretary of Public Safety, and the General Court and/or to law

enforcement agencies and other entities identified as appropriate by the Traffic Data Review Committee;

to promulgate model policies for law enforcement agencies that are designed to protect individuals' civil rights related to law enforcement practices and to recommend to law enforcement agencies model rules necessary to effectuate training on data collection and analysis, and mechanisms to engage agencies that fail to fulfill the requirements of this section;

to identify and recommend best practices for traffic stop data collection and analysis, including best practices for making use of advanced technologies;

to review reports compiled pursuant to subsection (E)(1) and (E)(4), and, as necessary, other data or reports collected or compiled pursuant to this section, and to consider and propose solutions to identify, eliminate and prevent racial profiling;

to support and encourage law enforcement agencies in their outreach to local communities concerning a) the goals of traffic enforcement, b) perceived racial and ethnic disparities in traffic stops and other law enforcement activities, and c) strategies for monitoring and reducing such disparities where found to exist;

to review reports, analysis, recommendations, and conclusions formulated in connection with the implementation of Massachusetts Chapter 228 of the Laws of 2000, and to consider such reports, analysis, recommendations and conclusions in executing the powers, duties, and responsibilities under this subsection; and

to annually issue a report to the Governor regarding the Traffic Data Review Committee’s activities during the previous fiscal year.

(D) Ongoing Data Collection.

(1) Within 90 days of the effective date of this section, whenever a state or municipal law enforcement officer issues a Massachusetts Uniform Citation for an alleged motor vehicle violation, he or she shall record at least the following:

the identifying characteristics of the individuals who receive a warning or a citation, or who were arrested, including the race or ethnicity and the gender of the individual;

the reason for the traffic stop;

the location and time of the traffic stop;

whether a search was initiated as a result of the stop, and whether it was with consent or by other means;

whether or not contraband was found during a search, and, if so, the type and amount of contraband seized;

whether the stop resulted in a warning, citation or arrest;

the name and badge number of the officer initiating the stop.

(2) Within 90 days of the effective date of this section, whenever a state or municipal law enforcement officer stops a motorist for an alleged motor vehicle violation, and does not issue a Massachusetts Uniform Citation, he or she shall complete the Massachusetts Traffic Stop Data Collection Form that records at least the following:

the identifying characteristics of the individuals who are stopped, including the race or ethnicity, and gender of the individual;

the reason for the traffic stop;

the location and time of the traffic stop;

whether a search was initiated as a result of the stop, and whether it was with consent or by other means;

whether or not contraband was found during a search, and, if so, the type and amount of contraband seized;

the name and badge number of the officer initiating the stop.

(3) Within 90 days of the effective date of this section, and with input from the Traffic Data Review Committee and the Executive Office of Public Safety and Security, the Registry of Motor Vehicles shall revise the Massachusetts Uniform Citation and Massachusetts Traffic Stop Data Collection Form as necessary to include fields that permit officers to capture the data described in subsections (D)(1) and (D)(2).

(4) Within 90 days of the effective date of this section, and with input from the Traffic Data Review Committee, the Executive Office of Public Safety and Security shall develop a uniform protocol for state police and municipal police officers on how to use the Massachusetts Uniform Citation and the Massachusetts Traffic Stop Data Collection Form to record the data described in subsections (D)(1) and (D)(2).

(5) Every law enforcement agency shall compile and transmit the data described in subsection (D)(1) to the Registry of Motor Vehicles. The Registry of Motor Vehicles shall maintain all data from citations and warnings in an electronically accessible database, and shall

report that information monthly to the Secretary of the Executive Office of Public Safety, who shall transmit such data when appropriate to the Attorney General.

(6) Every law enforcement agency shall compile the data described in subsection (D)(2) in an electronically accessible data base, and shall transmit the data semiannually to the Secretary of the Executive Office of Public Safety and Security, who shall transmit such data when appropriate to the Attorney General.

(E) Data Analysis.

(1) On an annual basis, every law enforcement agency collecting data pursuant to this section shall issue a summary report of the data collected for the fiscal year, and shall submit the report to the Secretary of the Executive Office of Public Safety and Security. The summary report shall include a monthly breakdown by race, for each police department, of the number of traffic stops made, the number of searches conducted, and any other information deemed appropriate by the Attorney General with the advice of the Traffic Data Review Committee. The report shall be submitted not more than 90 days after the end of each fiscal year. No information revealing the identity of any individual shall be contained in the report. The reports submitted pursuant to this subsection shall be deemed public records.

(2) Every law enforcement agency collecting data pursuant to this section shall ensure that supervisory personnel review each officer's stop and search documentation to ensure compliance with the documentation requirements of this section. Such review shall occur at least as frequently as review by supervisory personnel of officer compliance with other written documentation requirements, but no less frequently than twice a month, in accordance with the policies of the agency.

(3) The head of every law enforcement agency subject to this section, or his/her designee, shall review the underlying data and summary reports collected and compiled pursuant to this section on a regular basis in an effort to determine whether any racial disparities in the agency's traffic stops enforcement exists, and to appropriately respond to any such disparities.

(4) On an annual basis, the Secretary of the Executive Office of Public Safety and Security shall transmit the necessary data and reports collected by the Executive Office of Public Safety and Security and the Registry of Motor Vehicles to a university in the Commonwealth with experience in the analysis of such data, which shall prepare an analysis and a report. This analysis and report shall be submitted to the Governor and the Traffic Data Review Committee not more than 90 days after receipt of the data and reports by the university, and shall be deemed a public record. The report shall include a multivariate analysis of the collected data in accordance with general statistical standards, and will identify statistically significant disparities. The following list, which is illustrative, and not exclusive, contains examples of areas in which statistically significant disparities may be evaluated:

The percentage of minority drivers or passengers being stopped in a given area is substantially higher than the proportion constituted by the minority population within the overall population residing in or traveling through that area.

A disparity between the frequency of stops of minorities not resulting in the issuance of a traffic ticket or the making of an arrest, and the proportion of minorities within the overall population residing in or traveling through that area.

A disparity between the proportion of citations issued to minorities and the proportion of minorities within the population residing in or traveling through that area.

A disparity among particular officers employed within the same law enforcement agency with regard to the number of minority drivers or passengers they stop within in a given area.

A disparity between the frequency of searches performed on minority drivers and the frequency of searches performed on non-minority drivers.

(F) Data Availability.

Any individual charged with a criminal offense based on evidence or statements obtained as the result of a motor vehicle stop, shall have the right to obtain data collected pursuant to this section concerning any officer who participated in the stop or the search that resulted in the seizure of evidence, from the Registry of Motor Vehicles, the Executive Office of Public Safety and Security, and from the law department agency or the department of the officer(s) involved in the traffic stop or search, except that information revealing the name, date of birth, and driver's license number of individuals involved in motor vehicle stops who are not law enforcement officers or their agents shall not be disclosed.

SECTION 2. Sections 1 and 9 of Chapter 228 of the Acts of 2000 are hereby repealed.