

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:

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

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

5 (A) Findings.

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

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

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

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

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

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

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

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

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

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

35 (B) Ban on racial profiling.

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

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

45 (C) Traffic Data Review Committee.

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

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

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

52 the Attorney General or his or her designee;

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

54 designee;

55 the Registrar of the Registry of Motor Vehicles or his or her designee;
56 the Director of the Massachusetts State Police or his or her designee;
57 Chief Counsel of the Committee for Public Counsel Services or his or her designee;
58 two members of local or municipal law enforcement agencies, representing jurisdictions
59 of varied size and geography, appointed by the Governor;
60 two members of community and/or civil rights advocacy organizations appointed by the
61 Governor; and
62 one member of the Massachusetts academic community with specific expertise in both
63 statistical analysis and law enforcement, appointed by the Governor.

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

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

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

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

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

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

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

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

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

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

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

96 (D) Ongoing Data Collection.

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

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

102 the reason for the traffic stop;

103 the location and time of the traffic stop;

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

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

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

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

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

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

116 the reason for the traffic stop;

117 the location and time of the traffic stop;

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

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

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

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

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

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

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

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

142 (E) Data Analysis.

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

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

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

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

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

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

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

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

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

184 (F) Data Availability.

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

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