HOUSE DOCKET, NO. 1011 FILED ON: 1/15/2013

HOUSE . . . . . No. 1588

The Commonwealth of Massachusetts

PRESENTED BY:

Byron Rushing and Sonia Chang-Diaz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to improve the collection and analysis of data relative to traffic stops.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Byron Rushing	*9th Suffolk*	*1/15/2013*
Sonia Chang-Diaz	*Second Suffolk*	*1/15/2013*
Martha M. Walz	*8th Suffolk*	*1/15/2013*
Carlos Henriquez	*5th Suffolk*	*1/15/2013*
Ruth B. Balser	*12th Middlesex*	*1/15/2013*
Cory Atkins	*14th Middlesex*	*1/15/2013*
Denise Andrews	*2nd Franklin*	*1/31/2013*
Gloria L. Fox	*7th Suffolk*	*2/1/2013*
Elizabeth A. Malia	*11th Suffolk*	*1/30/2013*
Denise Provost	*27th Middlesex*	*1/15/2013*
Marjorie C. Decker	*25th Middlesex*	*1/15/2013*
James B. Eldridge	*Middlesex and Worcester*	*1/15/2013*
Paul R. Heroux	*2nd Bristol*	*1/15/2013*
Carl M. Sciortino, Jr.	*34th Middlesex*	*1/15/2013*
Kay Khan	*11th Middlesex*	*1/15/2013*
Mary S. Keefe	*15th Worcester*	*1/15/2013*

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By Representative Rushing of Boston and Senator Chang-Diaz, a joint petition (accompanied by bill, House, No. 1588) of Byron Rushing, Sonia Chang-Diaz and others for legislation to improve the collection and analysis of data relative to traffic stops. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2853* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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) Ban on racial profiling.

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

(2) As used in this section, "racial profiling" means the use by a state, municipal, college or university law enforcement officer or state, municipal, college or university police department of race, ethnicity, or national origin to any degree 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.

(B) Traffic Data Review Committee.

(1) There is created a Traffic Data Review Committee, consisting of not more than 13 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 Traffic Data Review Committee shall consist of:

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

(b) the Attorney General or his or her designee;

(c) the Secretary of Public Safety and Security or his or her designee, who shall serve as chair;

(d) the Registrar of Motor Vehicles or his or her designee;

(e) the Colonel of the Massachusetts State Police or his or her designee;

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

(g) one police officer from a municipal law enforcement agency, appointed by the Massachusetts Police Association;

(h) one member of the Massachusetts Chiefs of Police Association and one member of the Massachusetts Major City Chiefs Association, each selected by their respective boards of directors;

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

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

Members of the Traffic Data Review Committee shall be appointed within 45 days of the effective date of this act.

(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 the call of the chair of the Committee based on the Committee's workload but shall meet at least quarterly. The Executive Office of Public Safety and Security shall provide staff and administrative services for the Traffic Data Review Committee.

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

(a) to operate as an advisory body, with any proposed changes to rules and policy promoted by the Traffic Data Review Committee constituting recommendations, which may be reported to the Governor, the Secretary of Public Safety and Security, and the General Court and/or to state, municipal, college or university police departments and other entities identified as appropriate by the Traffic Data Review Committee;

(b) to promulgate model policies for state, municipal, college or university police departments that are designed to protect individuals' civil rights related to law enforcement practices with regard to traffic stops, which model policies may be based in part on a review of existing policies developed or adopted by state, municipal, college or university police departments in the Commonwealth;

(c) to recommend to state, municipal, college and university police departments model rules necessary to effectuate training on data collection and analysis and mechanisms to engage agencies that do not fulfill the requirements of this section and to help identify potential sources of funding for data collection and analysis training;

(d) to identify and recommend best practices for traffic stop data collection and analysis, including best practices for making use of advanced technologies, and to advise the Executive Office of Public Safety and Security regarding the development of a system for state, municipal, college and university police departments to electronically gather, record, and report information concerning motor vehicle accidents, violations, traffic stops, and citations;

(e) to consider and make recommendations about how to determine the baseline data against which data collected pursuant to subsection (C) shall be measured;

(f) to review reports compiled pursuant to subsections (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;

(g) to support and encourage state, municipal, college and university police departments 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;

(h) to review reports, analyses, recommendations, and conclusions compiled using data collected 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

(i) to issue an annual report to the Governor, no later than September 1, regarding the Traffic Data Review Committee's activities during the previous fiscal year, which report shall also be filed with the Clerks of the Senate and the House of Representatives.

In accordance with subsection (4)(e) above, the Traffic Data Review Committee may consider, among other matters, the following:

i. whether 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;

ii. whether a disparity exists 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;

iii. whether a disparity exists between the proportion of citations issued to minorities and the proportion of minorities within the population residing in or traveling through that area;

iv. whether a disparity exists 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; and

v. whether a disparity exists between the frequency of searches performed on minority drivers and the frequency of searches performed on non-minority drivers.

(C) Ongoing Data Collection.

Whenever a motorist is stopped by any state, municipal, college or university law enforcement officer, the officer shall record the following data:

(a) the race, ethnicity, and gender of the motorist;

(b) the reason for the traffic stop;

(c) the location and time of the traffic stop;

(d) whether a search was initiated as a result of the stop, and whether the search was conducted with consent;

(e) whether contraband was found or any materials were seized during a search;

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

(g) the name and badge number of the officer initiating the stop.

The state police department and each municipal, college and university police department shall review each officer's stop and search documentation on at least a quarterly basis to ensure compliance with this subsection.

(D) Electronic Data Systems.

Any electronic systems developed for state, municipal, college, or university police departments to issue motor vehicle citations, or to gather, record, report, and study information concerning motor vehicle accidents, violations, traffic stops, or citations, shall be designed in a manner that facilitates the collection of the data described in subsection (C) of this section and the automatic transmission of said data to the Registry of Motor Vehicles and the Executive Office of Public Safety and Security. The Executive Office of Public Safety and Security shall obtain the participation of the Traffic Data Review Committee in the development and implementation of such electronic systems, and in the development of a uniform protocol for law enforcement officers on how to use such electronic systems to record the data described in subsection (C).

Upon the adoption of such an electronic system by any state, municipal, college, or university police department, said department shall record the data set forth in subsection (C) for all traffic stops and shall, no less frequently than once a month, transmit said data by electronic means to the Registry of Motor Vehicles and the Executive Office of Public Safety and Security.

(E) Data Analysis.

(1) The Registry of Motor Vehicles shall maintain all data described in subsection (C) in an electronically accessible database and shall issue to the Secretary of Public Safety and Security and to the Attorney General a semi-annual summary report of said data. The report shall include, for each police department, statistical data setting out, in a month-by-month format, the number of traffic stops made, the number of citations issued, the number of searches conducted, the race of the drivers stopped, the race of the drivers searched, and any other information as may be requested by the Traffic Data Review Committee. The Registry of Motor Vehicles shall also issue to the state police department and each municipal, college and university police department subject to this section a semi-annual summary report of the data collected within each department's jurisdiction. Each report shall include, for each month, statistical data setting out the number of traffic stops made, the number of searches conducted, the race of the drivers stopped, the race of the drivers searched, and any other information as may be requested by the Traffic Data Review Committee. The semi-annual reports required by this subsection shall be submitted no later than April 1 and September 1 and each report shall include data collected during the preceding half of the fiscal year, regardless of whether complete data is available for that period. No information revealing the identity of any individual shall be contained in the reports. The reports submitted pursuant to this subsection shall be public records.

(2) The heads of the state police department and each municipal, college and university police department 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 department's traffic stops exist, and to appropriately respond to any such disparities.

(3) On an annual basis, the Secretary of Public Safety and Security shall transmit the data collected by the state police department and by each municipal, college and university police department in accordance with this act 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 by the university, and shall be deemed a public record. The report shall include a multivariate analysis of the collected data in accordance with generally accepted statistical standards and will identify any statistically significant disparities.

(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 police department or the department of the officer(s) involved in the traffic stop or search; provided that information revealing the name, street address, 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; and provided further that information revealing the home address, date of birth, personal telephone number or any personal identifying information other than the name, badge number, and department of a law enforcement officer shall not be disclosed. Requests for such data may specify a single or multiple incidents, dates, locations or any other combination of data collected pursuant to subsection (C).

(G) Enforcement.

The attorney general may bring a civil action in the superior court for injunctive or other appropriate equitable relief to enforce the provisions of this section. A person claiming to be aggrieved by a violation of this section may not institute an individual action for damages or other relief under this section, but nothing in this paragraph shall be construed to limit any other rights or remedies, including, but not limited to, a civil action for a violation of constitutional rights under section 11I of chapter 12 of the General Laws or 42 U.S.C. section 1983 or motions for suppression or dismissal or other relief in a criminal case.

The attorney general shall issue an annual summary report of the complaints received concerning the enforcement of the provisions of this section and the actions taken with respect to such complaints. The report shall be submitted to the Traffic Data Review Committee not more

than 90 days after the end of each fiscal year, including the first fiscal year-end following the effective date of this act, regardless of whether data based on a full fiscal year is available. No information revealing the identity of any individual shall be contained in the report. The reports submitted pursuant to this subsection shall be public records.

SECTION 2.

Subsection (C) of Section 6A of Chapter 90C shall take effect 12 months from the effective date of this act, at which time Chapter 228 of the Acts of 2000 shall be repealed.

Subsection (E) of said Section 6A shall take effect at such time as the Executive Office of Public Safety and Security makes available to law enforcement agencies an electronic system described in subsection (D).