SENATE DOCKET, NO. 1969 FILED ON: 1/20/2017

SENATE . . . . . No. 1312

The Commonwealth of Massachusetts

PRESENTED BY:

Linda Dorcena Forry

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 relative to pedestrian stop data.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Linda Dorcena Forry	*First Suffolk*	
Sonia Chang-Diaz	*Second Suffolk*	*2/1/2017*
Jason M. Lewis	*Fifth Middlesex*	*2/2/2017*
Denise Provost	*27th Middlesex*	*2/2/2017*
Marjorie C. Decker	*25th Middlesex*	*2/3/2017*
Mike Connolly	*26th Middlesex*	*2/3/2017*
Julian Cyr	*Cape and Islands*	*2/3/2017*
Daniel J. Ryan	*2nd Suffolk*	*2/3/2017*
James B. Eldridge	*Middlesex and Worcester*	*2/3/2017*

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By Ms. Forry, a petition (accompanied by bill, Senate, No. 1312) of Linda Dorcena Forry, Sonia Chang-Diaz, Jason M. Lewis, Denise Provost and other members of the General Court for legislation relative to pedestrian stop data. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1263* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to pedestrian stop data.

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. The General Laws are hereby amended by inserting after chapter 22E the following chapter:-

CHAPTER 22F.

PROFILING.

Section 1. For the purposes of this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Executive office”, the executive office of public safety and security.

“Frisk”, a pat-down to locate a weapon.

"Law enforcement agency", a state, municipal, college or university police department or a police officer acting on behalf of such state, municipal, college or university police department.

"Profiling", racial and other profiling by a law enforcement officer in which differential treatment is administered based on actual or perceived race, color, ethnicity, national origin, immigration or citizenship status, religion, gender, gender identity or sexual orientation in conducting any law enforcement activity; provided, however, that "profiling " shall not include the use of such characteristics, in combination with other factors, to apprehend a specific suspect based on a description that is individualized, timely and reliable.

"Receipt", a contemporaneous record of a traffic stop, to be provided to the subject of the stop which shall include, but not be limited to: (i) reason for the stop; (ii) date, time and duration of the encounter; (iii) street address or approximate location of the encounter; (iv) the name and badge number of the officer initiating the stop; and (v) information about how to register commendations or complaints regarding the encounter.

"Secretary", the secretary of public safety and security.

Section 2. No law enforcement agency shall engage in profiling. Evidence of profiling may include differential treatment as demonstrated by evidence of intentional discrimination or by statistical evidence of disparate treatment.

Section 3. (a) The secretary shall create and update a system to record statistical data for the police and civilian contact as provided in this chapter. This system's records shall include, but not be limited to: (i) the data required to be collected pursuant to subsection (b). The secretary shall give due regard to census figures when setting forth the race and ethnicity categories in the system and shall consider providing guidance about the manner in which race

and ethnicity information is identified and designated and collected, including individuals' self-reporting of such categories; provided that, in all cases, the method of identification of such date specified by the secretary must be the same across all law enforcement entities and among different stop scenarios. The department of state police shall use the system to collect data. Other law enforcement entities shall have the authority to create such data collection instruments for their own use; provided, however, that any such system shall include the data required to be collected pursuant to subsection (b) and shall be submitted to and approved by the secretary as meeting the requirements of this chapter.

(b) If a person is stopped, frisked or searched by an officer of a law enforcement agency, including any time a frisk or search is consensual, the officer shall record:

(i) the reason for the stop;

(ii) the date, time and duration of the encounter;

(iii) the street address or approximate location of the encounter;

(iv) the race, ethnicity, gender and approximate age of the individual, which shall be based on the officer's observation and perception and shall not be requested of the person unless otherwise required by law;

(v) whether the individual has limited English language proficiency based on the officer's observation and perception.

(vi) whether any investigatory action was initiated, including a frisk or a search, and whether any such investigatory action was conducted with consent;

(vii) whether the officer found contraband or seized any materials;

(viii) whether the stop resulted in a warning, citation, arrest or no subsequent action; and

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

(c) For any stop that does not result in the issuance of a citation or arrest, the officer shall provide a receipt to the subject at the conclusion of the stop.

(d) Each police department, not less frequently than quarterly, shall: (i) review each officer's stop and search documentation to ensure compliance with this chapter; (ii) review the entire agency's stop and search data; (iii) examine and analyze any racial or other disparities; and (iv) formulate and implement an appropriate response.

(e) (1)Subsequent to the passage of this chapter, any electronic system developed for a law enforcement agency to issue citations or to gather, record and report information concerning pedestrian stops or citations, shall be designed to:

(i) collect the data described in subsection (b);

(ii) automatically transmit the data to the executive office; and

(iii) electronically generate citations and police encounter receipts.

(2) Upon the adoption of an electronic system by a law enforcement agency, the department shall record the data set forth in subsection (b) for all pedestrian stops. The department shall transmit all such data by electronic means to the executive office at intervals to be determined by the secretary but not less frequently than semi-annually.

(f)(1) The secretary shall: (i) maintain the data described in subsection (b) in an electronically-accessible database; (ii) submit an annual report summarizing the data to the attorney general and the committee on criminal justice established pursuant to Chapter 68 of the Acts of 2011; and file the annual report with the clerks of the senate and house of representatives. The report shall include statistical data for each law enforcement agency setting out the following information for pedestrian stops separately in a month-by-month format: (A) the number of stops made; (B) the reason for the stops; (C) the number of warnings, citations and arrests; (D) the number of, race, ethnicity, gender and age of the persons stopped; (E) the number of, race, ethnicity, gender and age of the persons frisked; (F) the number of, race, ethnicity, gender and age of the persons searched; (G) the number of stops and searches of any duration and scope that resulted in the seizure of contraband or any other item or material; and (H) any other information as may be requested by the committee on criminal justice. The annual reports shall be submitted not later than April 1 each year and shall include data collected during the preceding calendar year regardless of whether complete data is available for that period. No information revealing the identity of an individual shall be included in the annual reports. The annual reports submitted pursuant to this subsection shall be public records and shall be published on the website of the executive office.

(2) On a biennial basis, the secretary shall transmit the data collected by each police department in accordance with this chapter to an independent organization or university in the Commonwealth with experience in the analysis of such data, which shall prepare an analysis and report. Such analysis and report shall be submitted to the governor, the attorney general, the committee on criminal justice established pursuant to Chapter 68 of the Acts of 2011 and the clerks of the senate and house of representatives not more than 90 days after receipt of the data

by the independent organization or university. The analysis, report and data collected shall be deemed a public record and shall be published on the website of the executive office. The report shall include a multivariate analysis of the collected data in accordance with generally accepted statistical standards that seeks, to the extent possible, to measure the roles of race, ethnicity, gender and age as factors in law enforcement agencies' interactions with civilians including, but not limited to, the frequency with which individuals are stopped, frisked, searched, cited or arrested. The analysis shall include consideration of the demographics of the population residing in or traveling through a particular locale, local crime rates, the frequency with which encounters result in seizure of contraband or arrest and comparisons among similarly-situated officers.

(g) An individual charged with a criminal offense based on evidence or statements obtained as the result of a pedestrian stop may obtain from the executive office and the law enforcement agency of the officer involved the data collected pursuant to this section concerning any officer who participated in the stop or search that resulted in the seizure of evidence; provided, however, that information revealing the name, street address, date of birth and driver's license number of individuals involved in 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 section 3.

(h) The attorney general may bring a civil action in the superior court for injunctive or other appropriate equitable relief to enforce this section. Nothing in this chapter shall limit an individual's 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. § 1983 or a motion to suppress or dismiss or other relief in a criminal case.

SECTION 2. Subsection (f) of section 3 of chapter 22F of the General Laws shall take effect at such time as the executive office of public safety and security makes available to law enforcement agencies as defined in section 1 of said chapter 22F an electronic system described in said subsection (e) of said section 3 of said chapter 22F.