

SENATE No. 860

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 data collection and fair treatment of drivers.

PETITION OF:

NAME:

Linda Dorcena Forry

DISTRICT/ADDRESS:

First Suffolk

SENATE No. 860

By Ms. Forry, a petition (accompanied by bill, Senate, No. 860) of Linda Dorcena Forry for legislation to improve the collection and analysis of data relative to traffic stops. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 829 OF 2015-2016.]

The Commonwealth of Massachusetts

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

An Act relative to data collection and fair treatment of drivers.

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

1 The General Laws as appearing in the 2012 Official Edition are hereby amended by
2 inserting after chapter 22E the following new chapter:

3 Chapter 22F

4 (A) Ban on racial and other profiling

5 (1) No law enforcement entity shall engage in racial or other profiling.

6 (2) “Racial profiling” and other “profiling” by a law enforcement entity means
7 differential treatment based on actual or perceived race, color, ethnicity, national origin,
8 immigration or citizenship status, religion, gender, gender identity, or sexual orientation in
9 conducting any law enforcement action. Differential treatment may be demonstrated by

10 evidence of intentional discrimination or by statistical evidence of disparate treatment. Profiling
11 does not include the use of such characteristics, in combination with other factors, to apprehend a
12 specific suspect based on a description that is individualized, timely and reliable.

13 (3) “Law enforcement entity” means any state, municipal, college or university law
14 enforcement officer or state, municipal, college or university police department.

15 (4) “Receipt” means a contemporaneous record of any traffic stop, to be provided to the
16 subject of the stop. A receipt shall at a minimum include the following data: the reason for the
17 stop; the date, time, and duration of the encounter; the street address or approximate location of
18 the encounter; and the name and badge number of the officer initiating the stop. The receipt
19 shall also include information about how to register commendations or complaints regarding the
20 encounter.

21 (5) “Driver” means an operator of a motor vehicle, motorized bicycle, or motorized
22 scooter under this chapter, or a bicycle, scooter, or other vehicle traveling on a way.

23 (6) “Frisk” means a pat-down to locate a weapon.

24 (B) Data Collection

25 (1) The Office of the Secretary of Public Safety and Security shall create and update as
26 may be appropriate an instrument to record statistical data for the police-civilian contacts
27 covered by this Act. This instrument shall, at minimum, include the data required to be collected
28 by subsection (B)(2). The Secretary shall give due regard to census figures when setting forth
29 the race and ethnicity categories in the instrument and shall consider providing guidance about
30 the manner in which race and ethnicity information is identified and designated and collected,

31 including by individuals' self-reporting of such categories; provided that, in all cases, the method
32 of identification of such data specified by the Secretary must be the same across all law
33 enforcement entities and among different stop scenarios. The Massachusetts State Police shall
34 use this instrument to collect data. Other law enforcement entities shall have the authority to
35 create such data collection instruments for their own use, provided that any such instrument (a)
36 includes the data required to be collected by subsection (B)(2) and (b) is submitted to and
37 approved by the Secretary as meeting the requirements of this Act.

38 (2) Whenever an individual is stopped, frisked, or searched by any state, municipal,
39 college or university law enforcement officer, including any time a frisk or search is consensual,
40 the officer shall record the following data:

41 (a) reason for any stop;

42 (b) date, time, and duration of the encounter;

43 (c) street address or approximate location of the encounter;

44 (d) the number of occupants of the vehicle, if stop was a vehicle;

45 (e) race, ethnicity, gender, and approximate age of the driver and any person searched
46 as part of that stop, which shall be based on the officer's observation and perception and shall not
47 be requested of the person unless otherwise required by law or regulation;

48 (f) whether the driver, and any person searched, has limited English language
49 proficiency, based on the officer's observation and perception.

50 (g) whether any investigatory action was initiated, including a frisk or a search of an
51 individual or vehicle, and whether any such investigatory action was conducted with consent;

- 52 (h) whether contraband was found or any materials were seized;
- 53 (i) whether the stop resulted in a warning, citation, arrest, or no subsequent action;
- 54 (j) the name and badge number of the officer initiating the stop.

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

57 (4) Each police department, on at least a quarterly basis, shall review each officer's stop
58 and search documentation to ensure compliance with this Act, review the entire department's
59 stop and search data, examine and analyze any racial or other disparities, and formulate and
60 implement an appropriate response.

61 (C) Electronic Data Systems

62 Subsequent to the passage of this act, any electronic systems developed for law
63 enforcement entities to issue citations, or to gather, record, and report information concerning
64 vehicle accidents, violations, traffic stops, or citations, shall be designed to:

- 65 (i) collect the data described in subsection (B) of this section;
- 66 (ii) automatically transmit such data to the Executive Office of Public Safety and
67 Security as required by this section;
- 68 (iii) electronically generate citations and police encounter receipts.

69 Upon the adoption of such an electronic system by any police department, the department
70 shall record the data set forth in subsection (B) for all traffic stops. The department shall

71 transmit all such data by electronic means to the Executive Office of Public Safety and Security,
72 at intervals to be determined by the Secretary but not less than semi-annually.

73 (D) Data Analysis

74 (1) The Secretary of Public Safety and Security shall maintain all data described in
75 subsection (B) in an electronically accessible database, shall issue an annual summary report of
76 said data which shall be submitted to the Attorney General and the Criminal Justice Commission
77 established pursuant to Chapter 68 of the Acts of 2011, and filed with the clerks of the House
78 and Senate. The report shall include statistical data for each police department, setting out the
79 following information for traffic stops separately in a month-by-month format: the number of
80 stops made; the reason for the stops; the number of warnings, citations, and arrests; the number,
81 race, ethnicity, gender, and age of the drivers stopped; the number, race, ethnicity, gender, and
82 age of the persons frisked; the number, race, ethnicity, gender, and age of the persons searched;
83 the number of stops and searches, of any duration and of any scope, resulting in the seizure of
84 contraband or any other item or material; and any other information as may be requested by the
85 Criminal Justice Commission. The annual reports required by this subsection shall be submitted
86 no later than April 1 each year and shall include data collected during the preceding calendar
87 year, regardless of whether complete data is available for that period. No information revealing
88 the identity of any individual shall be contained in the reports. The reports submitted pursuant to
89 this subsection shall be public records and shall be published on the website of the Executive
90 Office of Public Safety and Security, along with a machine-readable version of the data
91 summarized within the reports.

92 (2) On a biennial basis, the Secretary of Public Safety and Security shall commission an
93 analysis and report regarding the data collected by each police department to be prepared by an
94 independent organization or university in the Commonwealth with experience in such data
95 analysis. Such analysis and report shall be submitted to the Governor, the Attorney General, the
96 Criminal Justice Commission established pursuant to Chapter 68 of the Acts of 2011, and the
97 clerks of the House and Senate not more than 90 days after receipt of the data by the independent
98 organization or university. The analysis and report, and the collected data, shall be deemed a
99 public record, and shall be published on the website of the Executive Office of Public Safety and
100 Security. The report shall include a multivariate analysis of the collected data in accordance with
101 generally accepted statistical standards that seeks, to the extent possible, to measure the roles of
102 race, ethnicity, gender, and age as factors in law enforcement entities' interactions with civilians,
103 including but not limited to the frequency with which individuals are stopped, frisked, searched,
104 cited, or arrested. Such analysis shall include consideration of the demographics of the
105 population residing in or traveling through a particular locale, local crime rates, the frequency
106 with which encounters result in seizure of contraband or arrest, and comparisons among
107 similarly-situated officers.

108 (E) Data Availability

109 Any individual charged with a criminal offense based on evidence or statements obtained
110 as the result of a traffic stop shall have the right to obtain data collected pursuant to this section
111 concerning any officer who participated in the stop or the search that resulted in the seizure of
112 evidence, from the Executive Office of Public Safety and Security and from the police
113 department of the officer(s) involved in the stop or search; provided that information revealing
114 the name, street address, date of birth, and driver's license number of individuals involved in

115 stops who are not law enforcement officers or their agents shall not be disclosed; and provided
116 further that information revealing the home address, date of birth, personal telephone number or
117 any personal identifying information other than the name, badge number, and department of a
118 law enforcement officer shall not be disclosed. Requests for such data may specify a single or
119 multiple incidents, dates, locations or any other combination of data collected pursuant to
120 subsection (B).

121 (F) Enforcement

122 The attorney general may bring a civil action in the superior court for injunctive or other
123 appropriate equitable relief to enforce the provisions of this section. Nothing in this Act shall be
124 construed to limit an individual's rights or remedies, including, but not limited to, a civil action
125 for a violation of constitutional rights under section 11I of chapter 12 of the General Laws or 42
126 U.S.C. section 1983 or motions for suppression or dismissal or other relief in a criminal case.

127 SECTION 2.

128 Subsection (B) shall take effect 12 months from the effective date of this act, at which
129 time Chapter 228 of the Acts of 2000 shall be repealed.

130 Subsection (D) shall take effect at such time as the Executive Office of Public Safety and
131 Security makes available to law enforcement agencies an electronic system described in
132 subsection (C).