

HOUSE No. 3115

The Commonwealth of Massachusetts

PRESENTED BY:

Denise Provost

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 safe roads and equitable enforcement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/16/2019</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>1/30/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/1/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/29/2019</i>

HOUSE No. 3115

By Ms. Provost of Somerville, a petition (accompanied by bill, House, No. 3115) of Denise Provost and others for legislation to prohibit the use of mobile telephones or mobile electronic devices while driving and establishing a system of identifying racial and other types of profiling. Transportation.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to safe roads and equitable enforcement.

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

3 (1) “Racial profiling” and other “profiling” by a law enforcement officer means
4 differential treatment based on actual or perceived race, color, ethnicity, national origin,
5 immigration or citizenship status, religion, gender, gender identity, or sexual orientation in
6 conducting any law enforcement action. Differential treatment may be demonstrated by a
7 showing of intentional discrimination or statistically significant evidence of disparate treatment.
8 Profiling does not include the use of such characteristics, in combination with other factors, to
9 apprehend a specific suspect based on a description that is individualized, timely and reliable.

10 (a) “Law enforcement agency” means an agency employing law enforcement officers to
11 enforce criminal laws;

12 (b) "Law enforcement officer" means an officer employed to enforce criminal laws,
13 whether or not in uniform, by:

14 (A) this commonwealth or any municipal government within the commonwealth;

15 (B) a political subdivision, agency, department, including sheriffs' departments or bureau
16 of the governments described

17 in subparagraph (A) of this paragraph; or

18 (C) a police department established by a university or hospital.

19 Section 2. No law enforcement officer or entity shall engage in racial or other profiling.
20 Evidence of profiling may include differential treatment as demonstrated by evidence of
21 intentional discrimination or by statistical evidence of disparate treatment.

22 Section 3.

23 (1) Each law enforcement agency shall collect and submit to the executive office of
24 public safety and security the following statistical data for each stop made and citation issued
25 under chapter 90 of the General Laws: (i) reason for the stop; (ii) date, time, duration and street
26 address or approximate location of the stop; (iii) race, ethnicity, gender, approximate age of the
27 driver and whether the driver has limited English proficiency based on the officer's observation
28 and perception; (iv) whether investigatory action was initiated, including a search of a vehicle or
29 the vehicle operator or passengers, and if the search was conducted with the consent of the
30 operator or passengers; (v) the results of any investigatory action; (vi) whether the stop or
31 subsequent search resulted in a warning, citation, arrest or other subsequent action; and (vii) the
32 badge number of the officer initiating the stop. The executive office of public safety and security

33 shall: (1) develop and distribute a form for law enforcement agencies to facilitate data collection
34 under this section; (2) submit annual reports, excluding the officer badge number, of the
35 statewide data to the joint committee on the judiciary, the joint committee on public safety and
36 homeland security and the senate and house committees on ways and means; and (3) make such
37 data available to the public online, in machine-readable format. Not less than annually, a police
38 department shall review each officer's stop and search data, review the entire department's stop
39 and search data, examine and analyze racial or other disparities and formulate and implement an
40 appropriate response. The failure of an officer to collect such data shall not affect the validity of
41 the underlying stop.

42 (1)(2) Any electronic systems developed for data collection by law enforcement shall be
43 designed to collect the data described in this section and automatically transmit that data to the
44 executive office of public safety and security. This instrument shall, at minimum, include the
45 data required to be collected by subsection (1). The Secretary shall give due regard to census
46 figures when setting forth the race and ethnicity categories in the instrument and shall consider
47 providing guidance about the manner in which race and ethnicity information is identified and
48 designated and collected; provided that, in all cases, the method of identification of such data
49 specified by the Secretary must be the same across all law enforcement entities and among
50 different stop scenarios. The Massachusetts State Police shall use this instrument to collect data.
51 Other law enforcement entities shall have the authority to create such data collection instruments
52 for their own use, provided that any such instrument includes the data required to be collected by
53 subsection (1) and is submitted to and approved by the Secretary as meeting the requirements of
54 this Act.

55 SECTION 4. Section 13 of chapter 90 of the General Laws, as appearing the 2016
56 Official Edition, is hereby amended by deleting in line 6 the words “mobile telephone” and
57 inserting in place thereof the following words:- hands-free mobile telephone.

58 SECTION 5. Section 13B of said chapter 90, as so appearing, is hereby amended by
59 inserting the following subsection:-

60 (a ½) No operator of a motor vehicle shall use a mobile telephone or mobile electronic
61 device: (i) for voice communications, unless said telephone or device is being used as a hands-
62 free mobile telephone or to activate, deactivate, or initiate a feature or function; or (ii) to access
63 social media or use any camera functions, including video calls. It shall be an affirmative defense
64 for an operator under this section to produce evidence that the use of a mobile telephone that is
65 the basis of the alleged violation was in the case of an emergency. For the purpose of this
66 paragraph, an emergency shall mean that the operator needed to communicate with another to
67 report any of the following: (1) that the vehicle or vessel was disabled; (2) that medical attention
68 or assistance was required on the vehicle or vessel; (3) that police intervention, fire department
69 or other emergency services was necessary for the personal safety of a passenger or to otherwise
70 ensure the safety of the public; or (4) that a disabled vehicle or an accident was present on a
71 roadway.