HOUSE DOCKET, NO. 1346 FILED ON: 1/16/2019

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:
Denise Provost	*27th Middlesex*	*1/16/2019*
Nika C. Elugardo	*15th Suffolk*	*1/30/2019*
James K. Hawkins	*2nd Bristol*	*2/1/2019*
José F. Tosado	*9th Hampden*	*1/29/2019*

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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:

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

(1) "Racial profiling" and other "profiling" by a law enforcement officer means differential treatment 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 action. Differential treatment may be demonstrated by a showing of intentional discrimination or statistically significant evidence of disparate treatment. Profiling does 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.

(a) "Law enforcement agency" means an agency employing law enforcement officers to enforce criminal laws;

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

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

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

in subparagraph (A) of this paragraph; or

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

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

Section 3.

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

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

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

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

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

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