SENATE DOCKET, NO. 1248 FILED ON: 1/17/2019

SENATE . . . . . No. 1378

The Commonwealth of Massachusetts

PRESENTED BY:

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 relative to traffic and pedestrian stop data.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Sonia Chang-Diaz	*Second Suffolk*	
James B. Eldridge	*Middlesex and Worcester*	*1/31/2019*
Denise Provost	*27th Middlesex*	*2/1/2019*
Nika C. Elugardo	*15th Suffolk*	*2/1/2019*
Michael D. Brady	*Second Plymouth and Bristol*	*2/1/2019*
Bud L. Williams	*11th Hampden*	*2/1/2019*
Elizabeth A. Malia	*11th Suffolk*	*2/1/2019*
Carlos González	*10th Hampden*	*2/1/2019*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*2/1/2019*
Harriette L. Chandler	*First Worcester*	*2/1/2019*

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By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 1378) of Sonia Chang-Diaz, James B. Eldridge, Denise Provost, Nika C. Elugardo and other members of the General Court for legislation relative to traffic and pedestrian stop data. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

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

An Act relative to traffic and 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, as appearing in the 2016 Official Edition, are hereby amended by inserting after chapter 22E the following new chapter:-

Chapter 22F.

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 entity 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.

(2) “Law enforcement entity” means any state, municipal, transit, college or university law enforcement officer or state, municipal, college or university police department or a police officer acting on behalf of such state, municipal, college or university police department.

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

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

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

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

(7) “Secretary”, the secretary of public safety and security.

(8) “Pedestrian”, means an individual walking on a road, in a public transit station, or in another public space.

Section 2. (A) Ban on racial and other profiling

(1) No law enforcement 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. (B) Data collection

(1) The secretary of public safety and security shall create and update as may be appropriate an instrument to record statistical data for the police-civilian contacts covered by this Act. This instrument shall, at minimum, include the data required to be collected by subsection (B)(2). 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, including by individuals' self-reporting of such categories; 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 (a) includes the data required to be collected by subsection (B)(2) and (b) is submitted to and approved by the secretary as meeting the requirements of this Act.

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

(a) reason for any stop;

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

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

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

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

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

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

(h) whether contraband was found or any materials were seized;

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

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

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

(4) Each police department, not less frequently than quarterly, shall review each officer's stop and search documentation to ensure compliance with this Act, review the entire department's stop and search data, examine and analyze any racial or other disparities, and formulate and implement an appropriate response.

(C) Electronic data systems

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

(i) collect the data described in subsection (B) of this section;

(ii) automatically transmit such data to the executive office of public safety and security as required by this section;

(iii) electronically generate citations and police encounter receipts.

Upon the adoption of such an electronic system by any police department, the department shall record the data set forth in subsection (B) for all traffic and pedestrian stops. The department shall transmit all such data by electronic means to the executive office of public safety and security, at intervals to be determined by the Secretary but not less than semi-annually.

(D) Data analysis

(1) The secretary of public safety and security shall maintain all data described in subsection (B) in an electronically accessible database, shall issue an annual summary report of said data which shall be submitted to the attorney general and the criminal justice commission established pursuant to chapter 68 of the acts of 2011; and filed with the clerks of the house and senate. The report shall include statistical data for each police department, setting out the following information for traffic and pedestrian stops separately in a month-by-month format: the number of stops made; the reason for the stops; the number of warnings, citations, and arrests; the number of, race, ethnicity, gender, and age of the drivers or pedestrians stopped; the

number of, race, ethnicity, gender, and age of the persons frisked; the number of, race, ethnicity, gender, and age of the persons searched; the number of stops and searches, of any duration and of any scope, resulting in the seizure of contraband or any other item or material; and any other information as may be requested by the criminal justice commission. The annual reports required by this subsection shall be submitted no 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 any individual shall be contained in the reports. The reports submitted pursuant to this subsection shall be public records and shall be published on the website of the executive office of public safety and security, along with a machine-readable version of the data summarized within the reports.

(2) On a biennial basis, the secretary of public safety and security shall transmit the data collected by each police department in accordance with this act to an independent organization or university in the commonwealth with experience in the analysis of such data, and said organization or university shall prepare an analysis and a report. Such analysis and report shall be submitted to the governor, the attorney general, the criminal justice commission established pursuant to chapter 68 of the acts of 2011 and the clerks of the house and senate not more than 90 days after receipt of the data by the independent organization or university. The analysis and report, and the collected data, shall be deemed a public record, and shall be published on the website of the executive office of public safety and security. 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 entities' interactions with civilians, including but not limited to the frequency with which individuals are stopped, frisked, searched, cited, or arrested. Such

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.

(E) Data availability

Any individual charged with a criminal offense based on evidence or statements obtained as the result of a traffic or pedestrian 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 executive office of public safety and security and from the police department of the officer(s) involved in the stop or search; provided 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 subsection (B).

(F) 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. Nothing in this Act shall be construed to 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, as so

appearing, or 42 U.S.C. section 1983 or motions for suppression or dismissal or other relief in a criminal case.

SECTION 2. Subsection (B) 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 (D) 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 (C).