

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

SENATE No. 1378

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:

1 SECTION 1. The General Laws, as appearing in the 2016 Official Edition, are hereby
2 amended by inserting after chapter 22E the following new chapter:-

3 Chapter 22F.

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

6 (1) “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 a
10 showing of intentional discrimination or statistically significant evidence of disparate treatment.
11 Profiling does not include the use of such characteristics, in combination with other factors, to
12 apprehend a specific suspect based on a description that is individualized, timely and reliable.

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

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

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

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

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

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

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

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

30 (1) No law enforcement entity shall engage in racial or other profiling. Evidence of
31 profiling may include differential treatment as demonstrated by evidence of intentional
32 discrimination or by statistical evidence of disparate treatment.

33 Section 3. (B) Data collection

34 (1) The secretary of public safety and security shall create and update as may be
35 appropriate an instrument to record statistical data for the police-civilian contacts covered by this
36 Act. This instrument shall, at minimum, include the data required to be collected by subsection
37 (B)(2). The secretary shall give due regard to census figures when setting forth the race and
38 ethnicity categories in the instrument and shall consider providing guidance about the manner in
39 which race and ethnicity information is identified and designated and collected, including by
40 individuals' self-reporting of such categories; provided that, in all cases, the method of
41 identification of such data specified by the secretary must be the same across all law enforcement
42 entities and among different stop scenarios. The Massachusetts state police shall use this
43 instrument to collect data. Other law enforcement entities shall have the authority to create such
44 data collection instruments for their own use, provided that any such instrument (a) includes the
45 data required to be collected by subsection (B)(2) and (b) is submitted to and approved by the
46 secretary as meeting the requirements of this Act.

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

50 (a) reason for any stop;

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

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

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

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

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

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

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

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

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

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

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

71 (C) Electronic data systems

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

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

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

78 (iii) electronically generate citations and police encounter receipts.

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

84 (D) Data analysis

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

93 number of, race, ethnicity, gender, and age of the persons frisked; the number of, race, ethnicity,
94 gender, and age of the persons searched; the number of stops and searches, of any duration and
95 of any scope, resulting in the seizure of contraband or any other item or material; and any other
96 information as may be requested by the criminal justice commission. The annual reports required
97 by this subsection shall be submitted no later than April 1 each year and shall include data
98 collected during the preceding calendar year, regardless of whether complete data is available for
99 that period. No information revealing the identity of any individual shall be contained in the
100 reports. The reports submitted pursuant to this subsection shall be public records and shall be
101 published on the website of the executive office of public safety and security, along with a
102 machine-readable version of the data summarized within the reports.

103 (2) On a biennial basis, the secretary of public safety and security shall transmit the data
104 collected by each police department in accordance with this act to an independent organization or
105 university in the commonwealth with experience in the analysis of such data, and said
106 organization or university shall prepare an analysis and a report. Such analysis and report shall
107 be submitted to the governor, the attorney general, the criminal justice commission established
108 pursuant to chapter 68 of the acts of 2011 and the clerks of the house and senate not more than
109 90 days after receipt of the data by the independent organization or university. The analysis and
110 report, and the collected data, shall be deemed a public record, and shall be published on the
111 website of the executive office of public safety and security. The report shall include a
112 multivariate analysis of the collected data in accordance with generally accepted statistical
113 standards that seeks, to the extent possible, to measure the roles of race, ethnicity, gender, and
114 age as factors in law enforcement entities' interactions with civilians, including but not limited to
115 the frequency with which individuals are stopped, frisked, searched, cited, or arrested. Such

116 analysis shall include consideration of the demographics of the population residing in or
117 traveling through a particular locale, local crime rates, the frequency with which encounters
118 result in seizure of contraband or arrest, and comparisons among similarly-situated officers.

119 (E) Data availability

120 Any individual charged with a criminal offense based on evidence or statements obtained
121 as the result of a traffic or pedestrian stop shall have the right to obtain data collected pursuant to
122 this section concerning any officer who participated in the stop or the search that resulted in the
123 seizure of evidence, from the executive office of public safety and security and from the police
124 department of the officer(s) involved in the stop or search; provided that information revealing
125 the name, street address, date of birth, and driver's license number of individuals involved in
126 stops who are not law enforcement officers or their agents shall not be disclosed; and provided
127 further that information revealing the home address, date of birth, personal telephone number or
128 any personal identifying information other than the name, badge number, and department of a
129 law enforcement officer shall not be disclosed. Requests for such data may specify a single or
130 multiple incidents, dates, locations or any other combination of data collected pursuant to
131 subsection (B).

132 (F) Enforcement

133 The attorney general may bring a civil action in the superior court for injunctive or other
134 appropriate equitable relief to enforce the provisions of this section. Nothing in this Act shall be
135 construed to limit an individual's rights or remedies, including, but not limited to, a civil action
136 for a violation of constitutional rights under section 11I of chapter 12 of the General Laws, as so

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

139 SECTION 2. Subsection (B) shall take effect 12 months from the effective date of this
140 act, at which time chapter 228 of the acts of 2000 shall be repealed.

141 Subsection (D) shall take effect at such time as the executive office of public safety and
142 security makes available to law enforcement agencies an electronic system described in
143 subsection (C).