SECOND REGULAR SESSION

SENATE BILL NO. 560

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHAPPELLE-NADAL.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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AN ACT

To repeal section 590.650, RSMo, and to enact in lieu thereof one new section relating to racial bias in policing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 590.650, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 590.650, to read as follows:

590.650. 1. **This section may be cited as the "Fair and Impartial Policing Act of 2018".**

2. As used in this section, **the following terms shall mean:**

(1) "Benchmark", the percentage of a given population within the larger population, be it residential, driving, or some other measured population;

(2) "Biased policing", occurs when a peace officer inappropriately considers race, ethnicity, gender, gender identity, sexual orientation, age, national origin, or other factors in deciding which individuals should be subject to routine or spontaneous law enforcement activity. This does not include investigations of alleged crimes where law enforcement must seek out suspects who match a specifically delineated description;

(3) "Contraband", drugs, guns, or some other object that may warrant an arrest;

(4) "Disparity index", the rate of any given activity such as stops, searches, or arrests, for a given population as compared to the benchmark for that population;

(5) "Hit rate", the percentage of stops and searches in which a

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

law enforcement officer finds seizable evidence. The hit rate is calculated by dividing the number of searches that yield contraband by the total number of searches;

(6) "Law enforcement activity", the following activities by a peace officer:

(a) Traffic stops;

(b) Pedestrian (Terry) stops;

(c) Consensual or nonconsensual searches of persons, property, or possessions, including vehicles;

(7) "Minority group" **[**means**],** individuals of African, Hispanic, Native American **[**or**],** Asian descent**, or multiracial descent;**

(8) "Pedestrian stops" (Terry stops), any stops of individuals in public spaces where an officer stops, frisks, or questions a person based upon reasonable suspicion of unlawful activity.

[2.**] 3.** Each time a peace officer stops a driver of a motor vehicle **or completes a pedestrian stop**, that officer shall report the following information to the law enforcement agency that employs the officer:

(1) The age, gender **[**and**], gender identity,** race **[**or minority group**], and national origin** of the individual stopped **as perceived by the peace officer**;

(2) **Whether the person stopped resides in the jurisdiction in which such person was stopped;**

(3) The reasons for the stop;

[(3)**] (4)** Whether a search was conducted as a result of the stop;

[(4)**] (5)** If a search was conducted, whether the individual consented to the search, the probable cause for the search, whether the person was searched, whether the person's property was searched, and the duration of the search;

[(5)**] (6)** Whether any **[**contraband**] seizable evidence** was discovered in the course of the search and the type of any contraband discovered;

[(6)**] (7)** Whether any warning or citation was issued as a result of the stop;

[(7)**] (8)** If a warning or citation was issued, the violation charged or warning provided;

[(8)**] (9)** Whether an arrest was made as a result of either the stop or the search;

[(9)**] (10)** If an arrest was made, the crime charged; and

[(10)**]** **(11)** The **time, date, and** location of the stop.

Such information may be reported using a format determined by the department of public safety which uses existing citation and report forms.

[3.**]** **4.** (1) Each law enforcement agency shall compile the data described in subsection **[**2**]** **3** of this section for the calendar year into a report to the attorney general. **No information revealing the identity of any individual peace officer shall be contained in the report.**

(2) Each law enforcement agency shall submit the report to the attorney general no later than March first of the following calendar year.

(3) The attorney general shall determine the format that all law enforcement agencies shall use to submit the report.

[4.**]** **5.** (1) The attorney general shall analyze the annual reports of law enforcement agencies required by this section and submit a report of the findings to the governor, the general assembly and each law enforcement agency no later than June first of each year.

(2) **The data analysis shall be completed using best practices and include a meaningful benchmark as appropriate for the type of population and appropriate for the geographic areas being analyzed, against which data shall be measured, which may include:**

(a) Using race and ethnicity specific data about the residential population; or

(b) Using race and ethnicity specific data from a spatial weighting analysis tool;

(c) Using race and ethnicity specific data about traffic accidents in which the driver is not found to be at fault;

(d) Using race and ethnicity specific data from observational surveys of motorists;

(e) Using a combination of the above listed benchmark measures.

(3) The report of the attorney general shall include **statewide and agency-specific analyses of** at least the following information **[**for each agency**]**:

(a) The total number of vehicles **and pedestrians** stopped by peace officers during the previous calendar year;

(b) **The number of driver and pedestrian stops, broken down by the racial or ethnic group, meaning White, Black/African American, Hispanic/Latino, American Indian/Alaska Native, Asian, Multiracial, or**

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Other/Unknown;

(c) The number of vehicle stops that resulted in a search, broken down by the driver's racial or ethnic group;

(d) The number of pedestrian stops that resulted in either a pat down or search, broken down by racial or ethnic group;

(e) The disparity index regarding stopped pedestrians and drivers for each racial or ethnic group, as determined using the benchmark measures listed in subdivision (2) of this subsection;

(f) The disparity indices regarding consensual and nonconsensual searches for pedestrians and drivers subjected to vehicle stops for each racial or ethnic group, basing the benchmarks on the population of those stopped;

(g) The disparity indices regarding arrests for pedestrians and drivers subjected to stops for each racial or ethnic group, basing the benchmarks on the population of those stopped;

(h) The disparity indices in "pat downs" for pedestrians subject to stops for each racial or ethnic group, basing the benchmarks on the population of those stopped;

(i) A comparison of the racial or ethnic disparities in consent searches to the consent search hit rate;

(j) The number and percentage of **[**stopped motor vehicles that were driven by members of each particular minority**] traffic stops by the type of violation cited, such as moving, equipment, license, or investigatory, broken down by racial or ethnic** group;

[(c)**] (k)** A comparison of the **[**percentage of stopped motor vehicles driven by each minority group and the percentage of the state's population that each minority group comprises**] racial or ethnic disparities in hit rates**; and

[(d)**] (l)** A compilation of the information reported by law enforcement agencies pursuant to subsection **[**2**] 3** of this section.

[5.**] 6.** Each law enforcement agency shall adopt a **detailed written** policy **[**on race-based traffic stops**]** that **shall include**:

[(1) Prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;

(2) Provides for periodic reviews by the law enforcement agency of the annual report of the attorney general required by subsection 4 of this section

that:

(a) Determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency; and

(b) If the review reveals a pattern, require an investigation to determine whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law; and

(3) Provides for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within ninety days of the review.

The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

6. If a law enforcement agency fails to comply with the provisions of this section, the governor may withhold any state funds appropriated to the noncompliant law enforcement agency.**]**

(1) A stated prohibition on bias in policing;

(2) Provisions for training on biased policing, including:

(a) A required initial course on biased policing as part of basic law enforcement training given to all peace officers and those training for licensure as a peace officer;

(b) A requirement that peace officers attend a minimum of eight hours of ongoing anti-bias police training annually in order to maintain POST certification;

(c) A requirement that command staff and other peace officers with supervisory authority, including all licensed training instructors, shall be trained on best practices for promoting fair and impartial policing in their agencies on an annual basis; and

(d) A requirement that peace officers use electronic recording devices available in their agencies and receive training on the use and maintenance of the devices;

(3) Procedures aimed at decreasing bias in policing in the administration of consent searches, which shall include the following

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provisions:

(a) A peace officer may only seek consent to search when he or she has reasonable suspicion based on specific, articulable facts for conducting such search;

(b) The peace officer shall document in writing such specific, articulable facts for conducting a consent search. The written documentation shall also include the results of the search;

(c) Prior to conducting a consensual search of a person or the person's effects, a peace officer shall articulate in plain language that the person is being asked to voluntarily consent to a search and the person has the right to refuse the request to search;

(d) After providing such advisement, a peace officer shall request, in plain language, that the person subject to the search provide voluntary written consent to the search;

(e) Whether or not the person subject to search provides written consent, a peace officer may conduct the search if the person provided voluntary consent in a form other than in writing;

(f) Any evidence obtained as a result of a search prohibited by this section shall be inadmissible in any judicial proceeding; and

(g) Nothing contained in this subsection shall be construed to preclude any search otherwise based upon any legally sufficient cause;

(4) When the motor vehicle has been stopped solely for a traffic violation, a peace officer may only request the following documentation from drivers of motor vehicles: a driver's license or other verifiable, government-issued identification, including foreign-issued identification; motor vehicle registration; and proof of insurance, unless there exists reasonable suspicion or probable cause of criminal activity;

(5) No passenger of a motor vehicle shall be requested to provide identification or any other documentation by a peace officer when the motor vehicle has been stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity; and

(6) When a pedestrian has been stopped based on reasonable suspicion of criminal activity, a peace officer may only request the first, middle, and last name and address of the individual stopped.

7. Each law enforcement agency in this state may utilize federal funds

from community-oriented policing services grants or any other federal sources to equip each vehicle used for traffic stops with a video camera and voice-activated microphone.

8. **(1) Each law enforcement agency shall ensure that there is an annual review of the data collected by their officers under subsection 3 of this section and the annual report of the attorney general required by subsection 4 of this section.**

(2) Such review shall determine whether individual officers in the agency have a pattern of stopping, searching, or arresting members of minority groups:

(a) In a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency, using the benchmark measures described in subsection 5 of this section; and

(b) In a number disproportionate to similarly situated peace officers.

(3) If the review reveals a pattern of disparity, either systemically or for individual officers, the agency shall require an investigation to determine whether the agency or any peace officers of the agency routinely engage in biased policing.

(4) The agency shall provide for appropriate counseling and training of any peace officer found to have engaged in biased policing within ninety days of the review. The officer shall be removed from patrol duties until completion of training and counseling. The agency shall also review its own policies and procedures in order to minimize this bias in the future.

9. Each law enforcement agency shall create a community and law enforcement partnership to create mutual understanding between law enforcement and the community about bias-based policing and to provide a forum for each group to listen and respond to the other's concerns. The partnership:

(1) Shall include no less than five participants composed of representatives of law enforcement, community leaders, and educational leaders who reflect the local racial and ethnic community;

(2) Shall facilitate workshops and public meetings in the community on racial and other biases;

(3) May advise and assist in policy development and the training

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and education of law enforcement agencies on biased policing;

(4) Shall annually and formally recognize law enforcement agencies and individual officers who have demonstrated strong commitment to addressing issues of biased policing and working with the local community.

10. (1) If an agency does not report or submits incomplete reports in any year, the governor shall withhold any state funds appropriated to that agency.

(2) If a law enforcement agency reports a motor vehicle or pedestrian stop or consent search disparity index for any particular minority group that is one standard deviation above the corresponding statewide indices for that same minority group for three consecutive years, the agency shall be subject to review for a period of three years.

(3) During the time an agency is subject to review, the agency shall provide semi-annual reports on bias-based policing to the attorney general, which shall include the same information required in subsection 4 of this section and a narrative form describing what effort or action, if any, has been taken to address any racial disparities in stops and searches. The report shall be a public record.

(4) If the agency's disparity or consent search rate indices remain one standard deviation or more above the statewide indices in its second year of review, the attorney general shall require changes in the agency's policies and practices, including techniques for identifying problem officers, requirements that an officer's profiling statistics be a part of the record used to evaluate promotions and reassignments, training of supervisors in the skills necessary to eliminate bias in policing, and increasing the quality and quantity of officer training related to bias in policing.

(5) If the agency's disparity and consent search rate indices remain one standard deviation or more above the statewide indices and search rates in its third year of review, in addition to loss of state funds, the POST commission, in consultation with the attorney general's office, shall review the record of the law enforcement agency during the review period to determine if the pattern of disparities indicates a systemic bias or a failure to supervise of such magnitude that the law enforcement agency should be decertified. The POST commission shall take into account whether the agency is making a

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good faith effort to reform. If not decertified, the agency shall remain under sanction, with periodic POST review, until such time as the agency's disparity and consent search rate indices are no longer one standard deviation above the statewide indices.

11. A peace officer who stops a driver of a motor vehicle pursuant to a lawfully conducted sobriety check point or road block shall be exempt from the reporting requirements of subsection **[**2**]** **3** of this section.

12. Notwithstanding any other provision of law to the contrary, violation of this section is automatic grounds for civil suit by the person or persons claiming racial profiling by law enforcement agencies or peace officers in Missouri. Law enforcement agencies and peace officers are not immune to civil litigation or any generally applicable damages or remedies.

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