

SENATE No. 1312

The Commonwealth of Massachusetts

PRESENTED BY:

Linda Dorcena Forry

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 pedestrian stop data.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Linda Dorcena Forry	First Suffolk	
Sonia Chang-Diaz	Second Suffolk	2/1/2017
Jason M. Lewis	Fifth Middlesex	2/2/2017
Denise Provost	27th Middlesex	2/2/2017
Marjorie C. Decker	25th Middlesex	2/3/2017
Mike Connolly	26th Middlesex	2/3/2017
Julian Cyr	Cape and Islands	2/3/2017
Daniel J. Ryan	2nd Suffolk	2/3/2017
James B. Eldridge	Middlesex and Worcester	2/3/2017

SENATE No. 1312

By Ms. Forry, a petition (accompanied by bill, Senate, No. 1312) of Linda Dorcena Forry, Sonia Chang-Diaz, Jason M. Lewis, Denise Provost and other members of the General Court for legislation relative to pedestrian stop data. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1263 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to 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 are hereby amended by inserting after chapter 22E the
2 following chapter:-

3 CHAPTER 22F.

4 PROFILING.

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

7 “Executive office”, the executive office of public safety and security.

8 “Frisk”, a pat-down to locate a weapon.

9 “Law enforcement agency”, a state, municipal, college or university police department or
10 a police officer acting on behalf of such state, municipal, college or university police department.

11 “Profiling”, racial and other profiling by a law enforcement officer in which differential
12 treatment is administered based on actual or perceived race, color, ethnicity, national origin,
13 immigration or citizenship status, religion, gender, gender identity or sexual orientation in
14 conducting any law enforcement activity; provided, however, that “profiling “ shall not include
15 the use of such characteristics, in combination with other factors, to apprehend a specific suspect
16 based on a description that is individualized, timely and reliable.

17 “Receipt”, a contemporaneous record of a traffic stop, to be provided to the subject of the
18 stop which shall include, but not be limited to: (i) reason for the stop; (ii) date, time and duration
19 of the encounter; (iii) street address or approximate location of the encounter; (iv) the name and
20 badge number of the officer initiating the stop; and (v) information about how to register
21 commendations or complaints regarding the encounter.

22 “Secretary”, the secretary of public safety and security.

23 Section 2. No law enforcement agency shall engage in profiling. Evidence of profiling
24 may include differential treatment as demonstrated by evidence of intentional discrimination or
25 by statistical evidence of disparate treatment.

26 Section 3. (a) The secretary shall create and update a system to record statistical data for
27 the police and civilian contact as provided in this chapter. This system’s records shall include,
28 but not be limited to: (i) the data required to be collected pursuant to subsection (b). The
29 secretary shall give due regard to census figures when setting forth the race and ethnicity
30 categories in the system and shall consider providing guidance about the manner in which race

31 and ethnicity information is identified and designated and collected, including individuals' self-
32 reporting of such categories; provided that, in all cases, the method of identification of such data
33 specified by the secretary must be the same across all law enforcement entities and among
34 different stop scenarios. The department of state police shall use the system to collect data.
35 Other law enforcement entities shall have the authority to create such data collection instruments
36 for their own use; provided, however, that any such system shall include the data required to be
37 collected pursuant to subsection (b) and shall be submitted to and approved by the secretary as
38 meeting the requirements of this chapter.

39 (b) If a person is stopped, frisked or searched by an officer of a law enforcement agency,
40 including any time a frisk or search is consensual, the officer shall record:

41 (i) the reason for the stop;

42 (ii) the date, time and duration of the encounter;

43 (iii) the street address or approximate location of the encounter;

44 (iv) the race, ethnicity, gender and approximate age of the individual, which shall be
45 based on the officer's observation and perception and shall not be requested of the person unless
46 otherwise required by law;

47 (v) whether the individual has limited English language proficiency based on the
48 officer's observation and perception.

49 (vi) whether any investigatory action was initiated, including a frisk or a search, and
50 whether any such investigatory action was conducted with consent;

51 (vii) whether the officer found contraband or seized any materials;

52 (viii) whether the stop resulted in a warning, citation, arrest or no subsequent action;
53 and

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

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

57 (d) Each police department, not less frequently than quarterly, shall: (i) review each
58 officer's stop and search documentation to ensure compliance with this chapter; (ii) review the
59 entire agency's stop and search data; (iii) examine and analyze any racial or other disparities; and
60 (iv) formulate and implement an appropriate response.

61 (e) (1) Subsequent to the passage of this chapter, any electronic system developed for a
62 law enforcement agency to issue citations or to gather, record and report information concerning
63 pedestrian stops or citations, shall be designed to:

64 (i) collect the data described in subsection (b);

65 (ii) automatically transmit the data to the executive office; and

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

67 (2) Upon the adoption of an electronic system by a law enforcement agency, the
68 department shall record the data set forth in subsection (b) for all pedestrian stops. The
69 department shall transmit all such data by electronic means to the executive office at intervals to
70 be determined by the secretary but not less frequently than semi-annually.

71 (f)(1) The secretary shall: (i) maintain the data described in subsection (b) in an
72 electronically-accessible database; (ii) submit an annual report summarizing the data to the
73 attorney general and the committee on criminal justice established pursuant to Chapter 68 of the
74 Acts of 2011; and file the annual report with the clerks of the senate and house of
75 representatives. The report shall include statistical data for each law enforcement agency setting
76 out the following information for pedestrian stops separately in a month-by-month format: (A)
77 the number of stops made; (B) the reason for the stops; (C) the number of warnings, citations and
78 arrests; (D) the number of, race, ethnicity, gender and age of the persons stopped; (E) the number
79 of, race, ethnicity, gender and age of the persons frisked; (F) the number of, race, ethnicity,
80 gender and age of the persons searched; (G) the number of stops and searches of any duration
81 and scope that resulted in the seizure of contraband or any other item or material; and (H) any
82 other information as may be requested by the committee on criminal justice. The annual reports
83 shall be submitted not later than April 1 each year and shall include data collected during the
84 preceding calendar year regardless of whether complete data is available for that period. No
85 information revealing the identity of an individual shall be included in the annual reports. The
86 annual reports submitted pursuant to this subsection shall be public records and shall be
87 published on the website of the executive office.

88 (2) On a biennial basis, the secretary shall transmit the data collected by each police
89 department in accordance with this chapter to an independent organization or university in the
90 Commonwealth with experience in the analysis of such data, which shall prepare an analysis and
91 report. Such analysis and report shall be submitted to the governor, the attorney general, the
92 committee on criminal justice established pursuant to Chapter 68 of the Acts of 2011 and the
93 clerks of the senate and house of representatives not more than 90 days after receipt of the data

94 by the independent organization or university. The analysis, report and data collected shall be
95 deemed a public record and shall be published on the website of the executive office. The report
96 shall include a multivariate analysis of the collected data in accordance with generally accepted
97 statistical standards that seeks, to the extent possible, to measure the roles of race, ethnicity,
98 gender and age as factors in law enforcement agencies' interactions with civilians including, but
99 not limited to, the frequency with which individuals are stopped, frisked, searched, cited or
100 arrested. The analysis shall include consideration of the demographics of the population residing
101 in or traveling through a particular locale, local crime rates, the frequency with which encounters
102 result in seizure of contraband or arrest and comparisons among similarly-situated officers.

103 (g) An individual charged with a criminal offense based on evidence or statements
104 obtained as the result of a pedestrian stop may obtain from the executive office and the law
105 enforcement agency of the officer involved the data collected pursuant to this section concerning
106 any officer who participated in the stop or search that resulted in the seizure of evidence;
107 provided, however, that information revealing the name, street address, date of birth and driver's
108 license number of individuals involved in stops who are not law enforcement officers or their
109 agents shall not be disclosed; and provided further, that information revealing the home address,
110 date of birth, personal telephone number or any personal identifying information other than the
111 name, badge number and department of a law enforcement officer shall not be disclosed.
112 Requests for such data may specify a single or multiple incidents, dates, locations or any other
113 combination of data collected pursuant to section 3.

114 (h) The attorney general may bring a civil action in the superior court for injunctive or
115 other appropriate equitable relief to enforce this section. Nothing in this chapter shall limit an
116 individual's rights or remedies including, but not limited to, a civil action for a violation of

117 constitutional rights under section 11I of chapter 12 of the General Laws or 42 U.S.C. § 1983 or
118 a motion to suppress or dismiss or other relief in a criminal case.

119 SECTION 2. Subsection (f) of section 3 of chapter 22F of the General Laws shall take
120 effect at such time as the executive office of public safety and security makes available to law
121 enforcement agencies as defined in section 1 of said chapter 22F an electronic system described
122 in said subsection (e) of said section 3 of said chapter 22F.