

HOUSE BILL NO. 2070

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

4285H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 590.650, RSMo, and to enact in lieu thereof one new section relating to prohibitions against discriminatory 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Section A. Section 590.650, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 590.650, to read as follows: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. **The provisions of this section shall be known and may be cited as "The John Ashcroft Fourth Amendment Affirmation Act"**. As used in this section [~~"minority group" means individuals of African, Hispanic, Native American or Asian descent~~] **the following terms mean:**

(1) **"Benchmark", the number used as a basis of comparison in determining possible disproportions in law enforcement activities, which shall only include the following:**

(a) **The benchmark for measuring disproportions in vehicle stops shall be the proportions of drivers in racial or ethnic groups residing in a jurisdiction;**

(b) **The benchmark for measuring disproportions in post-stop activities shall be the racial or ethnic group's proportion of stops; and**

(c) **The benchmark used to measure disproportions in hit rates shall be the group proportions of drivers searched;**

(2) **"Consent search", a search authorized by the consent of the individual, not by probable cause;**

(3) **"Discriminatory policing", circumstances in which the peace officer's actions are based in whole or in part on the real or perceived race, ethnicity, religious beliefs,**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 gender, English language proficiency, status as a person with a disability, or a person's
19 national origin rather than upon specific and articulable facts which, taken together with
20 rational inferences from those facts, reasonably indicate criminal activity. "Discriminatory
21 policing" does not include investigations of alleged crimes when law enforcement must seek
22 out suspects who match a specifically delineated description;

23 (4) "Hit rate", the rate of searches in which contraband is found. The hit rate is
24 calculated by dividing the number of searches that yield contraband by the total number
25 of searches. Hit rate may be calculated for individual officers, agencies, or multiple
26 agencies;

27 (5) "Investigative stop", any stop, by a peace officer, of a motor vehicle based on
28 reasonable suspicion or probable cause and not a motor vehicle violation. Investigative
29 stops can involve calls for service, stops conducted in support of an agency investigation,
30 stops conducted because of a peace officer's observations, stops made at a sobriety
31 checkpoint or other road block, or other investigatory stops;

32 (6) "Minority group", individuals of African, Hispanic, Native American, or Asian
33 descent;

34 (7) "Ratio of disparity", the ratio of the rate of stops or other peace officer activities
35 for a nonwhite group as compared to the rate for the white group. The ratio of disparity
36 for the white group shall be the white group rate compared to the rate for nonwhite
37 groups;

38 (8) "Significant disproportion", a ratio of disparity that differs significantly from
39 the overall state ratio of disparity for any minority group for that category of peace officer
40 activity. The attorney general shall determine what deviation from the overall state ratio
41 of disparity warrants further scrutiny after considering factors other than discrimination.
42 The attorney general shall find any ratio of disparity that is over one hundred twenty-five
43 percent of the overall state disparity for any minority group for that category of peace
44 officer activity to be a significant disproportion.

45 2. Each time a peace officer stops a driver of a motor vehicle, that officer shall report at
46 least the following information to the law enforcement agency that employs the officer:

47 (1) The age, gender and race or minority group of the individual stopped;

48 (2) Whether the driver resides in the jurisdiction of the stop;

49 (3) The reasons for the stop. Reasons for an investigative stop may include, but are
50 not limited to, calls for service, stops conducted in support of an agency investigation, stops
51 conducted because of a peace officer's observations, and stops made at a sobriety
52 checkpoint or other road block;

53 [~~3~~] (4) Whether a search was conducted as a result of the stop;

- 54 ~~[(4)]~~ **(5)** If a search was conducted, whether the individual consented to the search, **how**
- 55 **the individual's consent was documented**, the probable cause for the search, whether the
- 56 person was searched, whether the person's property was searched, and the duration of the search;
- 57 ~~[(5)]~~ **(6)** Whether any contraband was discovered in the course of the search and the type
- 58 of any contraband discovered;
- 59 ~~[(6)]~~ **(7)** Whether any warning or citation was issued as a result of the stop;
- 60 ~~[(7)]~~ **(8)** If a warning or citation was issued, the violation charged or warning provided;
- 61 ~~[(8)]~~ **(9)** Whether an arrest was made as a result of either the stop or the search;
- 62 ~~[(9)]~~ **(10)** If an arrest was made, the crime charged; ~~[and]~~
- 63 ~~[(10)]~~ **(11)** The location of the stop; **and**
- 64 **(12) The municipal or state infraction for which the individual was stopped.**

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66 Such information ~~[may]~~ **shall** be ~~[reported using a format determined by the department of public~~
 67 ~~safety which uses existing citation and report forms]~~ **submitted to the attorney general as a**
 68 **single report indicating for each traffic stop the required information on the driver and**
 69 **stop. The format of the report shall be determined by the attorney general. No personnel**
 70 **information shall be disclosed.**

71 3. (1) Each law enforcement agency shall compile the data described in subsection 2 of
 72 this section for the calendar year ~~[into a]~~ **and send the stop** report to the attorney general.

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

75 (3) The attorney general shall determine the format that all law enforcement agencies
 76 shall use to submit the report. **The attorney general may allow the department of public**
 77 **safety to extract the data from other reports filed by law enforcement agencies.**

78 4. (1) The attorney general shall analyze the annual **stop** reports of law enforcement
 79 agencies required by this section and submit a report of the findings to the governor, the general
 80 assembly and each law enforcement agency no later than June first of each year.

81 (2) **The report shall identify situations in which data submitted by agencies indicate**
 82 **that racial and ethnic groups are disproportionately affected by law enforcement activity**
 83 **so that further analysis may be conducted to determine whether peace officers are**
 84 **engaging in discriminatory policing.**

85 (3) **The report shall provide group ratios of disparity for all categories of stops,**
 86 **poststop activities, searches, and contraband found, using appropriate benchmarks as**
 87 **defined in subsection 1 of this section.**

88 (4) The report of the attorney general shall include at least the following information for
 89 each agency **and for the state overall:**

90 (a) The total number of vehicles stopped by peace officers during the previous calendar
91 year;

92 (b) The number and percentage of stopped motor vehicles that were driven by members
93 of each particular minority group;

94 (c) ~~[A comparison of the percentage of stopped motor vehicles driven by each minority~~
95 ~~group and the percentage of the state's population that each minority group comprises]~~ **Ratios**
96 **of disparity for all categories of stops, post-stop activities, searches, and contraband using**
97 **appropriate benchmarks as defined in subsection 1 of this section;** and

98 (d) A compilation of the information reported by law enforcement agencies pursuant to
99 subsection 2 of this section.

100 5. **(1)** Each law enforcement agency shall adopt a policy on ~~[race-based traffic stops]~~
101 **discriminatory policing** that:

102 ~~[(1)]~~ **(a)** Prohibits ~~[the practice of routinely stopping members of minority groups for~~
103 ~~violations of vehicle laws as a pretext for investigating other violations of criminal law]~~
104 **discriminatory policing;**

105 ~~[(2)]~~ **(b)** Provides for ~~[periodic]~~ **annual** reviews by the law enforcement agency of the
106 annual report of the attorney general required by subsection 4 of this section that:

107 ~~[(a)]~~ **a.** Determine whether any peace officers of the law enforcement agency have a
108 pattern of stopping members of minority groups for violations of vehicle laws in a number
109 disproportionate to the population of minority groups residing or traveling within the jurisdiction
110 of the law enforcement agency; and

111 ~~[(b)]~~ **b.** If the review reveals a pattern, require an investigation to determine whether any
112 peace officers of the law enforcement agency ~~[routinely stop members of minority groups for~~
113 ~~violations of vehicle laws as a pretext for investigating other violations of criminal law; and]~~
114 **engaged in discriminatory policing;**

115 **c.** Include a review of complaints received by the law enforcement agency and a
116 breakdown of which complaints were verified, found to be unfounded, remain active, and
117 what steps were taken to address verified complaints. The review of complaints shall
118 indicate the number of complaints alleging discriminatory policing that a law enforcement
119 agency received; and

120 **d.** The results of the review shall be made public, however, no personnel
121 information shall be disclosed; and

122 ~~[(3)]~~ **(c)** Provides for appropriate **discipline, up to and including dismissal**, counseling,
123 and training of any peace officer found to have engaged in ~~[race-based traffic stops]~~
124 **discriminatory policing** within ninety days of the review.

125

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

130 **(2) Each policy shall be in writing and accessible by the public. The attorney**
131 **general shall certify that the discriminatory policing policy of each agency is substantially**
132 **equivalent to the requirements of this subsection.**

133 **(3) Each policy shall put in place procedures to eliminate discriminatory policing.**

134 **6. Each law enforcement agency shall establish policies to eliminate discriminatory**
135 **policing in the administration of consent searches. The procedures shall include the**
136 **following:**

137 **(1) A peace officer shall have specific and articulable facts about the individual**
138 **that, taken together with rational inferences from those facts, lead the peace officer to**
139 **reasonably believe a search is needed;**

140 **(2) The peace officer shall document, in writing, such specific articulable facts**
141 **about the circumstances leading to the request for consent in individual searches and if**
142 **multiple searches take place under the same circumstances at or near the same time;**

143 **(3) Prior to requesting consent for a search, a peace officer shall communicate**
144 **orally or in writing, in a language that the person being questioned clearly understands,**
145 **that the person's consent must be voluntary, that the voluntary consent authorizes the**
146 **search even if the peace officer does not have probable cause to search, that the lawfulness**
147 **of the search cannot be challenged in court if consent is given, and that the person has the**
148 **right to refuse the request to search;**

149 **(4) After providing such advisement, a peace officer shall obtain voluntary written**
150 **or recorded audio or video consent to the search;**

151 **(5) The peace officer shall document whether the person from whom the search was**
152 **requested provided written consent, if that consent was recorded by audio or video, or**
153 **whether consent was denied, and the law enforcement agency will submit this data for**
154 **compilation in the attorney general's vehicle stop report;**

155 **(6) The peace officer shall not ask for consent when he or she has probable cause**
156 **to conduct a search;**

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

159 **(8) Nothing contained in this subsection shall be construed to preclude a search**
160 **based upon probable cause.**

161 7. (1) If a law enforcement agency fails to comply with the provisions of this section,
162 the governor may withhold any state funds appropriated to the noncompliant law enforcement
163 agency.

164 (2) If a law enforcement agency's data shows for three consecutive years a
165 significant disproportion, the attorney general shall study the efforts of the law
166 enforcement agency to decrease its disproportion during the prior three years.

167 (3) If a law enforcement agency fails to provide documentation to the attorney
168 general that proves the agency's significant disproportions cannot be attributed to
169 discriminatory policing, the agency shall be subject to review for a period of three years.

170 (4) Documentation provided to the attorney general to analyze significant
171 disproportions shall be made public to the extent permitted by law.

172 (5) If a law enforcement agency subject to review shows a significant disproportion
173 in its data after its first year under review and the attorney general's study determines that
174 the law enforcement agency cannot show good-faith efforts to remedy the significant
175 disproportion, the attorney general shall require changes in the agency's policies and
176 practices, including techniques for identifying problem officers, requirements that an
177 officer's ratios of disparity along with any mitigating circumstances be a part of the record
178 used to evaluate promotions and reassignments, training of supervisors in the skills
179 necessary to eliminate discriminatory policing, and increasing the quality and quantity of
180 officer training related to discriminatory policing. The attorney general's office shall work
181 with other state agencies to provide financial assistance and expertise to facilitate these
182 changes.

183 (6) If a law enforcement agency continues to show a significant disproportion in its
184 data at the close of its three-year review period and the attorney general's study determines
185 that the significant disproportion can be attributed in whole or in part to discriminatory
186 policing, the attorney general shall evaluate whether the agency is making a good-faith
187 effort to achieve nondiscriminatory policing. As a minimum penalty, the agency shall
188 remain under review, with ongoing attorney general oversight, until such time as the
189 attorney general determines that discriminatory policing is no longer a cause of the
190 significant disproportion. As a maximum penalty, or after six years of review, the attorney
191 general shall order that the governing body or jurisdiction that the law enforcement agency
192 serves be required, from that point forward, to forfeit twenty-five percent of its annual
193 general operating revenue received from fines, bond forfeitures, and court costs for traffic
194 violations, including amended charges for any traffic violations. The forfeited amount
195 shall be paid to the general revenue fund of the state of Missouri, to be designated as
196 additional funds for the peace officers standards and training commission. This penalty

197 shall continue until such time as the attorney general determines that discriminatory
198 policing is no longer a cause of the significant proportion.

199 (7) A law enforcement agency may petition the attorney general to evaluate the
200 agency's vehicle stops report data using a different benchmark. The attorney general shall
201 determine appropriate benchmarks used in his or her evaluation of the data. The attorney
202 general shall note in his or her annual report if an alternative benchmark was granted and
203 the reasons for using the alternative benchmark.

204 [7.] 8. Each law enforcement agency in this state may utilize federal funds from
205 community-oriented policing services grants or any other federal sources to equip each vehicle
206 used for traffic stops with a video camera and voice-activated microphone **or to purchase body**
207 **cameras.**

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

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