

FIRST REGULAR SESSION

# SENATE BILL NO. 493

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

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ADRIANE D. CROUSE, Secretary.

2423S.01I

## 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Section A. Section 590.650, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 590.650, to read as follows: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 "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, including the following:**

(a) **The benchmark for measuring disproportions in vehicle stops shall be the proportions of drivers in racial or ethnic groups residing or traveling 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, gender, English language proficiency,**

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

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

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

30 (5) "Investigative stop", any stop, by a peace officer, of a motor  
31 vehicle involving at least in part an investigation of a criminal  
32 violation other than a motor vehicle violation. Investigative stops can  
33 involve calls for service, stops conducted in support of an agency  
34 investigation, stops conducted because of a peace officer's observations,  
35 stops made at a sobriety checkpoint or other road block, or other  
36 investigatory stops;

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

39 (7) "Ratio of disparity", the ratio of the rate of stops or other  
40 peace officer activities for a non-white group as compared to the rate  
41 for the white group. The ratio of disparity for the white group shall be  
42 the white group rate compared to the rate for non-white groups;

43 (8) "Significant disparity", a ratio of disparity that is over one  
44 hundred twenty-five percent of the overall state disparity for any  
45 minority group for that category of officer activity after controlling for  
46 factors other than discrimination that are contributing to the disparity;

47 (9) "Significant disproportion", a ratio of disparity that is over  
48 one hundred twenty-five percent of the overall state ratio of disparity  
49 for any minority group for that category of peace officer activity.

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

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

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

55 (3) The reasons for the stop. **Reasons for an investigative stop**  
56 **include, but are not limited to, calls for service, stops conducted in**

57 **support of an agency investigation, stops conducted because of a peace**  
58 **officer's observations, and stops made at a sobriety checkpoint or other**  
59 **road block;**

60 [(3)] (4) Whether a search was conducted as a result of the stop;

61 [(4)] (5) If a search was conducted, whether the individual consented to  
62 the search, **how the individual's consent was documented**, the probable  
63 cause for the search, whether the person was searched, whether the person's  
64 property was searched, and the duration of the search;

65 [(5)] (6) Whether any contraband was discovered in the course of the  
66 search and the type of any contraband discovered;

67 [(6)] (7) Whether any warning or citation was issued as a result of the  
68 stop;

69 [(7)] (8) If a warning or citation was issued, the violation charged or  
70 warning provided;

71 [(8)] (9) Whether an arrest was made as a result of either the stop or the  
72 search;

73 [(9)] (10) If an arrest was made, the crime charged; and

74 [(10)] (11) The location of the stop.

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

77 3. (1) Each law enforcement agency shall compile the data described in  
78 subsection 2 of this section for the calendar year into a report to the attorney  
79 general.

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

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

86 4. (1) The attorney general shall analyze the annual reports of law  
87 enforcement agencies required by this section and submit a report of the findings  
88 to the governor, the general assembly and each law enforcement agency no later  
89 than June first of each year.

90 (2) **The report shall identify situations in which data submitted**  
91 **by agencies indicate that racial and ethnic groups are**  
92 **disproportionately affected by law enforcement activity so that further**

93 analysis may be conducted to determine whether peace officers are  
94 engaging in discriminatory policing;

95 (3) The report shall provide group ratios of disparity for all  
96 categories of stops, post-stop activities, searches, and contraband  
97 found, using appropriate benchmarks as defined in subsection 1 of this  
98 section;

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

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

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

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

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

112 5. (1) Each law enforcement agency shall adopt a policy on [race-based  
113 traffic stops] discriminatory policing that:

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

117 [(2)] (b) Provides for [periodic] annual reviews by the law enforcement  
118 agency of the annual report of the attorney general required by subsection 4 of  
119 this section that:

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

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

129 c. Include a review of complaints received by the law  
130 enforcement agency and a breakdown of which complaints were  
131 verified, found to be unfounded, remain active, and what steps were  
132 taken to address verified complaints. The review of complaints shall  
133 indicate the number of complaints alleging discriminatory policing that  
134 a law enforcement agency received; and

135 d. The results of the review shall be made public, however, no  
136 personnel information prohibited by law shall be disclosed; and

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

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

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

149 (3) Each policy shall put in place procedures to eliminate  
150 discriminatory policing.

151 6. When a motor vehicle has been stopped solely for a traffic  
152 violation, a peace officer shall request only the following  
153 documentation from only the driver of the motor vehicle:

154 (1) A driver's license or other verifiable government-issued  
155 identification, including foreign-issued identification;

156 (2) Motor vehicle registration; and

157 (3) Proof of insurance.

158 7. Each law enforcement agency shall establish policies to  
159 eliminate discriminatory policing in the administration of consent  
160 searches. The procedures shall include the following:

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

164 (2) The peace officer shall document, in writing, such specific  
165 articulable facts about the circumstances leading to the request for

166 consent in individual searches and if multiple searches take place  
167 under the same circumstances at or near the same time;

168 (3) Prior to requesting consent for a search, a peace officer shall  
169 communicate orally or in writing, in a language that the person being  
170 questioned clearly understands, that the person's consent must be  
171 voluntary, that the voluntary consent authorizes the search even if the  
172 peace officer does not have probable cause to search, that the  
173 lawfulness of the search cannot be challenged in court if consent is  
174 given, and that the person has the right to refuse the request to search;

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

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

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

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

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

188 8. (1) If a law enforcement agency fails to comply with the provisions of  
189 this section, the governor may withhold any state funds appropriated to the  
190 noncompliant law enforcement agency.

191 (2) If a law enforcement agency reports for three consecutive  
192 years a significant disproportion, the attorney general shall study the  
193 efforts of the law enforcement agency to decrease its disproportion  
194 during the prior three years. If the attorney general determines that  
195 a significant disparity exists, the agency shall be subject to review for  
196 a period of three additional years.

197 (3) If, in its second year of review, a law enforcement agency  
198 reports a significant disproportion, and the attorney general's study  
199 determines that a significant disparity exists, and the law enforcement  
200 agency cannot show good-faith efforts, as determined by the attorney  
201 general, to remedy the disparity, the attorney general shall require  
202 changes in the agency's policies and practices, including techniques for

203 identifying problem officers, requirements that an officer's ratios of  
204 disparity along with any mitigating circumstances be a part of the  
205 record used to evaluate promotions and reassignments, training of  
206 supervisors in the skills necessary to eliminate discriminatory policing,  
207 and increasing the quality and quantity of officer training related to  
208 discriminatory policing. The attorney general's office shall work with  
209 other state agencies to provide financial assistance and expertise to  
210 facilitate these changes.

211 (4) If, in its third year of review, a law enforcement agency  
212 reports a significant disproportion and the attorney general's study  
213 determines a significant disparity exists, the attorney general shall also  
214 study the record of the law enforcement agency during the review  
215 period to determine if the disparities are of such magnitude that the  
216 law enforcement agency should be further penalized. The attorney  
217 general shall take into account whether the agency is making a good-  
218 faith effort to achieve nondiscriminatory policing. As a minimum  
219 penalty, the agency shall remain under review, with ongoing attorney  
220 general oversight, until such time as the agency's annual report shows  
221 that a significant disparity no longer exists or until such time as the  
222 attorney general's study determines that discriminatory policing is no  
223 longer a significant cause of the disparity. As a maximum penalty, or  
224 after six years of review, the attorney general shall order that the  
225 governing body or jurisdiction that the law enforcement agency serves  
226 be required, from that point forward, to forfeit twenty-five percent of  
227 its annual general operating revenue received from fines, bond  
228 forfeitures, and court costs for traffic violations, including amended  
229 charges for any traffic violations. The forfeited amount shall be paid  
230 to the general revenue fund of the state of Missouri, to be designated  
231 as additional funds for the peace officers standards and training  
232 commission. This penalty shall continue until such time as the law  
233 enforcement agency's annual report shows that a significant disparity  
234 no longer exists or until such time as the attorney general's study  
235 determines discriminatory policing is no longer a significant cause of  
236 the disparity.

237 [7.] 9. Each law enforcement agency in this state may utilize federal  
238 funds from community-oriented policing services grants or any other federal  
239 sources to equip each vehicle used for traffic stops with a video camera and

240 voice-activated microphone **or to purchase body cameras.**

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

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