

SECOND REGULAR SESSION

SENATE BILL NO. 976

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Read 1st time January 25, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5202S.04I

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Section A. Section 590.650, RSMo, is repealed and one new section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

590.650. 1. As used in this section, **the following terms mean:**

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

5 **(2) "Biased policing", occurs in circumstances in which the peace**
6 **officer's actions were based in whole or in part on the race, ethnicity,**
7 **gender, age, religious beliefs, disabilities, English language proficiency,**
8 **or national origin of a person rather than upon lawful and appropriate**
9 **law enforcement procedures based on observed behavior or**
10 **facts. "Biased policing" does not include investigations of alleged**
11 **crimes when law enforcement must seek out suspects who match a**
12 **specifically delineated description;**

13 **(3) "Contraband", illegal drugs, guns, or other objects that may**
14 **warrant an arrest;**

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

18 **(5) "Hit rate", the rate of searches in which a peace officer finds**
19 **contraband. The hit rate is calculated by dividing the number of**

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

20 searches that yield contraband by the total number of searches;

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

23 (a) Traffic stops;

24 (b) Pedestrian stops;

25 (c) Consensual or nonconsensual frisks or pat downs;

26 (d) Consensual or nonconsensual searches of persons, property,
27 or possessions, including vehicles;

28 (7) "Minority group" [means], individuals of **Black or African American,**
29 **Hispanic or Latino,** [Native American or] **American Indian or Alaska**
30 **Native, Asian, or multiracial** descent;

31 (8) "Pedestrian stops", any stop of an individual in a public space
32 in which a peace officer stops, frisks, or questions a person based upon
33 a claim by the peace officer of reasonable suspicion of unlawful
34 activity.

35 2. Every member of a law enforcement agency within the state
36 of Missouri, including any civilian employee or party contracted by the
37 law enforcement agency, is prohibited from engaging in biased
38 policing.

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

42 (1) The [age,] gender [and], race [or minority group], **disability, English**
43 **language proficiency, or national origin** of the individual stopped as
44 **perceived by the peace officer;**

45 (2) The [reasons for] **time, date, location, and duration** of the stop;

46 (3) **Whether the person stopped resides in the jurisdiction in**
47 **which such person was stopped;**

48 (4) **The violations alleged to have been committed that led to the**
49 **stop;**

50 (5) **Whether a search was conducted as a result of the stop and the**
51 **probable cause or authority for the search, such as consent, inventory**
52 **search, the presence of a drug or alcohol odor, search incident to arrest**
53 **for an outstanding warrant or arrest for another charge, plain view**
54 **contraband, reasonable suspicion due to the presence of a weapon or**
55 **an alert by a police dog, electronic or chemical detection technology,**

56 **or another reason;**

57 **(6) Whether a frisk or pat down was conducted as a result of the**
58 **stop;**

59 [(4)] **(7) If a search was conducted, [whether the individual consented to**
60 **the search, the probable cause for the search,] whether the **body of the** person**
61 **was searched, whether the person's property was searched, and the duration of**
62 **the search;**

63 **(8) If a search was of a passenger in the vehicle, the perceived**
64 **race, gender, disability, English language proficiency, or national**
65 **origin of the passenger;**

66 [(5)] **(9) Whether any contraband was discovered in the course of the**
67 **search [and], the type of any contraband discovered, and the amount;**

68 **(10) Whether canine units or electronic or chemical detection**
69 **technology, excluding breathalyzers, were involved in the search;**

70 [(6)] **(11) Whether any warning or citation was issued as a result of the**
71 **stop;**

72 [(7)] **(12) If a warning or citation [was issued, the violation charged or**
73 **warning provided;**

74 **(13) Whether any physical force was used by or against a peace**
75 **officer or officers and, if so, to what extent;**

76 [(8)] **(14) Whether an arrest was made as a result of either the stop or**
77 **the search; and**

78 [(9)] **(15) If an arrest was made, the crime charged[; and**

79 **(10) The location of the stop]. [Such]**

80 **Peace officers shall report to their agencies the information [may be**
81 **reported] listed under this subsection using a format determined by the**
82 **department of public safety [which uses existing citation and report forms].**

83 [3. (1)] **4. Each law enforcement agency shall:**

84 **(1) Compile [the] data [described in subsection 2 of this section for the**
85 **calendar year into a report to] on the standardized form determined by the**
86 **attorney general[.];**

87 **(2) [Each law enforcement agency shall] Submit the [report] form to the**
88 **attorney general no later than March first of [the following calendar] each**
89 **year[.];**

90 **(3) [The attorney general shall determine the format that all law**
91 **enforcement agencies shall use to submit the report] Update the compiled**

92 **data and conspicuously publicize the data on the respective law**
93 **enforcement agency's website on a monthly basis;**

94 **(4) Maintain all data collected under this section for not less**
95 **than four years;**

96 **(5) Provide for the protection of the privacy of individuals whose**
97 **data is collected by not providing to the public the individual names**
98 **and identifying information regarding the particular peace officers who**
99 **made the stops and the pedestrians, drivers, and passengers who were**
100 **stopped.**

101 **[4.] 5. (1) The attorney general shall analyze the annual reports of law**
102 **enforcement agencies required by this section and submit a report of the findings**
103 **to the governor, the general assembly and each law enforcement agency no later**
104 **than June first of each year.**

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

109 **(a) Using race- and ethnicity-specific data about the residential**
110 **population;**

111 **(b) Using a race- and ethnicity-specific spatial weighting data**
112 **analysis tool;**

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

115 **(d) Using race- and ethnicity-specific data from observational**
116 **surveys of motorists;**

117 **(e) Using information gathered by peace officers about the**
118 **residency of the individuals stopped. This analysis shall be used only**
119 **in addition to one or more of the benchmarks listed in this subdivision;**
120 **or**

121 **(f) Using a combination of the benchmark measures listed in this**
122 **subdivision.**

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

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

128 **(b) The total number of pedestrians stopped by peace officers**

129 **during the previous calendar year;**

130 **(c) The number of vehicle and pedestrian stops, broken down by**
131 **the racial or ethnic group, meaning White, Black or African American,**
132 **Hispanic or Latino, American Indian or Alaska Native, Asian,**
133 **multiracial, other, or unknown;**

134 **(d) The number of vehicle stops that resulted in a search, broken**
135 **down by the probable cause or authority for the search and by the**
136 **driver's racial or ethnic group;**

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

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

142 **(g) The disparity indices regarding consensual and**
143 **nonconsensual searches for pedestrians and drivers subjected to stops**
144 **for each racial or ethnic group, basing the benchmarks on the**
145 **population of those stopped;**

146 **(h) The disparity indices for each category of arrest for each**
147 **racial or ethnic group, basing the benchmarks on the population of**
148 **those stopped;**

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

152 **(j) A comparison of the racial or ethnic disparities in consent**
153 **searches to the consent search hit rate;**

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

158 **[(c)] (l) A comparison of the [percentage of stopped motor vehicles driven**
159 **by each minority group and the percentage of the state's population that each**
160 **minority group comprises] racial or ethnic disparities in hit rates for all**
161 **categories of probable cause or authority to search listed in the agency**
162 **reports; and**

163 **[(d)] (m) A compilation of the information reported by law enforcement**
164 **agencies pursuant to subsection [2] 4 of this section.**

165 **[5.] 6. (1) Each law enforcement agency shall [adopt a policy on**

166 race-based traffic stops that:

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

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

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

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

181 (3) Provides for appropriate counseling and training of any peace officer
182 found to have engaged in race-based traffic stops within ninety days of the
183 review. The course or courses of instruction and the guidelines shall stress
184 understanding and respect for racial and cultural differences, and development
185 of effective, noncombative methods of carrying out law enforcement duties in a
186 racially and culturally diverse environment] **ensure there is an annual**
187 **review of the data collected by their peace officers under subsection 3**
188 **of this section and the annual report of the attorney general required**
189 **by subsection 5 of this section. Such review shall determine whether**
190 **individual officers in the agency, or the agency as a whole, have a**
191 **pattern of stopping, searching, or arresting members of minority**
192 **groups:**

193 (a) **In a number disproportionate to the population of minority**
194 **groups residing, traveling, or being stopped within the jurisdiction of**
195 **the law enforcement agency, using the benchmark measures described**
196 **in subsection 5 of this section;**

197 (b) **In a number disproportionate to similarly situated**
198 **peace officers; and**

199 (c) **Whether any peace officers of the law enforcement agency**
200 **routinely stop members of minority groups for violations of vehicle**
201 **laws as a pretext for investigating other violations of criminal law.**

202 **(2) If the review reveals a pattern of disparity, either**
203 **systemically or for individual officers, the agency shall require an**
204 **investigation to determine whether the agency or any peace officers of**
205 **the agency routinely engage in biased policing. The review shall**
206 **examine factors that might be a contributing factor to the disparity**
207 **such as:**

208 **(a) Situations in which matters of fact establish that the officers**
209 **are acting in a bias-free manner, such as hit rates that confirm that**
210 **officer suspicions were accurate, investigations in which suspects were**
211 **clearly identified without regard to minority status before the stop as**
212 **being involved in criminal activity, radar stops on an Interstate**
213 **highway;**

214 **(b) Unclear or misunderstood policies;**

215 **(c) Unclear instructions from supervisors;**

216 **(d) Training that has failed to teach the required skills.**

217 **(3) The agency shall issue a report to the public explaining the**
218 **results of the investigation, including whether some results establish**
219 **the extent to which some disproportions are affected by factors other**
220 **than officer bias.**

221 **(4) The agency shall correct any problems revealed by the review**
222 **and the investigation and provide for appropriate counseling and**
223 **training of any peace officer found to have engaged in biased policing**
224 **within ninety days of the review. The officer shall be removed from**
225 **patrol duties until completion of training and counseling.**

226 **(5) Officers that persist in biased policing shall be subject to**
227 **discipline, up to and including dismissal.**

228 **7. Each law enforcement agency shall promulgate internal**
229 **policies, including:**

230 **(1) A stated prohibition on bias in policing;**

231 **(2) Provisions for training on biased policing as described in**
232 **subsection 9 of this section;**

233 **(3) Procedures aimed at decreasing biased policing in the**
234 **administration of consent searches, which shall include the following**
235 **provisions:**

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

239 **(b) The peace officer shall document in writing such specific,**
240 **articulable facts about the individual involved for conducting a consent**
241 **search. The written documentation shall also include the results of the**
242 **search;**

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

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

250 **(e) Whether the person subject to search provides written**
251 **consent. A peace officer may conduct the search if the person provided**
252 **voluntary consent in a form other than in writing;**

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

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

258 **(4) Procedures for requesting personal information from drivers**
259 **or pedestrians during a stop, including:**

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

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

272 **(c) When a pedestrian has been stopped based on reasonable**
273 **suspicion of criminal activity, a peace officer shall only request the**
274 **first, middle, and last name and address of the individual stopped.**

275 **8. Each law enforcement agency shall create a community and**

276 law enforcement partnership to create mutual understanding between
277 law enforcement and the community about biased policing and to
278 provide a forum for each group to listen and respond to the other's
279 concerns. The partnership:

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

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

285 (3) May advise and assist in policy development and the training
286 and education of law enforcement agencies on biased policing;

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

291 9. (1) All law enforcement agencies shall be trained by the POST
292 commission on issues related to the prohibition of biased policing, on
293 data collection and reporting methods, and on the policies mandated
294 in subsection 7 of this section. The commission shall develop and
295 disseminate guidelines and training on this section for peace
296 officers. The course or courses of instruction and the guidelines shall
297 stress development of effective, non-combative methods of carrying out
298 law enforcement duties in a diverse environment.

299 (2) The course of basic training for peace officers shall include
300 adequate instruction on diverse communities in order to foster mutual
301 respect and cooperation between law enforcement and members of all
302 diverse communities.

303 (3) In developing and establishing criteria for the training, the
304 POST commission shall consult with appropriate groups and
305 individuals having an interest and expertise in the fields of implicit
306 bias, biased policing, civil rights, cultural awareness and diversity.

307 (4) Every peace officer shall participate in a one-time training
308 as prescribed and certified by the POST commission. The course of
309 instruction shall include:

310 (a) Identification of key indices and perspectives that make up
311 differences among residents in a local community;

312 (b) Negative impact of implicit and explicit biases, prejudices,

313 **and stereotyping on effective law enforcement, including examination**
314 **of how historical perceptions of discriminatory enforcement practices**
315 **have harmed police and community relations;**

316 **(c) The history and the role of the civil rights movement and**
317 **struggles and their impact on law enforcement;**

318 **(d) Specific obligations of peace officers in preventing, reporting,**
319 **and responding to discriminatory or biased practices by fellow officers;**
320 **and**

321 **(e) Perspectives of diverse, local constituency groups, and**
322 **experts on particular cultural and police and community relations**
323 **issues in a local area.**

324 **(5) Once the initial one-time training is completed, each peace**
325 **officer shall be required to complete an annual training course that**
326 **reviews the topics listed in subdivision (4) of this subsection.**

327 **[6.] 10. (1) If a law enforcement agency fails to comply with the**
328 **provisions of this section, the governor [may] shall withhold any state funds**
329 **appropriated to the noncompliant law enforcement agency.**

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

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

341 **(4) If a law enforcement agency reports a motor vehicle,**
342 **pedestrian stop, or consent search disparity index that is one standard**
343 **deviation or more above the statewide indices in its second year of**
344 **review, the attorney general shall require changes in the agency's**
345 **policies and practices, including techniques for identifying problem**
346 **officers, requirements that an officer's profiling statistics be a part of**
347 **the record used to evaluate promotions and reassignments, training of**
348 **supervisors in the skills necessary to eliminate biased policing, and**
349 **increasing the quality and quantity of officer training related to biased**

350 **policing. The attorney general's office shall work with other state**
351 **agencies to provide financial assistance and expertise to facilitate these**
352 **changes.**

353 **(5) If a law enforcement agency reports a motor vehicle,**
354 **pedestrian stop, or consent search disparity index that is one standard**
355 **deviation or more above the statewide indices in its third year of**
356 **review, in addition to loss of state funds, the POST commission, in**
357 **consultation with the attorney general's office, shall review the record**
358 **of the law enforcement agency during the review period to determine**
359 **if the pattern of disparities is the result of low samples of statistical**
360 **data or if it indicates a systemic bias or a failure to supervise of such**
361 **magnitude that the law enforcement agency should be decertified. The**
362 **POST commission shall take into account whether the agency is making**
363 **a good faith effort to reform. If not decertified, the agency shall remain**
364 **under review, with periodic POST commission oversight, until such**
365 **time as the agency's disparity and consent search rate indices are no**
366 **longer one standard deviation or more above the statewide indices.**

367 **11. (1) An individual subject to biased policing practices or an**
368 **organization whose interests are germane to the purpose of this**
369 **section, may enforce this section in a civil action for any or all of the**
370 **following remedies: compensatory and punitive damages; injunctive**
371 **and declaratory relief; and such other relief as a court deems**
372 **appropriate.**

373 **(2) In an action brought under this section, relief may be**
374 **obtained against:**

375 **(a) Any governmental body that employed the peace officer who**
376 **engaged in biased policing;**

377 **(b) Any peace officer who engaged in biased policing practices**
378 **and any person with supervisory authority over such peace officer;**

379 **(c) Any civilian employee who is employed with a law**
380 **enforcement agency who engaged in biased policing practices and any**
381 **person with supervisory authority over such civilian employee; and**

382 **(d) Any party contracted by the law enforcement agency who**
383 **engaged in biased policing practices.**

384 **(3) A violation of this section is established when:**

385 **(a) An individual or organization brings an action demonstrating**
386 **that a peace officer has, or peace officers have, intentionally engaged**

387 **in biased policing of one or more individuals; and**

388 **(b) The governmental body, peace officer, or supervisor against**
389 **whom such action is brought fails to prove that:**

390 **a. Such biased policing is necessary to achieve a compelling**
391 **governmental interest; and**

392 **b. The practice was narrowly tailored to achieve that compelling**
393 **governmental interest; and**

394 **c. The least restrictive means were used to achieve the**
395 **compelling governmental interest.**

396 **(4) Alternatively, a violation of this section is established when:**

397 **(a) An individual or organization brings an action demonstrating**
398 **that the activities of peace officers have had a disparate impact on**
399 **individuals based on actual or perceived race, ethnicity, religion,**
400 **national origin, age, gender, gender identity, sexual orientation,**
401 **language, or disability; and**

402 **(b) The governmental body, peace officer, or supervisor against**
403 **whom such action is brought fails to prove a compelling governmental**
404 **interest for such activities; or**

405 **(c) The governmental body, peace officer, or supervisor does**
406 **prove a compelling governmental interest for such activities; and**

407 **(d) The individual or organization demonstrates a comparably**
408 **effective alternative policy or practice which results in less of a**
409 **disparate impact.**

410 **(5) In any action or proceeding to enforce this section against**
411 **any governmental body, the court shall allow a prevailing plaintiff**
412 **reasonable attorney's fees as part of the costs, and may include expert**
413 **witness fees as part of the attorney's fees.**

414 **[7.] 12. Each law enforcement agency in this state may utilize federal**
415 **funds from community-oriented policing services grants or any other federal**
416 **sources to equip each vehicle used for traffic stops with a video camera and**
417 **voice-activated microphone.**

418 **[8.] 13. A peace officer who stops a driver of a motor vehicle pursuant to**
419 **a lawfully conducted sobriety check point or road block shall be exempt from the**
420 **reporting requirements of subsection [2] 4 of this section.**

421 **14. If any provision of this section, or amendments thereto, shall**
422 **be held invalid or ineffective in whole or in part or inapplicable to any**
423 **person or situation, such holding shall not affect, impair or invalidate**

424 **any portion of or the remainder of this section, and all other provisions**
425 **thereof shall nevertheless be separately and fully effective and the**
426 **application of any such provision to other persons or situations shall**
427 **not be affected.**

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