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HOUSE BILL NO. 2503

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 15.2-1704, 15.2-1722 and 52-4 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 8.01-226.2:1, and to amend the Code of Virginia by adding in Title 52 a chapter numbered 6.1, consisting of sections numbered 52-30.1 and 52-30.2, relating to the Virginia Racial Profiling and Traffic Statistics Reporting Act.

Patrons—Robinson, Abbitt, Clement and McEachin; Senators: Lambert and Miller, Y.B.

Referred to Committee on Militia and Police

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1704, 15.2-1722 and 52-4 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 8.01-226.2:1, and that the Code of Virginia is amended by adding in Title 52 a chapter numbered 6.1, consisting of sections numbered 52-30.1 and 52-30.2, as follows:

§ 8.01-226.2:1. Civil immunity for police officers collecting certain traffic stops information.

Any police officer of a local police force or of the Department of State Police who participates in the collection of traffic data required in §§ 15.2-1704 and 52-30.2 shall not be liable for any civil damages for acts or omissions on his part resulting from stops for alleged traffic violations and investigatory motor vehicle stops in which certain identifying characteristics and data pertaining to persons stopped for alleged traffic violations and investigatory motor vehicle stops are collected in the absence of gross negligence or willful misconduct.

§ 15.2-1704. Powers and duties of police force.

A. The police force of a locality is hereby invested with all the power and authority which that formerly belonged to the office of constable at common law and is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.

B. A police officer has no authority in civil matters, except (i) to execute and serve temporary detention and emergency custody orders and any other powers granted to law-enforcement officers in § 37.1-67.01 or § 37.1-67.1, (ii) to serve an order of protection pursuant to §§ 16.1-253.1, 16.1-253.4 and 16.1-279.1, or (iii) to execute all warrants or summons as may be placed in his hands by any magistrate for the locality and to make due return thereof. A town police officer, after receiving training under subdivision 8 of § 9-170, may, with the concurrence of the local sheriff, also serve civil papers, and make return thereof, only when the town is the plaintiff and the defendant can be found within the corporate limits of the town.

C. The police force of a locality shall collect and correlate data pertaining to stops for alleged traffic violations, which shall include (i) the number of persons stopped for alleged traffic violations, (ii) the age, race, color, ethnicity, and gender of persons stopped for alleged traffic violations, (iii) the specific traffic offense committed by the person that resulted in the stop, (iv) whether a warning or written citation was issued, (v) whether the person or his vehicle or passengers were searched, and (vi) whether the person or his passengers were arrested. The police officer conducting the traffic stop shall request of the person stopped for an alleged traffic violation information concerning the person's age, race, color, ethnicity, and gender, and record such data on forms required by the Superintendent of State Police for this purpose. The chief of police of a local police force shall provide for the collection and correlation of data pertaining to traffic stops, as required in this section, and shall report the data on such forms and dates as the Superintendent of State Police shall require, as provided in § 52-30.2. A copy of the report shall be provided also to the attorney for the Commonwealth of the county or city wherein the police force is located.

D. The enforcement of this section shall be the duty of the attorney for the Commonwealth of the county or city wherein the police force is located. Upon notification by the Superintendent of State Police that the police force in the city or county in which he serves as attorney for the Commonwealth has failed to comply with the provisions of § 15.2-1722 or § 52-30.2, or this section, the attorney for the Commonwealth of the city or county wherein such police force is located may seek the withholding of State law-enforcement funds for the violation of the provisions of § 15.2-1722 or § 52-30.2, or this section.

§ 15.2-1722. Certain records to be kept by sheriffs and chiefs of police.

A. It shall be the duty of the sheriff or chief of police of every locality to ensure, in addition to

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59 other records required by law, the maintenance of adequate personnel, arrest, investigative, reportable
60 incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement
61 agency, *and the maintenance of traffic stops records necessary to ensure the enforcement of state and*
62 *local laws, regulations, and ordinances without regard to age, race, color, ethnicity, or gender.* Failure
63 of a sheriff or a chief of police to maintain such records or failure to relinquish such records to his
64 successor in office shall constitute a misdemeanor. Former sheriffs or chiefs of police shall be allowed
65 access to such files for preparation of a defense in any suit or action arising from the performance of
66 their official duties as sheriff or chief of police. The enforcement of this section shall be the duty of the
67 attorney for the Commonwealth of the county or city wherein the violation occurs.

68 B. For purposes of this section, the following definitions shall apply:

69 "Arrest records" means a compilation of information, centrally maintained in law-enforcement
70 custody, of any arrest or temporary detention of an individual, including the identity of the person
71 arrested or detained, the nature of the arrest or detention, and the charge, if any.

72 "Investigative records" means the reports of any systematic inquiries or examinations into criminal or
73 suspected criminal acts which have been committed, are being committed, or are about to be committed.

74 "Noncriminal incidents records" means compilations of noncriminal occurrences of general interest to
75 law-enforcement agencies, such as missing persons, lost and found property, suicides and accidental
76 deaths.

77 "Personnel records" means those records maintained on each and every individual employed by a
78 law-enforcement agency which reflect personal data concerning the employee's age, length of service,
79 amount of training, education, compensation level, and other pertinent personal information.

80 "Reportable incidents records" means a compilation of complaints received by a law-enforcement
81 agency and action taken by the agency in response thereto.

82 "*Traffic stops*" means the stopping of persons for alleged traffic violations, in accordance with
83 § 15.2-1704.

84 § 52-4. Functions of Department.

85 A. The highway patrol, or state police patrol as it is sometimes called, the police school, the state
86 police radio or communication system, the supervision of inspection stations and of inspectors of motor
87 vehicles, the promotion of highway safety, the establishment and direction of a vehicle accident
88 prevention and safety program for state agencies, the adoption of standards for motor vehicle appliances,
89 accessories and safety devices ~~and~~, the registration of machine guns, *and the collection and correlation*
90 *of data concerning stops for alleged traffic violations shall be in the Department of State Police. The*
91 *collection and correlation of such data shall include the age, race, color, ethnicity, and gender of*
92 *persons stopped for alleged traffic violations. State police officers conducting traffic stops shall request*
93 *of persons stopped for alleged traffic violations information concerning the person's age, race, color,*
94 *ethnicity, and gender, and shall record such data on the forms required by the Superintendent for this*
95 *purpose.*

96 CHAPTER 6.1.

97 Virginia Racial Profiling and Traffic Statistics Reporting Act.

98 § 52-30.1. Uniform statewide system and database for traffic stops established; collection and
99 correlation of certain data regarding traffic stops required.

100 With such funds as may be appropriated for this purpose, the Department of State Police shall
101 establish an uniform statewide system to collect and correlate data pertaining to traffic stops in the
102 Commonwealth, for the purpose of determining whether a disproportionate number of racial and ethnic
103 minority persons are subjected to racial profiling and pretextual traffic stops. Data collected and
104 correlated shall include by locality (i) the number of persons stopped for alleged traffic violations, (ii)
105 the age, race, color, ethnicity, and gender of persons stopped for alleged traffic violations, (iii) the
106 specific traffic offense allegedly committed by the person that resulted in the stop, (iv) whether a
107 warning or written citation was issued, (v) whether the person or his vehicle or passengers were
108 searched, and (vi) whether the person or his passengers were arrested. The Department shall establish a
109 database, consisting of data required to be reported in § 15.2-1704 and this chapter. The Department
110 shall analyze, synthesize, validate, and interpret such data to determine whether a disproportionate
111 number of racial and ethnic minority persons are stopped by Virginia state and local police officers for
112 alleged traffic violations on streets, roads, and highways in Virginia.

113 § 52-30.2. Duties of the Superintendent; reporting of data by local police forces and police officers
114 of the Department of State Police required.

115 A. The Superintendent shall require the police force in each locality and the police officers of the
116 Department to report the data required to be collected and correlated in § 15.2-1704 and this chapter to
117 the Department of State Police on such forms and dates as he shall determine. Police officers of the
118 Department shall submit such data to their commanding officer who shall forward it to the
119 Superintendent. If the Superintendent determines that a local police force has failed or refused to report
120 the required data to the Department, or if the Superintendent determines from the data analysis that a

local police force has failed to comply with the provisions of §§ 15.2-1704, 15.2-1722, 52-4, or this chapter, the Superintendent shall notify the attorney for the Commonwealth of the city or county wherein the police force is located of the local police force's failure to comply with the provisions of §§ 15.2-1704, 15.2-1722, or this chapter, and shall seek the enforcement of such laws. If the Superintendent determines that police officers of the Department have failed to comply with the provisions of § 52-4 or this chapter, the Superintendent shall utilize such disciplinary procedures as may be authorized by State law or the regulations of the Department to enforce compliance with the provisions of such laws.

B. The Superintendent also shall cause the establishment of an uniform statewide system and database to collect, correlate, analyze, synthesize, validate, and interpret the required traffic stops, report the results of the data analysis, and maintain any records relating to such data analysis, validation, and interpretation. The Superintendent may seek assistance in establishing the uniform statewide system and database from any accredited public or private institution of higher education in the Commonwealth or from an independent body having the experience, staff expertise, and technical support capacity to conduct such research and data analysis.

In establishing the uniform statewide data collection system and database, the Superintendent shall ensure that the system and database have the technological capacity to manage and process the data for analysis to: (i) determine whether racial profiling or other non-criminal characteristics are used by State and local police officers in the Commonwealth to identify persons for traffic stops; (ii) develop a demographic profile of persons who are stopped for alleged traffic violations; (iii) ascertain whether traffic stops in the Commonwealth, particularly along Interstate Route 95, involve primarily African-American and other minority persons, and whether such persons were stopped, charged with an offense, searched, detained, arrested, or had property seized relative to how Caucasian persons compare in similar circumstances; (iv) identify the reasons given by police officers for such stops; (v) determine whether persons stopped were issued a warning or written citation; (vi) determine whether African-American and other minority persons are advised of their constitutional rights under the Fourth and Fourteenth Amendments to be free from unreasonable search and seizure by State and local police officers conducting traffic stops; (vii) assess the extent to which State and local police officers are knowledgeable of the constitutional rights of citizens; (viii) determine whether African-American and other minority persons are aware of their constitutional rights regarding search and seizure and equal protection under the law; and (ix) reach conclusions and recommend appropriate strategies based on accurate interpretation of the data to promote the enforcement of State and local laws, regulations, and ordinances without regard to race or ethnicity.

C. The Superintendent shall report the findings and any recommendations resulting from the analysis and interpretation of the data annually to the Attorney General of Virginia, the Governor, and the General Assembly, beginning on July 1, 2002. A copy of the Superintendent's report shall be provided also to the attorney for the Commonwealth of each county and city in the Commonwealth.

D. For the purposes of this chapter, "pretextual traffic stops" means the stopping of a person on the basis of the person's age, race, color, ethnicity, or gender for an alleged traffic violation or for an investigatory motor vehicle stop in order to conduct a search of the person, his property, or his passengers for the purposes of drug interdiction or for the discovery of evidence to confirm the alleged violation of other State and local laws, regulations, and ordinances.

E. For the purposes of this chapter, "racial profiling" means the stopping, detaining, search, or arrest of a person solely on the basis of the person's age, race, color, ethnicity, or gender.

2. That the provisions of this act shall expire on July 1, 2005.