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HOUSE BILL NO. 2735

Offered January 12, 2005

A *BILL to amend the Code of Virginia by adding sections numbered 8.01-226.2:1 and 15.2-1722.1, and by adding in Title 52 a chapter numbered 6.1, consisting of sections numbered 52-30.1 through 52-30.5, relating to the Virginia Racial Profiling and Traffic Statistics Reporting Act. Report.*

 Patron—Ward

 Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 8.01-226.2:1 and 15.2-1722.1, and by adding in Title 52 a chapter numbered 6.1, consisting of sections numbered 52-30.1 and 52-30.5, 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 §§ 15.2-1722.1 and 52-30.2 shall not be liable for any civil damages for acts or omissions on his part, in the absence of gross negligence or willful misconduct, resulting from stops for alleged traffic violations or investigatory purposes in which certain data pertaining to the violations and stops is collected.

§ 15.2-1722.1. *Racial profiling.*

A. No police officer shall engage in racial profiling in the performance of his official duties. For purposes of this section, "racial profiling" means the practice of targeting persons for suspected illegal activities using race, ethnicity, color, age, gender, or any combination thereof, or other noncriminal characteristics as the sole criterion for the determination of probable cause and using traffic enforcement as a pretext in the prevention and detection of crime, including the apprehension, detention, or arrest of persons, stops of motor vehicles for alleged traffic violations or investigatory purposes, search and seizure of property, enforcement of state laws and regulations, or to conduct further investigation.

B. The police force of every locality shall collect data pertaining to motor vehicle stops for traffic violations or investigatory purposes pursuant to Chapter 6.1 of Title 52 (§ 52-30.1 et seq.) and report such data to the Department of State Police for inclusion in the Racial Profiling and Traffic Reporting Statistics database. The chief of police of the locality shall be responsible for forwarding the data to the Superintendent of the Department of State Police.

CHAPTER 6.1.**VIRGINIA RACIAL PROFILING AND TRAFFIC REPORTING STATISTICS ACT.**

§ 52-30.1. *Short title; policy.*

This Chapter may be referred to as the Virginia Racial Profiling and Traffic Reporting Statistics Act. The Act is established to determine whether a disproportionate number of racial and ethnic minority persons are subjected to racial profiling and pretextual traffic stops, as defined in § 52-4, and to identify factors contributing to such practices; to ensure public safety; to protect the constitutional rights of all citizens; to affirm the integrity of law-enforcement officers; and to restore faith and confidence among minority citizens in law enforcement and the criminal justice system.

§ 52-30.2. *Collection of data.*

A. No police officer of the Department shall engage in racial profiling in the performance of his official duties. For purposes of this section, "racial profiling" means the practice of targeting persons for suspected illegal activities using race, ethnicity, color, age, gender, or any combination thereof, or other noncriminal characteristics as the sole criterion for the determination of probable cause and using traffic enforcement as a pretext in the prevention and detection of crime, including the apprehension, detention, or arrest of persons, stops of motor vehicles for alleged traffic violations or investigatory purposes, search and seizure of property, enforcement of state laws and regulations, or to conduct further investigation.

B. Police officers of the Department shall collect data pertaining to motor vehicle stops for traffic violations or investigatory purposes pursuant to this chapter to be reported into the Racial Profiling and Traffic Reporting Statistics database. Police officers of the Department shall submit the data to their commanding officers, who shall forward it to the Superintendent.

§ 52-30.3. *Racial Profiling and Traffic Reporting Statistics database established.*

A. The Department of State Police shall develop and implement a uniform statewide database to collect and analyze traffic stop records, and data and information submitted by police forces pursuant to

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§§ 15.2-1722.1 and 52-30.2. The data shall be analyzed to determine the existence and prevalence of the practice of racial profiling as defined in §§ 15.2-1722.1 and 52-30.2. The Department shall maintain any records relating to the analysis, validation, and interpretation of such data. The Superintendent may seek assistance in designing the statewide 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.

B. Data collected shall include, by locality, (i) the number of persons stopped for traffic violations or investigatory purposes; (ii) the race, ethnicity, color, age, and gender of the motorist stopped; (iii) the specific alleged traffic violation that resulted in the stop; (iv) whether a warning, written citation, or summons was issued, or whether any person in the vehicle was arrested; and (v) whether the vehicle or any persons in the vehicle were searched.

C. In designing the uniform statewide database, the Superintendent shall ensure that the system shall manage and process the data for analysis to (i) determine whether racial profiling or other noncriminal characteristics are used by state and local police officers in the Commonwealth to identify persons for alleged traffic violations or investigatory purposes; (ii) develop a demographic profile of persons who are stopped for alleged traffic violations or investigatory purposes; (iii) ascertain whether traffic and investigatory stops in the Commonwealth, particularly along Interstate Route 95, involve primarily racial and ethnic minority persons, and compare the rate at which such persons were stopped, searched, detained, arrested, or had property seized to the rate at which Caucasian persons were subjected to such actions; (iv) identify the reasons given by police officers for such stops and whether such persons were charged with an offense, detained, arrested, and whether a warning or written citation was issued; (v) determine whether racial and ethnic minority persons were 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 and investigatory motor vehicle stops; (vi) assess the extent to which state and local police officers are knowledgeable of the constitutional rights of citizens; (vii) solicit the public's perspectives regarding issues associated with racial profiling and pretextual traffic stops; (viii) determine whether racial and ethnic minority persons are aware of their constitutional rights regarding search and seizure and equal protection under the law; and (ix) reach accurate interpretations and conclusions based on the reported data.

§ 52-30.4. Duties of the Superintendent; reporting of local police forces and police officers of the Department of State Police required.

The police force in each locality and the Department shall collect and analyze the data specified in subsection B of § 52-30.3, and any other data as may be specified by the Department, on forms developed by the Department.

If the Superintendent determines that a local police force has failed or refused to report the required data to the Department, 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 requirements of this chapter. If the Superintendent determines that police officers of the Department have failed to comply with the provisions of this section, 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 this section.

§ 52-30.5. Annual report.

The Superintendent shall annually report the findings and any recommendations resulting from the collection, analysis, and interpretation of the data to the Governor, the General Assembly, and the Attorney General of Virginia beginning on July 1, 2006. A copy of the Superintendent's report shall also be provided to each attorney for the Commonwealth of the county and city wherein the reporting police force is located.

2. That the provisions of this act shall expire on July 1, 2009.