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SENATE BILL NO. 280

Offered January 9, 2002

Prefiled January 8, 2002

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.

Patron—Marsh

Referred to Committee for Courts of Justice

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 52-4 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 and investigatory motor vehicle stops in which certain data pertaining to such violations and stops are collected.

§ 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. However, in the performance of his duties, no police officer shall engage in racial profiling as defined in subsection G.

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 § 9.1-102, 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 and investigatory motor vehicle stops, which shall include (i) the number of persons stopped for traffic violations and investigatory motor vehicle stops, (ii) the race, ethnicity, color, age, and gender of persons stopped for alleged traffic violations and investigatory motor vehicle stops, (iii) the specific traffic offense committed by the person that resulted in the stop, (iv) whether a warning or written traffic 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 or investigatory motor vehicle stop shall request and record information pertaining to the race, ethnicity, color, age, and gender of each motorist stopped. The chief of police of a local police force in a locality shall provide for the collection and correlation of data pertaining to traffic stops and investigatory motor vehicle stops as required in this section, and shall report the data on such forms as the Superintendent of State Police shall require, as provided in § 52-30.2. A copy of the report shall also be provided to the attorney for the Commonwealth of the county or city wherein the police force is located.

D. The police force in a locality shall adopt and implement a written policy that prohibits the stopping, detaining, searching, or the arrest of any person, or the search and seizure of his property as the result of a traffic stop or investigatory motor vehicle stop, solely on the basis of the person's race, ethnicity, color, age, or gender.

E. 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

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59 *the Commonwealth of the city or county wherein such police force is located, may seek the withholding*
60 *of state law-enforcement funds for the violation of the provisions of § 15.2-1722, or § 52-30.2, or this*
61 *section.*

62 *F. The provisions of this section shall apply to sheriffs who are the chief law-enforcement officers of*
63 *the locality in which they serve.*

64 *G. For the purposes of this section, "racial profiling" means the practice of targeting persons for*
65 *suspected illegal activities using race, ethnicity, color, age, gender or any combination thereof, or other*
66 *noncriminal characteristics as the sole criterion for the determination of probable cause, and employing*
67 *traffic enforcement as a pretext in the prevention and detection of crime; the apprehension, detention, or*
68 *arrest of persons; stops for alleged traffic violations or investigatory motor vehicles stops; the search*
69 *and seizure of property; the enforcement of local ordinances and state laws and regulations; or to*
70 *conduct further investigation.*

71 *§ 15.2-1722. Certain records to be kept by sheriffs and chiefs of police.*

72 *A. It shall be the duty of the sheriff or chief of police of every locality to ~~insure~~ ensure, in addition*
73 *to other records required by law, the maintenance of adequate personnel, arrest, investigative, reportable*
74 *incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement*
75 *agency, and the maintenance of traffic stops and investigatory motor vehicle stops records necessary for*
76 *the collection of data and information pertaining to racial profiling and to ensure the enforcement of*
77 *state and local laws, regulations, and ordinances prohibiting such practice. Failure of a sheriff or a*
78 *chief of police to maintain such records or failure to relinquish such records to his successor in office*
79 *shall constitute a misdemeanor. Former sheriffs or chiefs of police shall be allowed access to such files*
80 *for preparation of a defense in any suit or action arising from the performance of their official duties as*
81 *sheriff or chief of police. The enforcement of this section shall be the duty of the attorney for the*
82 *Commonwealth of the county or city wherein the violation occurs.*

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

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

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

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

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

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

97 *"Traffic stop records" means those records and compilations pertaining to the stopping of persons*
98 *for alleged traffic violations or investigatory motor vehicles stops, including such data and information*
99 *required to be collected and maintained pertaining to the practice of racial profiling as defined in*
100 *subsection G of § 15.2-1704.*

101 *§ 52-4. Functions of Department.*

102 *A. The highway patrol, or state police patrol as it is sometimes called, the police school, the state*
103 *police radio or communication system, the supervision of inspection stations and of inspectors of motor*
104 *vehicles, the promotion of highway safety, the establishment and direction of a vehicle accident*
105 *prevention and safety program for state agencies, the adoption of standards for motor vehicle appliances,*
106 *accessories and safety devices and, the registration of machine guns, and the collection and analysis of*
107 *data concerning stops for alleged traffic violations and investigatory motor vehicle stops shall be in the*
108 *Department of State Police. The collection and analysis of such data shall include the race, ethnicity,*
109 *color, age, and gender of persons stopped for alleged traffic violations and investigatory motor vehicle*
110 *stops. The police officer conducting the traffic stop or investigatory motor vehicle stop shall request*
111 *identifying characteristics concerning the race, ethnicity, color, age, and gender of the person stopped.*

112 *B. The Department of State Police shall adopt and implement a written policy that prohibits the*
113 *practice of racial profiling as defined in this section.*

114 *C. For the purposes of this section, "racial profiling" means the practice of targeting persons for*
115 *suspected illegal activities using race, ethnicity, color, age, gender or any combination thereof, or other*
116 *noncriminal characteristics as the sole criterion for the determination of probable cause, and employing*
117 *traffic enforcement as a pretext in the prevention and detection of crime; the apprehension, detention, or*
118 *arrest of persons; stops for alleged traffic violations or investigatory motor vehicles stops; the search*
119 *and seizure of property; the enforcement of state laws and regulations; or to conduct further*
120 *investigation.*

CHAPTER 6.1.

VIRGINIA RACIAL PROFILING AND TRAFFIC REPORTING STATISTICS ACT.

§ 52-30.1. Uniform statewide system and database established; collection and analysis of certain data regarding traffic stops and investigatory motor vehicle stops required.

There is hereby established, with such funds as may be appropriated for this purpose, the Virginia Racial Profiling and Traffic Reporting Statistics Act for the purpose of determining 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, ensure public safety, protect the constitutional rights of all citizens, affirm the integrity of law-enforcement officers, and restore faith and confidence among minority citizens in law enforcement and the criminal justice system.

The Department of State Police shall develop and implement a uniform statewide database to collect and analyze traffic stops records, and data and information from police forces in the Commonwealth, pursuant to § 15.2-1704 and subsection A of § 52-30.2, to determine the existence and prevalence of the practice of racial profiling as defined in § 52-4. Data collected and analyzed shall include by locality (i) the number of persons stopped for traffic violations and investigatory motor vehicle stops, (ii) the race, ethnicity, color, age, and gender of persons stopped for alleged traffic violations and investigatory motor vehicle stops, (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.

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

A. The Superintendent shall require the police force in each locality and the police officers of the Department to report the data and information required to be collected and analyzed in § 15.2-1704 to the Department of State Police on such forms as he shall determine. Police officers of the Department shall submit such data to their commanding officers who shall forward it to the Superintendent. If the Superintendent determines that a local police force has failed or refused to report the required data and information to the Department, or if based on analysis of such data and information, the Superintendent determines that a local police force has failed to comply with the provisions of § 15.2-1704 or § 15.2-1722 or this section, 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 or § 15.2-1722 or this section, 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 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.

B. The Superintendent also shall cause the development and implementation of a uniform statewide database to collect, correlate, synthesize, analyze, validate, interpret, and report the results of the required data and information, and shall maintain any records relating to the analysis, validation, and interpretation of such data. The Superintendent may seek assistance in designing the uniform 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.

In designing the uniform statewide database, the Superintendent shall ensure that the system is technologically equipped to 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 and investigatory motor vehicle stops; (ii) develop a demographic profile of persons who are stopped for alleged traffic violations and investigatory motor vehicle stops; (iii) ascertain whether traffic stops and investigatory motor vehicle stops in the Commonwealth, particularly along Interstate Route 95, involve primarily racial and ethnic minority persons, and compare the rate in which such persons were stopped, searched, detained, arrested, or had property seized to the rate in 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 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 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

182 *conclusions based on the reported data.*

183 *C. The Superintendent shall report the findings and any recommendations resulting from the*
184 *collection, analysis, and interpretation of the data annually to the Attorney General of Virginia, the*
185 *Governor, and the General Assembly, beginning on July 1, 2003. A copy of the Superintendent's report*
186 *shall also be provided to each attorney for the Commonwealth of the county and city wherein the*
187 *reporting police force is located.*

188 **2. That the provisions of this act shall expire on July 1, 2006.**