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HOUSE BILL NO. 2466

Offered January 20, 2011

A BILL to amend the Code of Virginia by adding sections numbered 8.01-226.11:1 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 Biased-Based Profiling and Traffic Statistics Reporting Act; report.

Patrons—Englin, Brink, Hope, James, McClellan, Morrissey, Plum, Scott, J.M., Sickles, Surovell, Toscano and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 8.01-226.11:1 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, as follows:

§ 8.01-226.11:1. Civil immunity for police officers collecting certain traffic stop information.

Any police officer of a local police force or 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. Biased-based profiling.

A. No police officer shall engage in biased-based profiling in the performance of his official duties. For purposes of this section, "bias-based 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 criteria 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, or 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 (§ 52-30.1 et seq.) of Title 52 and report such data to the Department of State Police for inclusion in the Biased-Based Profiling and Traffic Statistics Reporting 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 BIASED-BASED PROFILING AND TRAFFIC STATISTICS REPORTING ACT.**

§ 52-30.1. Short title; definition.

This chapter may be referred to as the Virginia Biased-Based Profiling and Traffic Statistics Reporting Act.

For purposes of this chapter, "bias-based 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 criteria 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, or enforcement of state laws and regulations, or to conduct further investigation.

§ 52-30.2. Collection of data.

A. No police officer of the Department shall engage in biased-based profiling in the performance of his official duties.

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 Biased-Based Profiling and Traffic Statistics Reporting Database. Police officers of the Department shall submit the data to their commanding officers, who shall forward it to the Superintendent.

§ 52-30.3. Biased-Based Profiling and Traffic Statistics Reporting 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 §§ 15.2-1722.1 and 52-30.2. The data shall be analyzed to determine the existence and prevalence of the practice of biased-based profiling. The Department shall maintain all records relating to the analysis,

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HB2466

58 validation, and interpretation of such data. The Superintendent may seek assistance in designing the
59 statewide database from any accredited public or private institution of higher education in the
60 Commonwealth or from an independent body having the experience, staff expertise, and technical
61 support capability to conduct such research.

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

67 C. In designing the uniform statewide database, the Superintendent shall ensure that the system shall
68 manage and process the data for analysis to (i) determine the extent to which biased-based profiling is
69 used by state and local police officers in the Commonwealth to identify persons for alleged traffic
70 violations or investigatory purposes; (ii) develop a demographic profile of persons who are stopped for
71 alleged traffic violations or investigatory purposes; (iii) ascertain whether traffic and investigatory stops
72 in the Commonwealth, particularly along Interstate Route 95, involve primarily racial and ethnic
73 minorities and compare the rate at which such persons were stopped, searched, detained, or arrested or
74 had property seized with the rate at which Caucasian persons were subjected to such actions; (iv)
75 identify the reasons given by police officers for such stops and whether such persons were charged with
76 an offense, detained, arrested, or issued a warning or written citation, (v) determine whether racial and
77 ethnic minorities were advised of their constitutional rights under the Fourth and Fourteenth
78 Amendments to be free from unreasonable search and seizure by state and local police officers
79 conducting traffic and investigatory motor vehicle stops, (vi) assess the extent to which state and local
80 police officers are knowledgeable of the constitutional rights of citizens, (vii) solicit the public's
81 perspectives regarding issues associated with biased-based profiling and pretextual traffic stops, (viii)
82 determine whether racial and ethnic minorities are aware of their constitutional rights regarding search
83 and seizure and equal protection under the law, and (ix) reach accurate interpretations and conclusions
84 based on the reported data.

85 § 52-30.4. Duties of the Superintendent; reporting of local police forces and police officers of the
86 Department of State Police required.

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

90 If the Superintendent determines that a local police force has failed or refused to report the required
91 data to the Department, the Superintendent shall notify the attorney for the Commonwealth of the county
92 or city in which the police force is located. If the Superintendent determines that police officers of the
93 Department have failed to comply with the provisions of this chapter, the Superintendent shall utilize
94 such disciplinary procedures as may be authorized by state law or the regulations of the Department to
95 enforce compliance with this chapter.

96 § 52-30.5. Annual report.

97 The Superintendent shall annually report the findings and recommendations resulting from the
98 collection, analysis, and interpretation of the data to the Governor, the General Assembly, and the
99 Attorney General of Virginia beginning July 1, 2012. A copy of the Superintendent's report shall also be
100 provided to each attorney for the Commonwealth of the county or city in which a reporting police force
101 is located.

102 2. That the provisions of this act shall expire on July 1, 2015.