SENATE DOCKET, NO. 747 FILED ON: 1/17/2013

SENATE . . . . . No. 644

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Diaz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An act to improve the collection and analysis of data relative to traffic stops. .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sonia Chang-Diaz	*Second Suffolk*
Byron Rushing	*9th Suffolk*
Denise Andrews	*2nd Franklin*
Marjorie C. Decker	*25th Middlesex*
Benjamin Swan	*11th Hampden*

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By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 644) of Sonia Chang-Diaz, Byron Rushing, Denise Andrews, Marjorie C. Decker and other members of the General Court for legislation to improve the collection and analsis of data realitve to traffic stops. . The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *677* OF 2011-2012.]

The Commonwealth of Massachusetts

An act to improve the collection and analysis of data relative to traffic stops. .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 90C is hereby amended by inserting after Section 6 the following new section:

Section 6A. Improved Systems for Collection and Analysis of Data Relative to Traffic Stops

(A) Ban on racial profiling.

(1) No state, municipal, college or university law enforcement officer or law enforcement agency shall engage in racial profiling.

(2) As used in this section, “racial profiling” means the use by a state, municipal, college or university law enforcement officer or state, municipal, college or university police department of race, ethnicity, or national origin to any degree in deciding who should be subject to traffic stops, pedestrian stops, frisks and other types of bodily searches, interviews, and searches and seizures of motorists, passengers, and motor vehicles, except when such characteristics are used in combination with other identifying factors in seeking to apprehend a specific suspect whose racial, ethnic or national origin status is part of the description of the suspect, which description is particularized, timely and reliable.

(B) Traffic Data Review Committee.

17 (1) There is created a Traffic Data Review Committee, consisting of not more than 13
18 members, which shall independently exercise its powers, duties, and responsibilities. The Traffic
19 Data Review Committee shall have the authority to allow additional participation from various
20 groups that the Committee deems necessary for additional input.

21 (2) The Traffic Data Review Committee shall consist of:

22 (a) two legislators appointed by the General Court leadership, one member from each
23 house;

24 (b) the Attorney General or his or her designee;

25 (c) the Secretary of Public Safety and Security or his or her designee, who shall serve
26 as chair;

27 (d) the Registrar of Motor Vehicles or his or her designee;

28 (e) the Colonel of the Massachusetts State Police or his or her designee;

29 (f) the Chief Counsel of the Committee for Public Counsel Services or his or her
30 designee;

31 (g) one police officer from a municipal law enforcement agency, appointed by the
32 Massachusetts Police Association;

33 (h) one member of the Massachusetts Chiefs of Police Association and one member
34 of the Massachusetts Major City Chiefs Association, each selected by their respective boards of
35 directors;

36 (i) two members of community and/or civil rights advocacy organizations appointed
37 by the Governor; and

38 (j) one member of the Massachusetts academic community with specific expertise in
39 both statistical analysis and law enforcement, appointed by the Governor.

40 Members of the Traffic Data Review Committee shall be appointed within 45 days of the
41 effective date of this act.

42 (3) All Traffic Data Review Committee members shall serve, without compensation,
43 for two years and until their successors are appointed. Members may be reappointed for an
44 unlimited number of terms. The Traffic Data Review Committee shall meet at the call of the
45 chair of the Committee based on the Committee's workload but shall meet at least quarterly.
46 The Executive Office of Public Safety and Security shall provide staff and administrative
47 services for the Traffic Data Review Committee.

48 (4) The Traffic Data Review Committee shall have the following powers, duties, and
49 responsibilities:

50 (a) to operate as an advisory body, with any proposed changes to rules and policy
51 promoted by the Traffic Data Review Committee constituting recommendations, which may be
52 reported to the Governor, the Secretary of Public Safety and Security, and the General Court
53 and/or to state, municipal, college or university police departments and other entities identified
54 as appropriate by the Traffic Data Review Committee;

55 (b) to promulgate model policies for state, municipal, college or university police
56 departments that are designed to protect individuals' civil rights related to law enforcement
57 practices with regard to traffic stops, which model policies may be based in part on a review of
58 existing policies developed or adopted by state, municipal, college or university police
59 departments in the Commonwealth;

60 (c) to recommend to state, municipal, college and university police departments
61 model rules necessary to effectuate training on data collection and analysis and mechanisms to
62 engage agencies that do not fulfill the requirements of this section and to help identify potential
63 sources of funding for data collection and analysis training;

64 (d) to identify and recommend best practices for traffic stop data collection and
65 analysis, including best practices for making use of advanced technologies, and to advise the
66 Executive Office of Public Safety and Security regarding the development of a system for state,
67 municipal, college and university police departments to electronically gather, record, and report
68 information concerning motor vehicle accidents, violations, traffic stops, and citations;

69 (e) to consider and make recommendations about how to determine the baseline data
70 against which data collected pursuant to subsection (C) shall be measured;

71 (f) to review reports compiled pursuant to subsections (E)(1) and (E)(4), and, as
72 necessary, other data or reports collected or compiled pursuant to this section, and to consider
73 and propose solutions to identify, eliminate and prevent racial profiling;

74 (g) to support and encourage state, municipal, college and university police
75 departments in their outreach to local communities concerning a) the goals of traffic
76 enforcement, b) perceived racial and ethnic disparities in traffic stops and other law enforcement
77 activities, and c) strategies for monitoring and reducing such disparities where found to exist;

78 (h) to review reports, analyses, recommendations, and conclusions compiled using
79 data collected in connection with the implementation of Massachusetts Chapter 228 of the Laws
80 of 2000, and to consider such reports, analysis, recommendations and conclusions in executing
81 the powers, duties, and responsibilities under this subsection; and

82 (i) to issue an annual report to the Governor, no later than September 1, regarding the
83 Traffic Data Review Committee's activities during the previous fiscal year, which report shall
84 also be filed with the Clerks of the Senate and the House of Representatives.

85 In accordance with subsection (4)(e) above, the Traffic Data Review Committee may
86 consider, among other matters, the following:

87 i. whether the percentage of minority drivers or passengers being stopped in a given
88 area is substantially higher than the proportion constituted by the minority population within the
89 overall population residing in or traveling through that area;

90 ii. whether a disparity exists between the frequency of stops of minorities not
91 resulting in the issuance of a traffic ticket or the making of an arrest, and the proportion of
92 minorities within the overall population residing in or traveling through that area;

93 iii. whether a disparity exists between the proportion of citations issued to minorities
94 and the proportion of minorities within the population residing in or traveling through that area;

95 iv. whether a disparity exists among particular officers employed within the same
96 law enforcement agency with regard to the number of minority drivers or passengers they stop
97 within in a given area; and

98 v. whether a disparity exists between the frequency of searches performed on
99 minority drivers and the frequency of searches performed on non-minority drivers.

100 (C) Ongoing Data Collection.

101 Whenever a motorist is stopped by any state, municipal, college or university law
102 enforcement officer, the officer shall record the following data:

103 (a) the race, ethnicity, and gender of the motorist;

104 (b) the reason for the traffic stop;

105 (c) the location and time of the traffic stop;

106 (d) whether a search was initiated as a result of the stop, and whether the search was
107 conducted with consent;

108 (e) whether contraband was found or any materials were seized during a search;

109 (f) whether the stop resulted in a warning, citation or arrest;

110 (g) the name and badge number of the officer initiating the stop.

111 The state police department and each municipal, college and university police department
112 shall review each officer's stop and search documentation on at least a quarterly basis to ensure
113 compliance with this subsection.

114 (D) Electronic Data Systems.

115 Any electronic systems developed for state, municipal, college, or university police
116 departments to issue motor vehicle citations, or to gather, record, report, and study information
117 concerning motor vehicle accidents, violations, traffic stops, or citations, shall be designed in a
118 manner that facilitates the collection of the data described in subsection (C) of this section and
119 the automatic transmission of said data to the Registry of Motor Vehicles and the Executive
120 Office of Public Safety and Security. The Executive Office of Public Safety and Security shall
121 obtain the participation of the Traffic Data Review Committee in the development and
122 implementation of such electronic systems, and in the development of a uniform protocol for law
123 enforcement officers on how to use such electronic systems to record the data described in
124 subsection (C).

125 Upon the adoption of such an electronic system by any state, municipal, college, or
126 university police department, said department shall record the data set forth in subsection (C) for
127 all traffic stops and shall, no less frequently than once a month, transmit said data by electronic
128 means to the Registry of Motor Vehicles and the Executive Office of Public Safety and Security.

129 (E) Data Analysis.

130 (1) The Registry of Motor Vehicles shall maintain all data described in subsection (C)
131 in an electronically accessible database and shall issue to the Secretary of Public Safety and
132 Security and to the Attorney General a semi-annual summary report of said data. The report
133 shall include, for each police department, statistical data setting out, in a month-by-month
134 format, the number of traffic stops made, the number of citations issued, the number of searches
135 conducted, the race of the drivers stopped, the race of the drivers searched, and any other
136 information as may be requested by the Traffic Data Review Committee. The Registry of Motor
137 Vehicles shall also issue to the state police department and each municipal, college and
138 university police department subject to this section a semi-annual summary report of the data
139 collected within each department's jurisdiction. Each report shall include, for each month,
140 statistical data setting out the number of traffic stops made, the number of searches conducted,
141 the race of the drivers stopped, the race of the drivers searched, and any other information as
142 may be requested by the Traffic Data Review Committee. The semi-annual reports required by
143 this subsection shall be submitted no later than April 1 and September 1 and each report shall
144 include data collected during the preceding half of the fiscal year, regardless of whether
145 complete data is available for that period. No information revealing the identity of any individual
146 shall be contained in the reports. The reports submitted pursuant to this subsection shall be
147 public records.

148 (2) The heads of the state police department and each municipal, college and
149 university police department subject to this section, or his/her designee, shall review the
150 underlying data and summary reports collected and compiled pursuant to this section on a regular
151 basis in an effort to determine whether any racial disparities in the department's traffic stops
152 exist, and to appropriately respond to any such disparities.

153 (3) On an annual basis, the Secretary of Public Safety and Security shall transmit the
154 data collected by the state police department and by each municipal, college and university
155 police department in accordance with this act to a university in the Commonwealth with
156 experience in the analysis of such data, which shall prepare an analysis and a report. This
157 analysis and report shall be submitted to the Governor and the Traffic Data Review Committee
158 not more than 90 days after receipt of the data by the university, and shall be deemed a public
159 record. The report shall include a multivariate analysis of the collected data in accordance with
160 generally accepted statistical standards and will identify any statistically significant disparities.

161 (F) Data Availability.

162 Any individual charged with a criminal offense based on evidence or statements obtained
163 as the result of a motor vehicle stop shall have the right to obtain data collected pursuant to this
164 section concerning any officer who participated in the stop or the search that resulted in the
165 seizure of evidence, from the Registry of Motor Vehicles, the Executive Office of Public Safety
166 and Security, and from the police department or the department of the officer(s) involved in the
167 traffic stop or search; provided that information revealing the name, street address, date of birth,
168 and driver's license number of individuals involved in motor vehicle stops who are not law
169 enforcement officers or their agents shall not be disclosed; and provided further that information
170 revealing the home address, date of birth, personal telephone number or any personal identifying
171 information other than the name, badge number, and department of a law enforcement officer
172 shall not be disclosed. Requests for such data may specify a single or multiple incidents, dates,
173 locations or any other combination of data collected pursuant to subsection (C).

174 (G) Enforcement.

175 The attorney general may bring a civil action in the superior court for injunctive or other
176 appropriate equitable relief to enforce the provisions of this section. A person claiming to be
177 aggrieved by a violation of this section may not institute an individual action for damages or
178 other relief under this section, but nothing in this paragraph shall be construed to limit any other
179 rights or remedies, including, but not limited to, a civil action for a violation of constitutional
180 rights under section 11I of chapter 12 of the General Laws or 42 U.S.C. section 1983 or motions
181 for suppression or dismissal or other relief in a criminal case.

182 The attorney general shall issue an annual summary report of the complaints received
183 concerning the enforcement of the provisions of this section and the actions taken with respect to
184 such complaints. The report shall be submitted to the Traffic Data Review Committee not more

185 than 90 days after the end of each fiscal year, including the first fiscal year-end following the
186 effective date of this act, regardless of whether data based on a full fiscal year is available. No
187 information revealing the identity of any individual shall be contained in the report. The reports
188 submitted pursuant to this subsection shall be public records.

189 SECTION 2.

190 Subsection (C) of Section 6A of Chapter 90C shall take effect 12 months from the
191 effective date of this act, at which time Chapter 228 of the Acts of 2000 shall be repealed.

192 Subsection (E) of said Section 6A shall take effect at such time as the Executive Office of
193 Public Safety and Security makes available to law enforcement agencies an electronic system
194 described in subsection (D).