

HOUSE BILL NO. 781

INTRODUCED BY J. WINDY BOY, AUGARE, BIXBY, CAMPBELL, CORDIER, JAYNE, JUNEAU, PEASE,
SMALL-EASTMAN, SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING EACH LAW ENFORCEMENT AGENCY TO ADOPT A
POLICY ON RACE-BASED TRAFFIC STOPS, INCLUDING THE COLLECTION OF DATA ON RACIAL
PROFILING IN TRAFFIC STOPS; PROVIDING FOR REPORTS BASED UPON THE DATA; AMENDING
SECTION 44-2-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Racial profiling -- race or ethnic background factor data gathering.~~

~~(1) Each time that a peace officer stops a driver of a motor vehicle, the peace officer shall report the following
information to the law enforcement agency that employs the officer:~~

~~—— (a) the age, gender, and race or minority group of the individual stopped;~~

~~—— (b) the reasons for the stop;~~

~~—— (c) whether a search was conducted as a result of the stop;~~

~~—— (d) if a search was conducted, whether the individual consented to the search, the probable cause for
the search, whether the person was searched, whether the person's property was searched, and the duration
of the search;~~

~~—— (e) whether any contraband was discovered in the course of the search and the type of any contraband
discovered;~~

~~—— (f) whether any warning or citation was issued as a result of the stop;~~

~~—— (g) if a warning or citation was issued, the warning provided or violation charged;~~

~~—— (h) whether an arrest was made as a result of either the stop or the search;~~

~~—— (i) if an arrest was made, the crime charged; and~~

~~—— (j) the location of the stop.~~

~~(2) The information in subsection (1) may be reported using a format determined by the department of
justice that uses existing citation and report forms.~~

~~(3) (a) Each law enforcement agency shall compile the data described in subsection (1) for the calendar~~

1 ~~year into a report to the attorney general.~~

2 ~~——— (b) Each law enforcement agency shall submit the report to the attorney general no later than July 1 of~~
3 ~~the following calendar year.~~

4 ~~——— (c) The attorney general shall determine the format that all law enforcement agencies shall use to submit~~
5 ~~the report.~~

6 ~~——— (4) (a) The attorney general shall analyze the annual reports of law enforcement agencies required by~~
7 ~~this section and submit a report of the findings to the governor, the legislature, and each law enforcement agency~~
8 ~~no later than September 1 of each year.~~

9 ~~——— (b) The report of the attorney general shall include at least the following information for each law~~
10 ~~enforcement agency:~~

11 ~~——— (i) the total number of vehicles stopped by peace officers during the previous calendar year;~~

12 ~~——— (ii) the number and percentage of stopped motor vehicles that were driven by members of each particular~~
13 ~~minority group;~~

14 ~~——— (iii) a comparison of the percentage of stopped motor vehicles driven by each minority group and the~~
15 ~~percentage of the state's population that each minority group comprises; and~~

16 ~~——— (iv) a compilation of the information reported by law enforcement agencies pursuant to subsection (1).~~

17 ~~——— (5) Each law enforcement agency shall adopt a policy on race-based traffic stops that:~~

18 ~~——— (a) prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws~~
19 ~~as a pretext for investigating other violations of criminal law;~~

20 ~~——— (b) provides for periodic reviews by the law enforcement agency of the annual report of the attorney~~
21 ~~general required by subsection (4) that determine whether any peace officers of the law enforcement agency~~
22 ~~have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate~~
23 ~~to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency;~~

24 ~~——— (c) if the review under subsection (5)(b) reveals a pattern, requires an investigation to determine whether~~
25 ~~any peace officers of the law enforcement agency routinely stop members of minority groups for violations of~~
26 ~~vehicle laws as a pretext for investigating other violations of criminal law; and~~

27 ~~——— (d) provides for appropriate counseling and training of any peace officer found to have engaged in~~
28 ~~race-based traffic stops within 90 days of the review. The course or courses of instruction and the guidelines must~~
29 ~~stress understanding and respect for racial and cultural differences and development of effective, noncombative~~
30 ~~methods of carrying out law enforcement duties in a racially and culturally diverse environment.~~

~~———— (6) If a law enforcement agency fails to comply with the provisions of this section, the office of budget and program planning may withhold any state funds appropriated to the noncompliant law enforcement agency and the noncompliant law enforcement agency is ineligible to receive any state grants or allocations of discretionary funds.~~

~~———— (7) Each law enforcement agency in this state may use federal funds from community-oriented policing services grants or any other federal sources to equip each vehicle used for traffic stops with a video camera and voice-activated microphone.~~

Section 1. Section 44-2-117, MCA, is amended to read:

"44-2-117. Racial profiling prohibited -- definitions -- policies -- complaints -- training. (1) A peace officer may not engage in racial profiling.

(2) The race or ethnicity of an individual may not be the sole factor in:

(a) determining the existence of probable cause to take into custody or arrest an individual; or

(b) constituting a particularized suspicion that an offense has been or is being committed in order to justify the detention of an individual or the investigatory stop of a motor vehicle.

(3) EACH LAW ENFORCEMENT AGENCY SHALL ADOPT A POLICY ON RACE-BASED TRAFFIC STOPS THAT:

(A) PROHIBITS THE PRACTICE OF ROUTINELY STOPPING MEMBERS OF MINORITY GROUPS FOR VIOLATIONS OF VEHICLE LAWS AS A PRETEXT FOR INVESTIGATING OTHER VIOLATIONS OF CRIMINAL LAW;

(B) PROVIDES FOR PERIODIC REVIEWS BY THE LAW ENFORCEMENT AGENCY AND COLLECTION OF DATA THAT DETERMINE WHETHER ANY PEACE OFFICERS OF THE LAW ENFORCEMENT AGENCY HAVE A PATTERN OF STOPPING MEMBERS OF MINORITY GROUPS FOR VIOLATIONS OF VEHICLE LAWS IN A NUMBER DISPROPORTIONATE TO THE POPULATION OF MINORITY GROUPS RESIDING OR TRAVELING WITHIN THE JURISDICTION OF THE LAW ENFORCEMENT AGENCY;

(C) IF THE REVIEW UNDER SUBSECTION (3)(B) REVEALS A PATTERN, REQUIRES AN INVESTIGATION TO DETERMINE WHETHER ANY PEACE OFFICERS OF THE LAW ENFORCEMENT AGENCY ROUTINELY STOP MEMBERS OF MINORITY GROUPS FOR VIOLATIONS OF VEHICLE LAWS AS A PRETEXT FOR INVESTIGATING OTHER VIOLATIONS OF CRIMINAL LAW.

~~(3)(4)~~ (a) Each municipal, county, consolidated local government, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency's policy must prohibit racial profiling, require that all stops are lawful under 46-5-401, and require that all stops are documented according to the agency's standard policies and procedures section 1 SUBSECTION (3) OF THIS SECTION.

(b) The policy must include a procedure that the law enforcement agency will use to address written complaints concerning racial profiling. The complaint procedure must require that:

(i) all written complaints concerning racial profiling be promptly reviewed;

(ii) a person is designated who shall review all written complaints of racial profiling;

(iii) the designated person shall, within 10 days of receipt of a written complaint, acknowledge receipt of the complaint in writing; and

(iv) after a review is completed, the designated person shall, in writing, inform the person who submitted the written complaint and the head of the agency of the results of the review.

(c) The policy must be available for public inspection during normal business hours.

~~(4)(5)~~ Each municipal, county, consolidated local government, and state law enforcement agency shall require for all of its peace officers cultural awareness training and training in racial profiling. The training program must be certified by the peace officers' standards and training advisory council.

(6) EACH LAW ENFORCEMENT AGENCY MAY PROVIDE FOR APPROPRIATE COUNSELING AND TRAINING OF ANY PEACE OFFICER FOUND TO HAVE ENGAGED IN RACE-BASED TRAFFIC STOPS WITHIN 90 DAYS OF THE REVIEW. THE COURSE OR COURSES OF INSTRUCTION AND THE GUIDELINES MUST STRESS UNDERSTANDING AND RESPECT FOR RACIAL AND CULTURAL DIFFERENCES AND DEVELOPMENT OF EFFECTIVE, NONCOMBATIVE METHODS OF CARRYING OUT LAW ENFORCEMENT DUTIES IN A RACIALLY AND CULTURALLY DIVERSE ENVIRONMENT.

~~(5)(7)~~ If an investigation of a complaint of racial profiling reveals that a peace officer was in direct violation of the law enforcement agency's written policy prohibiting racial profiling, the law enforcement agency shall take appropriate action against the peace officer consistent with applicable laws, rules, ordinances, or policies.

~~(6)(8)~~ For the purposes of ~~section 11~~ and this section, the following definitions apply:

(a) "Minority group" means individuals of African AMERICAN, Hispanic, Native American, or Asian, OR MIDDLE EASTERN descent.

~~(a)(b)~~ "Peace officer" has the meaning provided in 46-1-202.

~~(b)(c)~~ "Racial profiling" means the detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual.

~~(7)(9)~~ The department of justice shall make periodic reports to the law and justice interim committee regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section.

(10) EACH LAW ENFORCEMENT AGENCY IN THIS STATE MAY USE FEDERAL FUNDS FROM COMMUNITY-ORIENTED POLICING SERVICES GRANTS OR ANY OTHER FEDERAL SOURCES TO EQUIP EACH VEHICLE USED FOR TRAFFIC STOPS WITH A VIDEO CAMERA AND VOICE-ACTIVATED MICROPHONE."

~~NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 2, part 1, and the provisions of Title 44, chapter 2, part 1, apply to [section 1].~~

NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 2007.

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