WEST virginia legislature

2021 regular session

Introduced

House Bill 3121

By Delegate Rowe

[Introduced March 12, 2021; Referred to the Committee on the Judiciary]

A BILL to amend and reenact §17G-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17G-2-1, §17G-2-2, and §17G-2-3 of said code, all relating to data collection for actions by law-enforcement officers involving motor vehicle drivers, passengers and pedestrians, and subjects in property or domestic violence actions; providing for a reporting procedure on forms of the Division of Motor Vehicles forms used to include information for law enforcement actions involving traffic stops.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. racial profiling data collectioN.

§17G-1-2. Information obtained by law-enforcement officers during ~~a traffic stop~~ stops and searches of motor vehicle drivers, passengers, pedestrians and other persons.

Each time a law-enforcement officer stops a driver ~~of~~ or passenger in a motor vehicle or a pedestrian or enters property pursuant to a domestic or property dispute for ~~a~~ violation of ~~any motor vehicle~~ a statute or ordinance, ~~other than for a nonviolation stop including, but not limited to, a checkpoint for driving under the influence, license, registration or seat belts~~ the law-enforcement officer shall ~~obtain and~~ prepare a brief report based on the officer’s visual observation and perception of basic information about the nature, duration and outcome of the ~~stop~~ action and about the subjects of the action, including, but not limited to, information relating to the perceived racial characteristics of each ~~operator~~ subject stopped or engaged. The report is to be provided to the West Virginia law-enforcement agency which employs the law-enforcement officer and shall specify whether the action is a traffic or nontraffic action: *Provided,* That the failure of the law-enforcement officer to obtain and report racial profiling data shall not affect the validity of the underlying ~~traffic~~ action, citation or warning.

The information to be collected ~~shall include~~ includes:

(a) The identifying characteristics reported of the ~~operator stopped~~ subject of the action, including perceived race, ethnicity or national origin, gender and age level;

(b) The location and duration of the ~~stop~~ action;

(c) The ~~traffic~~ violation or violations of the subject or subjects alleged to have been committed ~~that led~~ leading to the ~~stop~~ action;

(d) Whether or not ~~a warning~~ an arrest, ~~or~~ citation, or warning was issued as a result of the ~~stop~~ action and if so, the specific violation, if any, charged or warning given;

(e) Whether a search was performed as a result of the ~~stop~~ action;

(f) If a search was performed, whether the ~~person~~ subject consented to the search, the probable cause or reasonable suspicion for the search, whether the ~~person~~ subject was searched, whether the ~~persons~~ subject’s property was searched and the duration of the search;

(g) If a search was of a driver or the passenger ~~in the~~ in a motor vehicle, or a pedestrian, or other subject, the subject’s perceived ~~age, gender and race or minority group of the passenger~~ race, ethnicity, natural origin, gender and age level;

(h) Whether any contraband or cash was discovered or seized in the course of the search and the type of any contraband discovered or seized and the amount of cash seized;

(i) Whether the law-enforcement officer was injured or a subject was injured in the action, and whether any party required medical treatment.

~~(i)~~ (j) Identify whether the search involved canine units or advanced technology; and

~~(j)~~ (k) Any additional information which the law-enforcement agency considers appropriate.

Article 2. ANALYSIS OF TRAFFIC STOPS STUDY AND ANNUAL REPORT BY DIRECTOR OF THE GOVERNOR’S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§17G-2-1. Format of data collection forms in traffic stops and other actions ~~traffic stops data collection forms~~.

The Division of Motor Vehicles shall provide a form as required by ~~section three of this article~~ §17G-2-3 of this code, in both printed and electronic format, to be used by law-enforcement officers when making a traffic stop or other action to record the information listed in §17G-1-2 of this code.

§17G-2-2. Law-enforcement agency ~~traffic stops~~ actions, data collection and submission.

(a) Each law-enforcement agency shall report its data described in ~~section two, article one of this chapter~~ §17G-1-2of this codeto the Division of Motor Vehicles in a report format as prescribed by the division.

(b) If a law-enforcement agency fails to comply with the provisions of this section, the Division of Motor Vehicles shall notify the agency by certified mail of its failure to comply. If the agency continues to fail to comply, the Governor may withhold state-controlled funds appropriated to the noncompliant law-enforcement agency until reports are made as required by this article.

§17G-2-3. Analysis of traffic and nontraffic actions ~~stop~~ statistics, annual report and legislative rules.

(a) To facilitate the commencement of data collection, the director of the Governor’s Committee on Crime, Delinquency and Corrections, in consultation with the Division of Motor Vehicles, shall propose legislative rules in accordance with §29A-3-1 *et seq.* of this code. These rules shall include, but are not limited to:

(1) The manner of collecting and reporting the information to the Division of Motor Vehicles;

(2) Promulgation of a form or forms for reporting purposes by various law-enforcement agencies;

(3) A means of reporting the information required in ~~section two, article one of this chapter~~ §17G-1-2 of this codeon warning citations to the Division of Motor Vehicles;

(4) In consultation with the Fraternal Order of Police, the Sheriffs Association, the Deputy Sheriffs Association and representatives of law-enforcement agencies, a means of providing training to law-enforcement officers on completion and submission of the data on the proposed form;

(5) A means of reporting back to individual law-enforcement agencies, from time to time, at the request of a law-enforcement agency on findings specific to that agency in an agreed-upon format to allow the agency to evaluate independently the data provided;

(6) A limitation that the data is to be used solely for the purposes of this chapter;

(7) Safeguards to protect the identity of individual law-enforcement officers collecting data required by §17G-1-2of this code~~when no citation or warning is issued~~;

(8) Methodology for collection of gross data by law-enforcement agencies and the analysis of the data;

(9) The number of stops, searches, and other actions involving subjects who are ~~number of motor vehicle stops and searches of motor vehicles occupied by~~ members of a perceived minority group; the number of ~~motor vehicle~~ stops, ~~and~~ searches, and actions of motor vehicles occupied by ~~persons~~ subjects who are not members of a minority group; the population of minorities in the areas where the ~~stops~~ stops, searches and actions occurred; estimates of the number of ~~all~~ vehicles traveling on the public highways where ~~the stops~~ a stop occurred; factors to be included in any evaluation that the data may indicate racial or ethnic profiling, ~~racial~~ stereotyping or other ~~race-based~~ discrimination or selective enforcement; and other data deemed appropriate by the Governor’s Committee on Crime, Delinquency and Correction for the analysis of the protection of Constitutional rights; ~~and~~

(10) The number of stops, searches and actions of law-enforcement engaging of members of a perceived minority group; the number of similar stops, searches, and actions of persons who are not members of a minority group; the population of minorities in the areas where the stops, searches, and actions occurred; factors to be included in any evaluation that the data may indicate minority profiling or stereotyping or minority-based discrimination or selective enforcement; and other data deemed appropriate by the Governor’s Committee on Crime, Delinquency and Correction for the analysis of the protection of Constitutional rights; and

~~(10)~~ (11) Protocols for reporting collected data by the Division of Motor Vehicles to the Governor’s Committee on Crime, Delinquency and Correction and the analysis thereof.

(b) Annually, on or before February 1, the director of the Governor’s Committee on Crime, Delinquency and Correction shall publish a public report of the data collected and provide a copy thereof to all law-enforcement agencies subject to this chapter and provide a copy of the report and analysis of the data collected to the Governor and to the Joint Committee on Government and Finance.

(c) The provisions of §17G-1-2, §17G-1-3, and §17G-2-2 of this code were effective December 31, 2004.

~~(d) Collection of data pursuant to subsection (a) of this section shall terminate on December 31, 2008. The provisions of this chapter shall be of no force or effect after June 30, 2009~~

NOTE: The purpose of this bill is to require law enforcement to collect certain data from the public in actions involving traffic and pedestrian stops and actions in domestic or property disputes, and to modify the DMV form used for traffic stops.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.