

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3121

BY DELEGATE ROWE

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

1 A BILL to amend and reenact §17G-1-2 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §17G-2-1, §17G-2-2, and §17G-2-3 of said code, all relating to data
 3 collection for actions by law-enforcement officers involving motor vehicle drivers,
 4 passengers and pedestrians, and subjects in property or domestic violence actions;
 5 providing for a reporting procedure on forms of the Division of Motor Vehicles forms used
 6 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.

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

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

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

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

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

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

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

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

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

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

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

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

33 (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.~~**

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

4 this code.

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

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

4 (b) If a law-enforcement agency fails to comply with the provisions of this section, the
5 Division of Motor Vehicles shall notify the agency by certified mail of its failure to comply. If the
6 agency continues to fail to comply, the Governor may withhold state-controlled funds appropriated
7 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.

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

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

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

9 (3) A means of reporting the information required in ~~section two, article one of this chapter~~
10 §17G-1-2 of this code on warning citations to the Division of Motor Vehicles;

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

15 (5) A means of reporting back to individual law-enforcement agencies, from time to time,

16 at the request of a law-enforcement agency on findings specific to that agency in an agreed-upon
17 format to allow the agency to evaluate independently the data provided;

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

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

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

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

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

40 ~~(40)~~ (11) Protocols for reporting collected data by the Division of Motor Vehicles to the
41 Governor's Committee on Crime, Delinquency and Correction and the analysis thereof.

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

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

49 ~~(d) Collection of data pursuant to subsection (a) of this section shall terminate on~~
50 ~~December 31, 2008. The provisions of this chapter shall be of no force or effect after June 30,~~
51 ~~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.