



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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132nd General Assembly
(As Introduced)

Sens. Williams and Tavares, Thomas, Brown, Hite

BILL SUMMARY

Prohibited law enforcement practices

- Prohibits a law enforcement officer from targeting or stopping a person on the basis, in whole or in part, of the person's ethnic, minority group, religious affiliation, sexual orientation, or gender identity status, unless the person, in combination with other factors, fits a timely, reliable description of a wanted person.
- Prohibits an officer from engaging in certain other practices during traffic stops.

Law enforcement agency policies and training

- Requires each law enforcement agency to develop and maintain a policy that is designed to eliminate biased policing or status-based profiling by the agency and its officers, including the types of activities discussed above, and to cease any existing practices that permit, perpetuate, or encourage those activities.
- Requires each agency to develop an educational training program that is designed to train officers and officials to perform law enforcement duties and handle law enforcement matters without engaging in biased policing and status-based profiling.

Reporting

- Requires each agency to obtain and record certain data from an officer who stops, delays, or questions a motorist, cyclist, or pedestrian or conducts a search or inventory of a motor vehicle or bicycle.
- Specifies that the Attorney General must analyze the data to determine whether disparities exist that cause a disproportionately adverse effect on a particular

minority group or groups or any other group of persons linked by ethnic, religious affiliation, sexual orientation, or gender identity status.

- Requires the Attorney General to publish an annual report concerning the data and the analysis.
- Requires that, if the Attorney General determines that the data show any pattern of disparate traffic and law enforcement practices by an agency or its officers or officials that has such a disproportionately adverse effect, the agency must take immediate remedial actions to eradicate those practices.

Enforcement

- Allows an individual who is a victim of a violation of the prohibitions described above to sue the agency whose officer committed the violation under the section of continuing law that allows a person to sue for damages resulting from a criminal act.
- Permits the Attorney General to institute civil proceedings for injunctive relief against an agency whose officer or official violates the prohibitions described above, in order to compel the termination of the violation and to prevent future violations.

Peace officer training

- Requires the Attorney General to adopt rules governing the training of peace officers at peace officer training schools in performing law enforcement duties and handling law enforcement matters without engaging in biased policing or status-based profiling.
- Requires the Ohio Peace Officer Training Commission and the State Highway Patrol to develop similar training programs for the Ohio Peace Officer Training Academy, the basic training course for new sheriffs, and the State Highway Patrol Academy.

Racial and Identity Profiling Advisory Board

- Creates the Racial and Identity Profiling Advisory Board within the Office of the Attorney General for the purpose of eliminating biased policing and status-based profiling and improving diversity and racial and identity sensitivity in law enforcement.
- Specifies duties for the Board, including producing an annual report that provides the Board's assessment of biased policing and status-based profiling in Ohio, detailed findings on the past and current status of racial and identity profiling, and policy recommendations to eliminate biased policing and profiling.

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CONTENT AND OPERATION

Prohibited law enforcement practices

Biased policing and status-based profiling

The bill prohibits a law enforcement officer from engaging in a practice of targeting or stopping a motorist, cyclist, or pedestrian by means of detention, interdiction, or other disparate treatment on the basis, in whole or in part, of the person's ethnic, minority group, religious affiliation, sexual orientation, or gender identity status, unless (1) that status is used in combination with one or more other identifying factors seeking to apprehend a specific suspect whose status as perceived by the officer is part of the description of the suspect and (2) that description is timely and reliable. Further, under the bill, no official of a law enforcement agency may engage in, or authorize or allow the law enforcement officers the agency employs or is served by to engage in, such a practice.

The bill provides the following definitions for terms used in the prohibitions described above:¹

¹ R.C. 2933.84(A), (B), and (C).



- "Minority group" means any of the following:
 - African Americans, including persons of African descent;
 - Latinos, including persons of Hispanic descent;
 - Persons of Arab or Middle Eastern descent or appearance;
 - Asians, including persons of Mongoloid descent;
 - Native Americans;
 - Pacific Islanders;
 - Any other persons who are members of a socially or economically disadvantaged group, whose disadvantage arises from discrimination on the basis of race, religion, sex, disability, military status, national origin, ancestry, or other similar cause.
- "Sexual orientation" means actual or perceived heterosexuality, homosexuality, or bisexuality.
- "Gender identity" means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated gender at birth.

Other detention and search practices

The bill also prohibits a law enforcement officer from doing any of the following:

- Using a violation of any state or local traffic law as a pretense for stopping a motor vehicle, bicycle, or pedestrian for any reason other than the occurrence of an offense that the officer can explicitly articulate;
- Requesting that a motorist, cyclist, or pedestrian who is stopped solely for a minor traffic violation consent to a search by the officer of the vehicle, bicycle, or pedestrian's person;
- Detaining a motorist, cyclist, or pedestrian, or detaining a vehicle or bicycle, after a traffic stop to wait for a canine unit or any other animal used in an inspection or sniffing of a vehicle, bicycle, or person, or otherwise extending the traffic stop beyond the time reasonably necessary to address the traffic violation that is the basis of the stop, unless probable cause exists to believe

that the motorist or a passenger, the cyclist, or the pedestrian has been involved in criminal activity.

As used in the bill, "minor traffic violation" means any violation of a prohibition set forth in Title XLV of the Revised Code, which generally governs motor vehicles, or of a municipal ordinance that is substantially equivalent to such a violation, other than a moving violation. "Traffic stop" means a law enforcement officer's stop of a motor vehicle, bicycle, or pedestrian for any minor traffic violation. Using these definitions, for example, if an officer stopped a motorist because the vehicle's registration appeared to be expired, the officer could not ask the motorist to consent to a search of the vehicle. However, if the officer stopped the motorist for speeding, the officer could ask for that consent.²

Current law

Based on U.S. Supreme Court rulings, the U.S. Constitution prohibits some, but not all, of the law enforcement practices prohibited by the bill. Under the Fourth Amendment, an officer may stop a person without a warrant only if the officer has reasonable suspicion, based on specific and articulable facts, that the person has been, is, or is about to be engaged in illegal activity. The person's apparent ancestry must not be the sole reason for the stop. And, an officer may not prolong a stop longer than the time needed to handle the reason for the stop unless the officer has reasonable suspicion, based on specific and articulable facts, that justifies the extension of the stop. For example, an officer may not prolong a traffic stop beyond the time required to issue a ticket in order to wait for a canine unit to arrive to sniff for drugs, unless the officer has reasonable suspicion that the person possesses drugs.³

Law enforcement agency policies and training

Under the bill, each law enforcement agency that employs or is served by any law enforcement officer must develop and maintain a policy that is designed to eliminate biased policing or status-based profiling by the agency and its officers, including the types of activities prohibited by the bill as discussed above. An agency must cease any existing practices by the agency or its officers that permit, perpetuate, or encourage biased policing and status-based profiling.

An agency also must develop an educational training program that is designed to train officers and officials to perform law enforcement duties and handle law

² R.C. 2933.84(A) and (B).

³ *Terry v. Ohio*, 392 U.S. 1 (1968); *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975); and *Rodriguez v. United States*, 135 S. Ct. 1609 (2015).

enforcement matters without engaging in biased policing and status-based profiling. The program must include training materials that provide an understanding of the historical and cultural systems that perpetuate biased policing and status-based profiling, assistance in identifying biased policing and status-based profiling practices, and self-evaluation strategies for officers to preempt biased policing or status-based profiling before stopping an individual.

The agency must provide that training annually to each of the agency's officers and officials. And, within a reasonable time after a violation of one of the prohibitions described above occurs, the agency must provide additional training to the violator.⁴

Reporting

Data collection

The bill requires that, whenever a law enforcement officer stops, delays, or questions a motorist, cyclist, or pedestrian, the law enforcement agency must obtain and record all of the following data from the officer. The officer must provide the information based on the officer's observation and perception, and must not ask any person involved to provide the information.

- Regarding a motor vehicle, a description, including the manufacturer and model, and the license plate number;
- Regarding a bicycle, a description, including the manufacturer and model;
- The race, ethnicity, approximate age, and gender of the motorist, cyclist, or pedestrian and any passengers;
- The location of the stop, delay, or questioning, including the street and address number;
- The approximate duration of the stop, delay, or questioning;
- The basis for the stop, delay, or questioning, including any local, state, or federal offense alleged to have been committed by any person involved;
- The date and exact time of the stop, delay, or questioning.

Further, under the bill, whenever a law enforcement officer conducts a search or inventory of a motor vehicle or bicycle, or otherwise causes a motor vehicle, bicycle, or pedestrian to be inspected or sniffed by a canine unit or other animal for the detection

⁴ R.C. 2933.84(D).

of illegal drugs or contraband, the law enforcement agency must obtain and record all of the following data from the officer:

- The legal basis and rationale for the stop, search, inventory, or sniffing;
- The nature of any contraband that was discovered;
- The exact oral or written warning or instructions given to the motorist or a passenger in the motor vehicle, the cyclist, or the pedestrian before the search, inventory, or sniffing;
- The charge or charges, if any, that were filed against any person involved as a result of the search, inventory, or sniffing;
- The reason for the search, inventory, or sniffing.

The agency then must submit that data to the Attorney General not later than February 1 of the calendar year following the year in which the data were collected. The Attorney General must adopt rules under the Administrative Procedure Act prescribing the format and timing of the data submission.⁵

Annual report

Upon receiving the data submitted as described above, the bill requires the Attorney General to analyze the data in accordance with general statistical standards to determine whether disparities exist in the stopping and searching of motor vehicles, bicycles, or pedestrians that cause a disproportionately adverse effect on a particular minority group or groups or any other group of persons linked by ethnic, religious affiliation, sexual orientation, or gender identity status. The Racial and Identity Profiling Advisory Board, discussed below, must assist the Attorney General in analyzing the data.

Not later than April 1 of the calendar year in which the Attorney General receives the data, the Attorney General must publish the data and the analysis in an annual report and must distribute copies of the report to the General Assembly, the Governor, and law enforcement agencies. The annual report is a public record and must be made readily available to the public.

The report must not include any information that would personally identify any motorist, passenger, cyclist, or pedestrian who is the subject of any stop, search, inventory, or sniffing, or any law enforcement officer who conducts any stop, search,

⁵ R.C. 109.748(B) and 2933.84(E), (F), and (G)(1).

inventory, or sniffing. However, the Attorney General and the law enforcement agency must maintain that identifying information for a reasonable time. The identifying information is not a public record, and the Attorney General and the law enforcement agency must redact it from any records that are released. But, the Attorney General or a law enforcement agency may disclose that information for purposes of a civil proceeding brought under the bill and may disclose that information to relevant parties of a motion seeking to exclude from admission as evidence any information obtained through a potentially unconstitutional or unlawful search.

If the Attorney General determines that the data show any pattern of disparate traffic and law enforcement practices by an agency or its officers or officials that has a disproportionately adverse effect on a particular minority group or groups or any other group of persons linked by ethnicity, religious affiliation, sexual orientation, or gender identity status, the agency must take immediate remedial actions to eradicate those practices.⁶

Enforcement

Private cause of action

The bill allows an individual who is a victim of a violation of the prohibitions described above to sue the law enforcement agency that employs or is served by the officer who committed the violation under the section of continuing law that allows a person to sue for damages resulting from a criminal act. The individual may seek appropriate and equitable relief in an Ohio court that has proper jurisdiction. The bill requires the court to award reasonable attorneys' fees, including expert fees, to the prevailing party as costs.⁷

Attorney General proceedings

The bill permits the Attorney General to institute civil proceedings in any court of competent jurisdiction for injunctive relief (that is, a civil lawsuit seeking a court order that a party refrain from taking an action) against a law enforcement agency that employs or is served by a law enforcement officer or official who violates the prohibitions described above, in order to compel the termination of the violation and to prevent future violations. If the Attorney General proves that the officer or official has committed or is committing the violation, the court must order the agency to discontinue all biased policing and status-based profiling and to discontinue all practices that permit, perpetuate, or encourage biased policing or status-based profiling.

⁶ R.C. 109.748(C) and 2933.84(G) and (H).

⁷ R.C. 2933.84(I). See also R.C. 2307.60, not in the bill.



The agency must submit to the Attorney General a corrective action plan by a specified date that is agreed upon by the agency and the Attorney General and approved by the court.⁸

Peace officer training

Generally

The bill requires the Attorney General to adopt rules under the Administrative Procedure Act governing the training of peace officers in performing law enforcement duties and handling law enforcement matters without engaging in biased policing or status-based profiling, including the types of behavior described in the prohibitions above. The Ohio Peace Officer Training Commission must make recommendations to the Attorney General concerning those rules.

The training must include materials that provide an understanding of the historical and cultural systems that perpetuate biased policing and status-based profiling, assistance in identifying biased policing and status-based profiling practices, and self-evaluation strategies for officers to preempt biased policing or status-based profiling before stopping an individual. The rules must specify the amount of that training necessary to complete basic training programs at approved peace officer training schools, other than the Ohio Peace Officer Training Academy.

Under the bill, the requirement to complete the training as part of a peace officer basic training program, other than the Ohio Peace Officer Training Academy or the State Highway Patrol Academy, does not apply to a person who is serving as a peace officer when the bill takes effect. However, if such a person terminates that employment after the bill's effective date and is subsequently hired as a peace officer by the same or another law enforcement agency, the person must complete the training.⁹

Ohio Peace Officer Training Commission

The Ohio Peace Officer Training Commission must develop a training program for attendees of the Ohio Peace Officer Training Academy and the basic training course for new sheriffs that is consistent with the training program prescribed by the Attorney General, as described above.¹⁰

⁸ R.C. 2933.84(J).

⁹ R.C. 109.73, 109.748(A), and 109.77.

¹⁰ R.C. 109.79 and 109.80.



State Highway Patrol

Similarly, the bill requires the Superintendent of the State Highway Patrol to include training that is consistent with the training program prescribed by the Attorney General, as described above, for prospective troopers who attend the State Highway Patrol Academy.¹¹

Racial and Identity Profiling Advisory Board

The bill creates the Racial and Identity Profiling Advisory Board within the Office of the Attorney General for the purpose of eliminating biased policing and status-based profiling and improving diversity and racial and identity sensitivity in law enforcement. The Board consists of the following 17 members:

- The Attorney General, the Ohio Public Defender, and the Superintendent of the State Highway Patrol, or their designees;
- The president of the Ohio Association of Chiefs of Police, or the president's designee;
- The president of the Buckeye State Sheriffs' Association or the president's designee;
- A member of the Senate appointed by the President of the Senate;
- A member of the Senate appointed by the Minority Leader of the Senate;
- A member of the House of Representatives appointed by the Speaker of the House;
- A member of the House of Representatives appointed by the Minority Leader of the House;
- A member of the General Assembly appointed by the Ohio Legislative Black Caucus;
- The following persons, appointed by the Governor with the advice and consent of the Senate:
 - A university professor who specializes in policing and racial and identity equity;

¹¹ R.C. 5503.05.

- Two representatives of civil or human rights nonprofit organizations who specialize in civil or human rights;
- Two representatives of community organizations who specialize in civil or human rights and criminal justice and who work with victims of biased policing or status-based profiling, with at least one of the representatives being between 16 and 24 years old;
- Two religious clergy members with experience in addressing and reducing racial and identity bias toward individuals and groups.

Members of the Board serve four-year terms, and a member may be reappointed to the Board at the end of the member's term. Any vacancy must be filled in the same manner as the original appointment. The Board annually must elect two of its members as co-chairpersons, and no action of the Board is valid unless agreed to by a majority of its members. Members of the Board must serve without compensation.

The Board must do all of the following on an annual basis:

- Assist the Attorney General in analyzing the data reported by law enforcement agencies under the bill;
- Assess state and local law enforcement training regarding biased policing and status-based profiling;
- Work in partnership with state and local law enforcement agencies to review and analyze biased policing and status-based profiling policies and practices across geographic areas in Ohio;
- Conduct evidence-based research or consult available research on intentional and implicit biases and law enforcement stop, search, and seizure tactics;
- Hold at least three public meetings across the state to discuss biased policing and status-based profiling and potential reforms to prevent those practices, and provide public notice of each meeting at least 60 days in advance.

Additionally, the Board must issue an annual report that provides the Board's assessment of biased policing and status-based profiling in Ohio, detailed findings on the past and current status of racial and identity profiling, and policy recommendations

to eliminate biased policing and profiling. The report is a public record, and all such reports must be permanently available on the Attorney General's website.¹²

HISTORY

ACTION	DATE
Introduced	03-02-17

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¹² R.C. 109.749.

