

SB 271 S

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2004

**ENROLLED**

Committee Substitute for  
**SENATE BILL NO.** 271

(By Senator Lunter, et al )

**PASSED** March 13, 2004

In Effect 90 days From Passage

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OFFICE WEST VIRGINIA  
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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 271**

(SENATORS HUNTER, ROWE, WEEKS, CALDWELL,  
JENKINS AND UNGER, *original sponsors*)

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[Passed March 13, 2004; in effect ninety days from passage.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §17F-1-1, §17F-1-2, §17F-1-3, §17F-2-1, §17F-2-2 and §17F-2-3, all relating to racial profiling data collection; defining terms; requiring all state law-enforcement officers to collect certain data during traffic stops; requiring the division of motor vehicles to develop forms and compile the data collected; establishing penalties for agencies which fail to comply; providing limited civil liability protection for officers collecting data; providing form content; providing consultation with law-enforcement organizations relating to developing forms; requiring director of the governor's committee on crime, delinquency and correction to conduct analysis and distribute data; requiring promulgation of emergency and legislative rules; providing effective date for requiring

collection of data; providing for annual report to the Legislature; and expiring data collection requirements.

*Be it enacted by the Legislature of West Virginia:*

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §17F-1-1, §17F-1-2, §17F-1-3, §17F-2-1, §17F-2-2 and §17F-2-3, all to read as follows:

**CHAPTER 17F. RACIAL PROFILING  
DATA COLLECTION ACT.**

**ARTICLE 1. RACIAL PROFILING DATA COLLECTION.**

**§17F-1-1. Definitions.**

1 The following words and phrases, when used in this  
2 chapter, shall, for the purposes of this chapter, have the  
3 meanings respectively ascribed to them in this article:

4 (a) "Gross data" means aggregate data regarding the  
5 information obtained under section two of this article.

6 (b) "Law-enforcement agency" means every state,  
7 county or municipal agency with officers who are autho-  
8 rized to direct or regulate traffic or to make arrests or  
9 issue citations or warnings for violations of traffic laws  
10 and ordinances.

11 (c) "Minority group" means individuals of any ethnic  
12 descent, including, but not limited to, African-American,  
13 Hispanic, Native American, Middle Eastern, Asian or  
14 Pacific Islander.

**§17F-1-2. Information obtained by law-enforcement officers  
during a traffic stop.**

1 Each time a law-enforcement officer stops a driver of a  
2 motor vehicle for a violation of any motor vehicle statute  
3 or ordinance, other than for a nonviolation stop, including,  
4 but not limited to, a checkpoint for driving under the  
5 influence, license, registration or seat belts, the officer

6 shall obtain and prepare a brief report based on the  
7 officer's visual observation and perception of basic  
8 information about the nature, duration and outcome of the  
9 stop, including, but not limited to, information relating to  
10 the perceived racial characteristics of each operator  
11 stopped. The report is to be provided to the West Virginia  
12 law-enforcement agency which employs the law-enforce-  
13 ment officer: *Provided*, That the failure of the law-en-  
14 forcement officer to obtain and report racial profiling data  
15 shall not affect the validity of the underlying traffic  
16 citation or warning.

17 The information to be collected shall include:

18 (a) The identifying characteristics of the operator  
19 stopped, including perceived race, ethnicity or national  
20 origin, gender and age;

21 (b) The location and duration of the stop;

22 (c) The traffic violation or violations alleged to have  
23 been committed that led to the stop;

24 (d) Whether or not a warning or citation was issued as a  
25 result of the stop and if so, the specific violation, if any,  
26 charged or warning given;

27 (e) Whether a search was performed as a result of the  
28 stop;

29 (f) If a search was performed, whether the person  
30 consented to the search, the probable cause or reasonable  
31 suspicion for the search, whether the person was searched,  
32 whether the person's property was searched and the  
33 duration of the search;

34 (g) If a search was of a passenger in the motor vehicle,  
35 the perceived age, gender and race or minority group of  
36 the passenger;

37 (h) Whether any contraband was discovered or seized in  
38 the course of the search and the type of any contraband  
39 discovered or seized;

40 (i) Identify whether the search involved canine units or  
41 advanced technology; and

42 (j) Any additional information which the law-enforce-  
43 ment agency considers appropriate.

**§17F-1-3. Law-enforcement officer exemption from civil liability.**

1 Any law-enforcement officer who, in good faith, records  
2 traffic stop information under the requirements of section  
3 two of this article may not be held civilly liable for the act  
4 of inaccurately recording the information unless the  
5 officer's conduct was unconstitutional, unreasonable,  
6 intentional or reckless.

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

**§17F-2-1. Format of traffic stops data collection forms.**

1 The division of motor vehicles shall provide a form as  
2 required by section three of this article, in both printed  
3 and electronic format, to be used by law-enforcement  
4 officers when making a traffic stop to record the informa-  
5 tion listed in section two, article one of this chapter.

**§17F-2-2. Law-enforcement agency traffic stops data collection and submission.**

1 (a) Each law-enforcement agency shall report its data  
2 described in section two, article one of this chapter to the  
3 division of motor vehicles in a report format as prescribed  
4 by the division.

5 (b) If a law-enforcement agency fails to comply with the  
6 provisions of this section, the division of motor vehicles  
7 shall notify the agency by certified mail of its failure to  
8 comply. If the agency continues to fail to comply, the  
9 governor may withhold state-controlled funds appropri-  
10 ated to the noncompliant law-enforcement agency until  
11 reports are made as required by this article.

**§17F-2-3. Analysis of traffic stop statistics, annual report and legislative rules.**

1 (a) To facilitate the commencement of data collection on  
2 the first day of January, two thousand five, the director of  
3 the governor's committee on crime, delinquency and  
4 corrections, in consultation with the division of motor  
5 vehicles, shall propose emergency and legislative rules in  
6 accordance with article three, chapter twenty-nine-a of  
7 this code. These rules shall include, but are not limited to:

8 (1) The manner of reporting the information to the  
9 division of motor vehicles;

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

12 (3) A means of reporting the information required in  
13 section two, article one of this chapter on warning cita-  
14 tions to the division of motor vehicles;

15 (4) In consultation with the fraternal order of police, the  
16 sheriff's association, the deputy sheriff's association and  
17 representatives of law-enforcement agencies, a means of  
18 providing training to law-enforcement officers on comple-  
19 tion and submission of the data on the proposed form;

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

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

27 (7) Safeguards to protect the identity of individual law-  
28 enforcement officers collecting data required by section  
29 two, article one of this chapter when no citation or warn-  
30 ing is issued;

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

33 (9) The number of motor vehicle stops and searches of  
34 motor vehicles occupied by members of a perceived  
35 minority group; the number of motor vehicle stops and  
36 searches of motor vehicles occupied by persons who are  
37 not members of a minority group; the population of  
38 minorities in the areas where the stops occurred; estimates  
39 of the number of all vehicles traveling on the public  
40 highways where the stops occurred; factors to be included  
41 in any evaluation that the data may indicate racial profil-  
42 ing, racial stereotyping or other race-based discrimination  
43 or selective enforcement; and other data deemed appropri-  
44 ate by the governor's committee on crime, delinquency and  
45 correction for the analysis of the protection of constitu-  
46 tional rights; and

47 (10) Protocols for reporting collected data by the division  
48 of motor vehicles to the governor's committee on crime,  
49 delinquency and correction and the analysis thereof.

50 (b) On or before the first day of February, two thousand  
51 six, and each year thereafter, the director of the governor's  
52 committee on crime, delinquency and correction shall  
53 publish a public report of the data collected and provide  
54 a copy thereof to all law-enforcement agencies subject to  
55 this chapter and provide a copy of the report and analysis  
56 of the data collected to the governor and to the joint  
57 committee on government and finance.

58 (c) The provisions of sections two and three, article one  
59 of this chapter and section two of this article shall become  
60 effective after the thirty-first day of December, two  
61 thousand four.

62 (d) The provisions of this chapter shall be of no force or  
63 effect after the thirty-first day of December, two thousand  
64 seven.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *3/8* .....  
Day of *March* ....., 2004.

*[Signature]*  
.....  
Governor



PRESENTED TO THE  
GOVERNOR

DATE 5/28/04

TIME 3:15 p