

## LEGISLATIVE BILL 99

Approved by the Governor May 16, 2013

Introduced by Mello, 5.

FOR AN ACT relating to criminal justice; to amend sections 20-501, 20-502, 20-504, 20-505, and 20-506, Reissue Revised Statutes of Nebraska, and sections 81-1822 and 81-1833, Revised Statutes Cumulative Supplement, 2012; to change provisions relating to prohibited conduct and racial profiling prohibition policies; to require a racial profiling prevention policy; to eliminate a termination date regarding maintenance of certain records; to change powers and duties of the Nebraska Commission on Law Enforcement and Criminal Justice; to change appointment provisions and duties for the Racial Profiling Advisory Committee; to change and eliminate provisions relating to awards and reports under the Nebraska Crime Victim's Reparations Act; to harmonize provisions; to repeal the original sections; and to outright repeal section 81-1834, Revised Statutes Cumulative Supplement, 2012.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 20-501, Reissue Revised Statutes of Nebraska, is amended to read:

20-501 Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated. Motorists who have An individual who has been detained or whose vehicle has been stopped by the police for no reason other than the color of their his or her skin or their his or her apparent nationality or ethnicity are the victims is the victim of a discriminatory practices-practice.

Sec. 2. Section 20-502, Reissue Revised Statutes of Nebraska, is amended to read:

20-502 (1) No member of the Nebraska State Patrol or a county sheriff's office, officer of a city or village police department, or member of any other law enforcement agency in this state shall engage in racial profiling. The disparate treatment of an individual who has been detained or whose motor vehicle has been stopped by a law enforcement officer is inconsistent with this policy.

(2) Racial profiling shall not be used to justify the detention of an individual or to conduct a motor vehicle stop.

Sec. 3. Section 20-504, Reissue Revised Statutes of Nebraska, is amended to read:

20-504 (1) On or before January 1, ~~2002,~~ 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall adopt and provide a copy to the Nebraska Commission on Law Enforcement and Criminal Justice of a written policy that prohibits the detention of any person or a motor vehicle stop when such action is motivated by racial profiling. Such racial profiling prevention policy shall include definitions consistent with section 20-503 and one or more internal methods of prevention and enforcement, including, but not limited to; and the action would constitute a violation of the civil rights of the person.

(a) Internal affairs investigation;

(b) Preventative measures including extra training at the Nebraska Law Enforcement Training Center focused on avoidance of apparent or actual racial profiling;

(c) Early intervention with any particular personnel determined by the administration of the agency to have committed, participated in, condoned, or attempted to cover up any instance of racial profiling; and

(d) Disciplinary measures or other formal or informal methods of prevention and enforcement.

None of the preventative or enforcement measures shall be implemented contrary to the collective-bargaining agreement provisions or personnel rules under which the member or officer in question is employed.

(2) The Nebraska Commission on Law Enforcement and Criminal Justice may develop and distribute a suggested model written racial profiling prevention policy for use by law enforcement agencies, but the commission shall not mandate the adoption of the model policy except for any particular law enforcement agency which fails to timely create and provide to the commission a policy for the agency in conformance with the minimum standards set forth in this section.

~~(2)~~ (3) With respect to a motor vehicle stop, on and after January 1, 2002, and until January 1, 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall record and retain the following information using the form developed and promulgated pursuant to section 20-505:

(a) The number of motor vehicle stops;

(b) The characteristics of race or ethnicity of the person stopped. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop and the information shall not be required to be provided by the person stopped;

(c) If the stop is for a law violation, the nature of the alleged law violation that resulted in the motor vehicle stop;

(d) Whether a warning or citation was issued, an arrest made, or a search conducted as a result of the motor vehicle stop. Search does not include a search incident to arrest or an inventory search; and

(e) Any additional information that the Nebraska State Patrol, the county sheriffs, all city and village police departments, or any other law enforcement agency in this state, as the case may be, deems appropriate.

~~(3)~~ (4) The Nebraska Commission on Law Enforcement and Criminal Justice may develop a uniform system for receiving allegations of racial profiling. The Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall provide to the commission (a) a copy of each allegation of racial profiling received and (b) written notification of the review and disposition of such allegation. No information revealing the identity of the law enforcement officer involved in the stop shall be used, transmitted, or disclosed in violation of any collective-bargaining agreement provision or personnel rule under which such law enforcement officer is employed. No information revealing the identity of the complainant shall be used, transmitted, or disclosed in the form alleging racial profiling.

~~(4)~~ (5) Any law enforcement officer who in good faith records information on a motor vehicle stop pursuant to this section shall not be held civilly liable for the act of recording such information unless the law enforcement officer's conduct was unreasonable or reckless or in some way contrary to law.

~~(5)~~ (6) On or before October 1, 2002, and annually thereafter, until January 1, 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and all other law enforcement agencies in this state shall provide to the ~~commission,~~ Nebraska Commission on Law Enforcement and Criminal Justice, in such form as the commission prescribes, a summary report of the information recorded pursuant to subsection ~~(2)~~ (3) of this section.

~~(6)~~ On and after January 1, 2002, and until April 1, 2014, the ~~commission may,~~ (7) The Nebraska Commission on Law Enforcement and Criminal Justice shall, within the limits of its existing appropriations, including any grant funds which the commission is awarded for such purpose, provide for a an annual review and analysis of the prevalence and disposition of motor vehicle stops based on racial profiling and allegations of racial profiling involved in other detentions reported pursuant to this section. After the review and analysis, the commission may, when it deems warranted, inquire into and study individual law enforcement agency circumstances in which the raw data collected and analyzed raises at least some issue or appearance of possible racial profiling. The commission may make recommendations to any such law enforcement agency for the purpose of improving measures to prevent racial profiling or the appearance of racial profiling. The results of such review, analysis, inquiry, and study and any recommendations by the commission to any law enforcement agency shall be reported annually to the Governor and the Legislature, beginning on or before April 1, 2004, until April 1, 2014. The report submitted to the Legislature shall be submitted electronically.

(8) Any law enforcement officer, prosecutor, defense attorney, or probation officer, unless restricted by privilege, who becomes aware of incidents of racial profiling by a law enforcement agency, shall report such incidents to the Nebraska Commission on Law Enforcement and Criminal Justice within thirty days after becoming aware of such practice.

Sec. 4. Section 20-505, Reissue Revised Statutes of Nebraska, is amended to read:

20-505 On or before January 1, 2002, the Nebraska Commission on Law Enforcement and Criminal Justice, the Superintendent of Law Enforcement and Public Safety, the Attorney General, and the State Court Administrator may adopt and promulgate: (1) A a form, in printed or electronic format, to be

used by a law enforcement officer when making a motor vehicle stop to record personal identifying information about the operator of such motor vehicle, the location of the stop, the reason for the stop, and any other information that is required to be recorded pursuant to subsection ~~(2)~~ (3) of section 20-504 and (2) a form, in printed or electronic format, to be used to report an allegation of racial profiling by a law enforcement officer.

Sec. 5. Section 20-506, Reissue Revised Statutes of Nebraska, is amended to read:

20-506 (1) The Racial Profiling Advisory Committee is created.

(2) (a) The committee shall consist of:

(i) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, who also shall be the chairperson of the committee;

(ii) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(iii) The director of the Commission on Latino-Americans or his or her designee; and

(iv) The executive director of the Commission on Indian Affairs or his or her designee.

(b) The committee shall also consist of the following persons, each appointed by the Governor from a list of ~~three~~ five names submitted to the Governor for each position:

(i) A representative of the Fraternal Order of Police;

(ii) A representative of the Nebraska County Sheriffs Association;

(iii) A representative of the Police Officers Association of Nebraska;

(iv) A representative of the American Civil Liberties Union of Nebraska;

(v) A representative of the AFL-CIO;

(vi) A representative of the Police Chiefs Association of Nebraska;

(vii) A representative of the Nebraska branches of the National Association for the Advancement of Colored People; and

(viii) A representative of the Nebraska State Bar Association appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet semiannually at a time and place to be fixed by the committee. Special meetings may be called by the chairperson or at the request of two or more members of the committee.

(4) The committee shall advise the commission and its executive director of the commission in the conduct of his or her their duties regarding (a) the completeness and acceptability of written racial profiling prevention policies submitted by individual law enforcement agencies as required by subsection (1) of section 20-504, (b) the collection of data by law enforcement agencies, any needed additional data, and any needed additional analysis, investigation, or inquiry as to the data provided pursuant to subsection (3) of section 20-504, (c) the review, analysis, inquiry, study, and recommendations required pursuant to subsection ~~(6)~~ (7) of section 20-504, provide including an analysis of the review, analysis, inquiry, study, and recommendations, and (d) and make policy recommendations with respect to the prevention of racial profiling and the need, if any, for enforcement by the Department of Justice of the prohibitions found in section 20-502.

Sec. 6. Section 81-1822, Revised Statutes Cumulative Supplement, 2012, is amended to read:

81-1822 No compensation shall be awarded from the Victim's Compensation Fund:

(1) If the victim aided or abetted the offender in the commission of the unlawful act;

(2) If the offender will receive economic benefit or unjust enrichment from the compensation;

(3) If the victim violated a criminal law of the state, which violation caused or contributed to his or her injuries or death; or

(4) If the victim is injured as a result of the operation of a motor vehicle, boat, or airplane (a) unless the vehicle was used in a deliberate attempt to injure or kill the victim, (b) unless the operator is charged with a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with either of such sections, or (c) unless any chemical test of the operator's breath or blood indicates an alcohol concentration equal to or in excess of the limits prescribed in section 60-6,196. ~~or~~

~~(5) If the victim incurs an economic loss which does not exceed ten percent of his or her net financial resources. For purposes of this~~

subdivision, a victim's net financial resources shall not include the present value of future earnings and shall be determined by the committee by deducting from the victim's total financial resources:

- (a) One year's earnings;
- (b) The victim's equity in his or her home, not exceeding thirty thousand dollars;
- (c) One motor vehicle; and
- (d) Any other property which would be exempt from execution under section 25-1552 or 40-101.

Nothing in this section shall limit payments to a victim by an offender which are made as full or partial restitution of the victim's actual pecuniary loss.

Sec. 7. Section 81-1833, Revised Statutes Cumulative Supplement, 2012, is amended to read:

81-1833 (1) The committee shall prepare and submit to the commission a biennial report of its activities under the Nebraska Crime Victim's Reparations Act, including the name of each applicant, a brief description of the facts in each case, and the amount of compensation awarded, except that if the applicant was the victim of a sexual assault the victim's name shall not be included in the report, but shall be available to the Governor or a member of the Legislature upon request to the committee. Such report shall be submitted to the Governor and Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically. as part of the commission's report submitted pursuant to section 81-1423.

(2) The committee shall act as the oversight committee for the Community Trust and shall annually report its activities and findings as the oversight committee to the commission, the Governor, and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically. If any questionable or improper actions or inactions on the part of the Community Trust are observed, the committee shall immediately notify the Attorney General who shall investigate the matter.

Sec. 8. Original sections 20-501, 20-502, 20-504, 20-505, and 20-506, Reissue Revised Statutes of Nebraska, and sections 81-1822 and 81-1833, Revised Statutes Cumulative Supplement, 2012, are repealed.

Sec. 9. The following section is outright repealed: Section 81-1834, Revised Statutes Cumulative Supplement, 2012.