

House Bill 1009

By: Representatives Marin of the 96th, Mitchell of the 88th, Brooks of the 63rd, Taylor of the 55th, Drenner of the 86th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 1 of Title 40 of the Official Code of Georgia Annotated, relating to general provisions relative to motor vehicles and traffic, so as to require policies that prohibit law enforcement officers from impermissibly using race or ethnicity in determining whether to stop a motorist or pedestrian; to require annual training of law enforcement officers on impermissible uses of race and ethnicity in stopping motorists or pedestrians; to require law enforcement officers to document the race, ethnicity, and gender of a motorist and passengers or pedestrian; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 40 of the Official Code of Georgia Annotated, relating to general provisions relative to motor vehicles and traffic, is amended by adding a new Code section to read as follows:

"40-1-8.

(a) As used in this Code section, the term:

(1) 'Law enforcement officer' means any person who, in an official capacity, is authorized by law to make arrests and who is an employee of a law enforcement agency.

(2) 'Pedestrian stop' means an interaction between a law enforcement officer and an individual on foot who is being detained for the purpose of a criminal investigation in which the person is not under arrest.

(3) 'Racial profiling' means the practice of a law enforcement agent relying, to any degree, on perceived or actual race, ethnicity, national origin, or religion in selecting which individuals to subject to investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial investigatory activity, except where such criteria are used in combination with other identifying factors in seeking to

apprehend a specific suspect whose apparent race, ethnicity, or national origin is part of the description of the suspect and said description is reliable and locally relevant.

(4) 'Traffic stop' means any instance when a law enforcement officer stops the driver of a motor vehicle and detains the driver for any period of time. For the purposes of this Code section, a traffic stop does not include:

(A) A stop of multiple vehicles due to a traffic accident, or emergency requiring the stopping of vehicles for public safety purposes; or

(B) A stop based solely on the use of radar, laser, or Vascar technology.

(b) No law enforcement officer shall engage in racial profiling by using a person's perceived or actual race, ethnicity, national origin, or religion to form probable cause or reasonable suspicion of illegal activity.

(c) No law enforcement officer shall conduct a search in the absence of reasonable suspicion, probable cause, or consent, where the individual is informed of the right to refuse. Where consent is given, it must be in writing and signed by the individual.

(d) Each state and local law enforcement agency shall adopt a policy regarding racial profiling that:

(1) Prohibits racial profiling as defined in this Code section;

(2) Requires that law enforcement officers articulate reasonable suspicion, probable cause, or consent prior to a stop, frisk, arrest, search, or detention and defines reasonable suspicion and probable cause to ensure that race, ethnicity, national origin, or religion is not a basis for their establishment;

(3) Requires informing the individual stopped of the right to refuse a search where there is no reasonable suspicion or probable cause, and where consent is given, requires obtaining the consent in writing signed by the individual;

(4) Requires law enforcement officers to identify themselves by full name and jurisdiction and proffer written identification, such as a business card;

(5) Provides standards for the use of in-car audio and visual equipment, including the requirement that all audio and videotapes be preserved for a minimum of 90 days;

(6) Provides for appropriate disciplinary procedures for law enforcement officers found to have engaged in racial profiling; and

(7) Provides for appropriate disciplinary procedures for law enforcement supervisors found to have encouraged or abetted racial profiling or otherwise permitted it.

The Attorney General shall take all necessary steps to ensure timely compliance with the policy requirements contained in this subsection, including sanctions against any law enforcement agency for failure to comply with the policy requirements.

(e) Each state and local law enforcement agency shall implement an annual training program for all law enforcement officers and supervisors regarding racial profiling that:

- (1) Emphasizes the prohibition against racial profiling as defined in this Code section;
(2) Ensures that operating procedures adequately implement the prohibition against racial profiling and that law enforcement personnel have copies of, have demonstrated (through testing or other measured means) understanding of, and are following the procedures;
(3) Includes comprehensive, scenario-based sessions that begin in the law enforcement training academy and continue with regular continuing education and certification;
(4) Includes foreign language instruction where appropriate, to ensure communication with residents of non-English-speaking communities; and
(5) Stresses understanding and respect for racial and cultural differences and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

The Attorney General shall take all necessary steps to ensure timely compliance with the training requirements contained in this subsection, including sanctions against any law enforcement agency for failure to comply.

(f) Each time a law enforcement officer stops a motor vehicle or a pedestrian, that officer shall document the following information:

- (1) The identification of the law enforcement officer, including name and identification or badge number;
(2) The agency employing the law enforcement officer;
(3) The age, gender, race, and ethnicity of the individual subjected to the stop, based on the observation or perception of the law enforcement officer;
(4) The date, time, duration, and location of the stop;
(5) Whether the law enforcement officer requested information about the person's immigration status or country of origin;
(6) Whether the law enforcement officer examined a state-issued identification card issued to the person, including the person's date of birth, state, and country of residence, if available;
(7) In the case of a traffic stop, the license plate number and state of registration of the vehicle stopped, and the description of the vehicle, including make, model, condition, and color;
(8) The alleged violation that led to the stop;
(9) In the case of a traffic stop, whether the law enforcement officer requested the person to exit the vehicle;
(10) Whether a search was conducted as a result of the stop;

(11) Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent or the circumstances establishing probable cause or reasonable suspicion;

(12) In cases of consent searches, whether consent was given in writing by the individual;

(13) Whether passengers were present and, if so, the passengers' age, gender, race, and ethnicity, based on the observation or perception of the law enforcement officer;

(14) Whether any person's, including the passengers', property or personal effects were searched (vehicle or other), and the scope of the search;

(15) Whether contraband was found, the type and approximate amount of contraband, and whether contraband was seized;

(16) Whether any citation or any oral or written warning was issued as a result of the stop;

(17) If a warning or citation was issued, the violation charged or warning provided;

(18) Whether an arrest was made as a result of either the stop or the search;

(19) If an arrest was made, the crime charged;

(20) Whether the law enforcement officer making the stop encountered any physical resistance, whether the officer engaged in the use of force, and whether injuries resulted; and

(21) Whether the circumstances surrounding the stop were the subject of any investigation and the results of that investigation.

The information gathered pursuant to this subsection shall be collected and reported on an annual basis to the Attorney General using a format determined by the Attorney General.

(g) In addition to the information collected under subsection (f) of this Code section, each law enforcement agency shall send to the Attorney General on a monthly basis:

(1) All of the forms collected that month regarding motorists or pedestrians who were stopped;

(2) Any complaints filed by motorists or pedestrians who believed they were the subject of racial profiling; and

(3) Any other information the Attorney General deems appropriate.

(h) Law enforcement agencies and the Attorney General shall review the data required to be collected under this Code section on an annual basis to determine whether members of minority groups are disproportionately stopped, searched, warned, or arrested, shall report findings to the public on an annual basis using a format determined by the Attorney General, and shall take appropriate remedial action.

(i) The Attorney General shall take all necessary steps to ensure timely compliance with the data collection and reporting requirements, including sanctions against any law enforcement agency for failure to comply.

(j) Each law enforcement agency shall provide to the Attorney General an annual report of the information recorded under the provisions of this Code section. The Attorney General shall determine the format that all law enforcement agencies shall use to submit this report.

(k) The Attorney General shall analyze the annual reports of law enforcement agencies required under subsection (j) of this Code section and submit a report of the findings to the Governor, the General Assembly, and each law enforcement agency no later than January 1 of each year. The report of the Attorney General shall include an analysis of the collected data in accordance with general statistical standards. The report, findings, and conclusions submitted by the Attorney General shall be deemed public records. The report shall include at least the following information for each law enforcement agency:

(1) The total number of vehicles and pedestrians stopped by law enforcement officers during the previous calendar year;

(2) The number and percentage of stopped motor vehicles that were driven by members of each particular minority group;

(3) A comparison of the percentage of stopped motor vehicles driven by each minority group and the percentage of the state's population, driving age population, and owners of motor vehicles that each minority group comprises; and

(4) A compilation of the information reported by law enforcement agencies pursuant to this Code section.

(l) The Attorney General shall establish independent procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement officers. The Attorney General shall further require each law enforcement agency to make available on its website the racial profiling complaint filing procedures.

(m) During the collection of data under this Code section, the information and forms collected shall be public records if a citation was issued or an arrest was made, and the information or forms shall include a citation or arrest number for reference. All data collected pursuant to this Code section shall be made public upon the completion of each year's study and the submission of the Attorney General's report.

(n) In addition to any penalties or sanctions implemented by the Attorney General, if a law enforcement agency fails to comply with the provisions of this Code section, the Governor shall withhold any state funds appropriated to the noncompliant law enforcement agency.

168 (o) Nothing in this Code section shall be construed to alter the requirements for
169 determining probable cause or reasonable suspicion under the Constitution of the United
170 States or the Constitution of the State of Georgia."

171 **SECTION 2.**

172 This Act shall become effective on July 1, 2010, and apply to all stops of pedestrians or
173 motorists on or after January 1, 2011.

174 **SECTION 3.**

175 All laws and parts of laws in conflict with this Act are repealed.