

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 99

Final Reading

Introduced by Mello, 5.

Read first time January 10, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal justice; to amend sections 20-501,
 2 20-502, 20-504, 20-505, and 20-506, Reissue Revised
 3 Statutes of Nebraska, and sections 81-1822 and 81-1833,
 4 Revised Statutes Cumulative Supplement, 2012; to change
 5 provisions relating to prohibited conduct and racial
 6 profiling prohibition policies; to require a racial
 7 profiling prevention policy; to eliminate a termination
 8 date regarding maintenance of certain records; to change
 9 powers and duties of the Nebraska Commission on Law
 10 Enforcement and Criminal Justice; to change appointment
 11 provisions and duties for the Racial Profiling Advisory
 12 Committee; to change and eliminate provisions relating to
 13 awards and reports under the Nebraska Crime Victim's
 14 Reparations Act; to harmonize provisions; to repeal the
 15 original sections; and to outright repeal section
 16 81-1834, Revised Statutes Cumulative Supplement, 2012.

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

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

3 20-501 Racial profiling is a practice that presents a
4 great danger to the fundamental principles of a democratic society.
5 It is abhorrent and cannot be tolerated. ~~Motorists who have~~ An
6 individual who has been detained or whose vehicle has been stopped by
7 the police for no reason other than the color of ~~their~~ his or her
8 skin or ~~their~~ his or her apparent nationality or ethnicity ~~are the~~
9 ~~victims~~ is the victim of a discriminatory practices. practice.

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

12 20-502 (1) No member of the Nebraska State Patrol or a
13 county sheriff's office, officer of a city or village police
14 department, or member of any other law enforcement agency in this
15 state shall engage in racial profiling. The disparate treatment of an
16 individual who has been detained or whose motor vehicle has been
17 stopped by a law enforcement officer is inconsistent with this
18 policy.

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

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

23 20-504 (1) On or before January 1, ~~2002,~~ 2014, the
24 Nebraska State Patrol, the county sheriffs, all city and village
25 police departments, and any other law enforcement agency in this

1 state shall adopt and provide a copy to the Nebraska Commission on
2 Law Enforcement and Criminal Justice of a written policy that
3 prohibits the detention of any person or a motor vehicle stop when
4 such action is motivated by racial profiling. Such racial profiling
5 prevention policy shall include definitions consistent with section
6 20-503 and one or more internal methods of prevention and
7 enforcement, including, but not limited to: ~~and the action would~~
8 ~~constitute a violation of the civil rights of the person.~~

9 (a) Internal affairs investigation;

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

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

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

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

23 (2) The Nebraska Commission on Law Enforcement and
24 Criminal Justice may develop and distribute a suggested model written
25 racial profiling prevention policy for use by law enforcement

1 agencies, but the commission shall not mandate the adoption of the
2 model policy except for any particular law enforcement agency which
3 fails to timely create and provide to the commission a policy for the
4 agency in conformance with the minimum standards set forth in this
5 section.

6 ~~(2)~~(3) With respect to a motor vehicle stop, on and
7 after January 1, 2002, and ~~until January 1, 2014,~~ the Nebraska State
8 Patrol, the county sheriffs, all city and village police departments,
9 and any other law enforcement agency in this state shall record and
10 retain the following information using the form developed and
11 promulgated pursuant to section 20-505:

12 (a) The number of motor vehicle stops;

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

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

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

25 (e) Any additional information that the Nebraska State

1 Patrol, the county sheriffs, all city and village police departments,
2 or any other law enforcement agency in this state, as the case may
3 be, deems appropriate.

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

18 ~~(4)~~ (5) Any law enforcement officer who in good faith
19 records information on a motor vehicle stop pursuant to this section
20 shall not be held civilly liable for the act of recording such
21 information unless the law enforcement officer's conduct was
22 unreasonable or reckless or in some way contrary to law.

23 ~~(5)~~ (6) On or before October 1, 2002, and annually
24 thereafter, ~~until January 1, 2014,~~ the Nebraska State Patrol, the
25 county sheriffs, all city and village police departments, and all

1 other law enforcement agencies in this state shall provide to the
2 ~~commission,~~ Nebraska Commission on Law Enforcement and Criminal
3 Justice, in such form as the commission prescribes, a summary report
4 of the information recorded pursuant to subsection ~~(2)~~(3) of this
5 section.

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

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

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

9 20-505 On or before January 1, 2002, the Nebraska
10 Commission on Law Enforcement and Criminal Justice, the
11 Superintendent of Law Enforcement and Public Safety, the Attorney
12 General, and the State Court Administrator may adopt and promulgate:
13 (1) ~~A~~a form, in printed or electronic format, to be used by a law
14 enforcement officer when making a motor vehicle stop to record
15 personal identifying information about the operator of such motor
16 vehicle, the location of the stop, the reason for the stop, and any
17 other information that is required to be recorded pursuant to
18 subsection ~~(2)~~(3) of section 20-504 and (2) a form, in printed or
19 electronic format, to be used to report an allegation of racial
20 profiling by a law enforcement officer.

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

23 20-506 (1) The Racial Profiling Advisory Committee is
24 created.

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

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

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

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

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

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

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

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

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

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

20 (v) A representative of the AFL-CIO;

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

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

25 (viii) A representative of the Nebraska State Bar

1 Association appointed by the Governor from a list of attorneys
2 submitted by the executive council of the Nebraska State Bar
3 Association.

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

9 (4) The committee shall advise the commission and its
10 executive director of the commission in the conduct of his or her
11 their duties regarding (a) the completeness and acceptability of
12 written racial profiling prevention policies submitted by individual
13 law enforcement agencies as required by subsection (1) of section
14 20-504, (b) the collection of data by law enforcement agencies, any
15 needed additional data, and any needed additional analysis,
16 investigation, or inquiry as to the data provided pursuant to
17 subsection (3) of section 20-504, (c) the review, analysis, inquiry,
18 study, and recommendations required pursuant to subsection ~~(6)-(7)~~ of
19 section 20-504, ~~provide~~ including an analysis of the review,
20 analysis, inquiry, study, and recommendations, and (d) and make
21 policy recommendations with respect to the prevention of racial
22 profiling and the need, if any, for enforcement by the Department of
23 Justice of the prohibitions found in section 20-502.

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

1 81-1822 No compensation shall be awarded from the
2 Victim's Compensation Fund:

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

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

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

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

18 ~~(5) If the victim incurs an economic loss which does not~~
19 ~~exceed ten percent of his or her net financial resources. For~~
20 ~~purposes of this subdivision, a victim's net financial resources~~
21 ~~shall not include the present value of future earnings and shall be~~
22 ~~determined by the committee by deducting from the victim's total~~
23 ~~financial resources:~~

24 ~~(a) One year's earnings;~~

25 ~~(b) The victim's equity in his or her home, not exceeding~~

1 ~~thirty thousand dollars;~~

2 ~~(c) One motor vehicle; and~~

3 ~~(d) Any other property which would be exempt from~~
4 ~~execution under section 25-1552 or 40-101.~~

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

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

10 81-1833 (1) The committee shall prepare and submit to the
11 commission a biennial report of its activities under the Nebraska
12 Crime Victim's Reparations Act., ~~including the name of each~~
13 ~~applicant, a brief description of the facts in each case, and the~~
14 ~~amount of compensation awarded, except that if the applicant was the~~
15 ~~victim of a sexual assault the victim's name shall not be included in~~
16 ~~the report, but shall be available to the Governor or a member of the~~
17 ~~Legislature upon request to the committee. Such report shall be~~
18 ~~submitted to the Governor and Clerk of the Legislature. The report~~
19 ~~submitted to the Clerk of the Legislature shall be submitted~~
20 ~~electronically. as part of the commission's report submitted pursuant~~
21 ~~to section 81-1423.~~

22 (2) The committee shall act as the oversight committee
23 for the Community Trust and shall annually report its activities and
24 findings as the oversight committee to the commission, the Governor,
25 and the Clerk of the Legislature. The report submitted to the Clerk

1 of the Legislature shall be submitted electronically. If any
2 questionable or improper actions or inactions on the part of the
3 Community Trust are observed, the committee shall immediately notify
4 the Attorney General who shall investigate the matter.

5 Sec. 8. Original sections 20-501, 20-502, 20-504, 20-505,
6 and 20-506, Reissue Revised Statutes of Nebraska, and sections
7 81-1822 and 81-1833, Revised Statutes Cumulative Supplement, 2012,
8 are repealed.

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