

By: Coleman

H.B. No. 4159

A BILL TO BE ENTITLED

AN ACT

relating to interactions between law enforcement and individuals  
stopped on suspicion of the commission of criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.13, Code of Criminal Procedure, is  
amended by adding Subsection (d) to read as follows:

(d) The officer may not:

(1) conduct a search based solely on a person's consent  
to the search; or

(2) make a stop for an alleged violation of a traffic  
law or ordinance as a pretext for investigating a violation of  
another penal law.

SECTION 2. Article 2.132, Code of Criminal Procedure, is  
amended by amending Subsections (b), (c), and (e) and adding  
Subsections (h) and (i) to read as follows:

(b) Each law enforcement agency in this state shall adopt a  
detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial  
profiling;

(2) strictly prohibit peace officers employed by the  
agency from engaging in racial profiling;

(3) implement a process by which an individual may  
file a complaint with the agency if the individual believes that a  
peace officer employed by the agency has engaged in racial

1 profiling with respect to the individual;

2 (4) provide public education relating to the agency's  
3 complaint process, including providing the information regarding  
4 the complaint process on each ticket, citation, or warning issued  
5 by a peace officer;

6 (5) require appropriate corrective action to be taken  
7 against a peace officer employed by the agency who, after an  
8 investigation, is shown to have engaged in racial profiling in  
9 violation of the agency's policy adopted under this article;

10 (6) require collection of information relating to all  
11 motor vehicle stops [~~in which a citation is issued and to arrests~~  
12 ~~made as a result of those stops~~], including information relating  
13 to:

14 (A) the race or ethnicity of the individual  
15 detained;

16 (B) whether a search was conducted [~~and, if so,~~  
17 ~~whether the individual detained consented to the search~~]; and

18 (C) whether the peace officer knew the race or  
19 ethnicity of the individual detained before detaining that  
20 individual; [~~and~~]

21 (D) whether the peace officer used physical force  
22 against anyone during the stop; and

23 (7) require the chief administrator of the agency,  
24 regardless of whether the administrator is elected, employed, or  
25 appointed, to submit an annual report of the information collected  
26 under Subdivision (6) to:

27 (A) the Texas Commission on Law Enforcement; and

1 (B) the governing body of each county or  
2 municipality served by the agency, if the agency is an agency of a  
3 county, municipality, or other political subdivision of the state.

4 (c) The data collected as a result of the reporting  
5 requirements of this article shall not constitute prima facie  
6 evidence of racial profiling but is admissible in a court of law as  
7 evidence of racial profiling.

8 (e) A report required under Subsection (b)(7) may not  
9 include identifying information about a peace officer who makes a  
10 motor vehicle stop or about an individual who is stopped or arrested  
11 by a peace officer. This subsection does not affect the collection  
12 of information as required by a policy under Subsection (b)(6).

13 (h) A law enforcement agency shall review the data collected  
14 under Subsection (b)(6) to determine whether the number of vehicles  
15 driven by a member of a particular race or ethnicity stopped by any  
16 peace officer employed by the agency is disproportionate to the  
17 population of that race or ethnicity in the county or municipality  
18 served by the agency.

19 (i) If a law enforcement agency determines that the number  
20 of vehicles driven by a member of a particular race or ethnicity  
21 stopped by a peace officer is disproportionate, as described by  
22 Subsection (h), the agency shall conduct an investigation of the  
23 officer to determine whether the officer routinely stops vehicles  
24 the drivers of which are members of a particular racial or ethnic  
25 group for alleged violations of traffic laws or ordinances as a  
26 pretext for investigating violations of other penal laws.

27 SECTION 3. Chapter 2, Code of Criminal Procedure, is

amended by adding Articles 2.1321 and 2.1322 to read as follows:

Art. 2.1321. RACIAL PROFILING INVESTIGATIONS. (a) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, shall annually review the data collected by the agency on racial profiling to determine if:

(1) racial profiling is potentially occurring on an agency-wide level; or

(2) an individual peace officer may be engaging in racial profiling.

(b) On a finding by the chief administrator of potential racial profiling on an agency-wide basis or by an individual peace officer, the agency shall initiate an investigation into the potential racial profiling.

(c) The chief administrator of each law enforcement agency shall annually certify to the Texas Commission on Law Enforcement that the chief administrator conducted the review required by Subsection (a).

(d) On a finding by the Texas Commission on Law Enforcement that the chief administrator of a law enforcement agency intentionally failed to conduct a review required by Subsection (a), the commission shall begin disciplinary procedures against the chief administrator.

Art. 2.1322. REQUIRED RACIAL PROFILING COUNSELING AND TRAINING FOR CERTAIN PEACE OFFICERS. (a) If an investigation initiated under Article 2.132 or 2.1321 results in a finding of racial profiling, the law enforcement agency shall provide

1 appropriate counseling and training to any peace officer found to  
2 have engaged in racial profiling.

3 (b) The counseling and training under Subsection (a) must:

4 (1) emphasize understanding and respect for racial and  
5 cultural differences;

6 (2) address racial and cultural biases; and

7 (3) include effective, noncombative methods of  
8 carrying out law enforcement duties in a racially and culturally  
9 diverse environment.

10 (c) If, after a peace officer completes the counseling and  
11 training under Subsection (a), the officer is again found to have  
12 engaged in racial profiling, the law enforcement agency shall:

13 (1) suspend the officer for not less than six months;  
14 and

15 (2) require the officer to repeat the counseling and  
16 training under Subsection (a).

17 SECTION 4. Article 2.133, Code of Criminal Procedure, is  
18 amended by amending Subsection (b) and adding Subsection (c) to  
19 read as follows:

20 (b) A peace officer who stops a motor vehicle for an alleged  
21 violation of a law or ordinance shall report to the law enforcement  
22 agency that employs the officer information relating to the stop,  
23 including:

24 (1) a physical description of any person operating the  
25 motor vehicle who is detained as a result of the stop, including:

26 (A) the person's gender; and

27 (B) the person's race or ethnicity, as stated by

1 the person or, if the person does not state the person's race or  
2 ethnicity, as determined by the officer to the best of the officer's  
3 ability;

4 (2) the initial reason for the stop;

5 (3) whether the officer conducted a search as a result  
6 of the stop [~~and, if so, whether the person detained consented to~~  
7 ~~the search~~];

8 (4) whether any contraband or other evidence was  
9 discovered in the course of the search and a description of the  
10 contraband or evidence;

11 (5) the reason for the search, including whether:

12 (A) any contraband or other evidence was in plain  
13 view;

14 (B) any probable cause or reasonable suspicion  
15 existed to perform the search; or

16 (C) the search was performed as a result of the  
17 towing of the motor vehicle or the arrest of any person in the motor  
18 vehicle;

19 (6) whether the officer made an arrest as a result of  
20 the stop or the search, including a statement of whether the arrest  
21 was based on a violation of the Penal Code, a violation of a traffic  
22 law or ordinance, or an outstanding warrant and a statement of the  
23 offense charged;

24 (7) the street address or approximate location of the  
25 stop; [~~and~~]

26 (8) whether the officer issued a verbal or written  
27 warning or a citation as a result of the stop; and

1           (9) whether the officer used physical force in  
2 conjunction with the arrest.

3           (c) The chief administrator of a law enforcement agency,  
4 regardless of whether the administrator is elected, employed, or  
5 appointed, shall make periodic random and unannounced reviews of  
6 motor vehicle stops by peace officers employed by the agency to  
7 ensure that the race or ethnicity of the person operating the motor  
8 vehicle is being properly identified in the report under Subsection  
9 (b).

10           SECTION 5. Articles [2.134](#)(c), (d), and (f), Code of  
11 Criminal Procedure, are amended to read as follows:

12           (c) A report required under Subsection (b) must be submitted  
13 by the chief administrator of the law enforcement agency,  
14 regardless of whether the administrator is elected, employed, or  
15 appointed, and must include:

16           (1) a comparative analysis of the information compiled  
17 under Article [2.133](#) to:

18           (A) evaluate and compare the number of motor  
19 vehicle stops, within the applicable jurisdiction, of persons who  
20 are recognized as racial or ethnic minorities and persons who are  
21 not recognized as racial or ethnic minorities; ~~and~~

22           (B) examine the disposition of motor vehicle  
23 stops made by officers employed by the agency, categorized  
24 according to the race or ethnicity of the affected persons, as  
25 appropriate, including any searches resulting from stops within the  
26 applicable jurisdiction; and

27           (C) evaluate and compare the number of searches

1 resulting from motor vehicle stops within the applicable  
2 jurisdiction and whether contraband or other evidence was  
3 discovered in the course of those searches;

4 (2) information relating to each complaint filed with  
5 the agency alleging that a peace officer employed by the agency has  
6 engaged in racial profiling; and

7 (3) information relating the number of investigations  
8 initiated under Article 2.1321, and the outcomes of the  
9 investigations.

10 (d) A report required under Subsection (b) may not include  
11 identifying information about a peace officer who makes a motor  
12 vehicle stop or about an individual who is stopped or arrested by a  
13 peace officer. This subsection does not affect the reporting of  
14 information required under Article 2.133(b)(1).

15 (f) The data collected as a result of the reporting  
16 requirements of this article shall not constitute prima facie  
17 evidence of racial profiling but is admissible in a court of law as  
18 evidence of racial profiling.

19 SECTION 6. Article 2.1385(a), Code of Criminal Procedure,  
20 is amended to read as follows:

21 (a) If the chief administrator of a local law enforcement  
22 agency intentionally fails to submit the incident-based data as  
23 required by Article 2.134, the agency is liable to the state for a  
24 civil penalty in the amount of \$10,000 [~~\$1,000~~] for each violation.  
25 The attorney general may sue to collect a civil penalty under this  
26 subsection.

27 SECTION 7. Effective September 1, 2018, Chapter 2, Code of



Criminal Procedure, is amended by adding Article 2.1386 to read as follows:

Art. 2.1386. MOTOR VEHICLE STOP INVESTIGATIONS. (a) In this article, "law enforcement agency" and "motor vehicle stop" have the meanings assigned by Article 2.132(a).

(b) Each law enforcement agency shall adopt and implement a detailed written policy regarding the administration of a motor vehicle stop investigation in accordance with this article, including the administrative penalties for violations of the policy. A law enforcement agency may adopt the model policy promulgated by the Bill Blackwood Law Enforcement Management Institute of Texas or the agency's own policy.

(c) A peace officer may not:

(1) conduct a roadside investigation during a motor vehicle stop for an offense other than the traffic violation without suspicion based on a preponderance of the evidence that the driver has committed the other offense;

(2) continue a roadside investigation during a motor vehicle stop into an offense other than the traffic violation after the driver has refused to consent to be searched unless the peace officer has additional suspicion based on a preponderance of the evidence that the driver has committed the other offense; or

(3) arrest a driver during a motor vehicle stop for a traffic violation to conduct a search incident to arrest unless the officer has probable cause to believe that the driver has committed an offense more serious than a Class C misdemeanor.

(d) A peace officer who violates Subsection (c) shall be

1 subject to an administrative penalty of not less than a one-day  
2 suspension.

3 SECTION 8. Article 3.05, Code of Criminal Procedure, is  
4 amended to read as follows:

5 Art. 3.05. RACIAL PROFILING. (a) In this code, "racial  
6 profiling" means a law enforcement-initiated action based on an  
7 individual's race, ethnicity, or national origin rather than on the  
8 individual's behavior or on information identifying the individual  
9 as having engaged in criminal activity.

10 (b) Racial profiling may be identified through the  
11 examination of sufficient and evidence-based data analysis.

12 SECTION 9. Article 14.06, Code of Criminal Procedure, is  
13 amended by amending Subsection (b) and adding Subsection (b-1) to  
14 read as follows:

15 (b) A peace officer who is charging a person, including a  
16 child, with committing an offense that is a ~~[Class C]~~ misdemeanor  
17 punishable by a fine only, other than an offense under Section  
18 49.02, Penal Code, or an offense under Chapter 106, Alcoholic  
19 Beverage Code, shall ~~[may]~~, instead of taking the person before a  
20 magistrate, issue a citation to the person that contains written  
21 notice of the time and place the person must appear before a  
22 magistrate, the name and address of the person charged, the offense  
23 charged, and the following admonishment, in boldfaced or underlined  
24 type or in capital letters:

25 "If you are convicted of a misdemeanor offense involving  
26 violence where you are or were a spouse, intimate partner, parent,  
27 or guardian of the victim or are or were involved in another,

1 similar relationship with the victim, it may be unlawful for you to  
2 possess or purchase a firearm, including a handgun or long gun, or  
3 ammunition, pursuant to federal law under 18 U.S.C. Section  
4 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any  
5 questions whether these laws make it illegal for you to possess or  
6 purchase a firearm, you should consult an attorney."

7 (b-1) A peace officer who is charging a person, including a  
8 child, with committing an offense that is a misdemeanor punishable  
9 by a fine only under Chapter 106, Alcoholic Beverage Code, may,  
10 instead of taking the person before a magistrate, issue to the  
11 person a citation that contains written notice of the time and place  
12 the person must appear before a magistrate, the name and address of  
13 the person charged, and the offense charged.

14 SECTION 10. Section 543.004(a), Transportation Code, is  
15 amended to read as follows:

16 (a) An officer shall issue a written notice to appear if:

17 (1) the offense charged is ~~[speeding or]~~ a misdemeanor  
18 under this subtitle that is punishable by a fine only ~~[violation of~~  
19 ~~the open container law, Section 49.03, Penal Code]~~; and

20 (2) the person makes a written promise to appear in  
21 court as provided by Section 543.005.

22 SECTION 11. Effective January 1, 2018, Subchapter A,  
23 Chapter 543, Transportation Code, is amended by adding Section  
24 543.0045 to read as follows:

25 Sec. 543.0045. NOTIFICATION REQUIRED DURING TRAFFIC STOP.

26 (a) An officer who stops a motor vehicle as a result of a person's  
27 alleged commission of a misdemeanor under this subtitle that is

punishable by a fine only shall promptly notify the person that:

(1) the alleged offense is a misdemeanor under this subtitle that is punishable by a fine only; and

(2) the officer may not arrest a person solely on the basis of that offense.

(b) The Texas Commission on Law Enforcement by rule shall specify the language that is required to be included in the notification described by Subsection (a).

SECTION 12. The following provisions of the Code of Criminal Procedure are repealed:

(1) Article 2.135.

SECTION 13. Article 2.13(d), Code of Criminal Procedure, as added by this article, applies only to a motor vehicle stop or search that occurs on or after the effective date of this Act.

SECTION 14. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 15. Articles 2.132(h) and (i), 2.1321, and 2.1322, Code of Criminal Procedure, as added by this article, apply to an investigation that occurs on or after the effective date of this Act, regardless of whether the potential racial profiling occurred before, on, or after that date.

SECTION 16. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to withstand academic scrutiny.

1           SECTION 17. (a) Not later than December 31, 2017, the Bill  
2 Blackwood Law Enforcement Management Institute of Texas, in  
3 consultation with large, medium, and small law enforcement  
4 agencies, law enforcement associations, and community  
5 organizations engaged in the development of law enforcement policy  
6 on behalf of the public, shall develop, adopt, and disseminate to  
7 all law enforcement agencies in this state a model policy and  
8 associated training materials for conducting a motor vehicle stop,  
9 in accordance with Article 2.1386, Code of Criminal Procedure, as  
10 added by this article.

11           (b) Not later than September 1, 2018, each law enforcement  
12 agency of this state shall adopt the policy required by Article  
13 2.1386, Code of Criminal Procedure, as added by this article, if  
14 applicable.

15           SECTION 18. Not later than December 1, 2017, the Texas  
16 Commission on Law Enforcement shall adopt the rules required by  
17 Section 543.0045(b), Transportation Code, as added by this article.

18           SECTION 19. The changes in law made by this article apply  
19 only to an offense committed on or after the effective date of this  
20 Act. An offense committed before the effective date of this Act is  
21 governed by the law in effect on the date the offense was committed,  
22 and the former law is continued in effect for that purpose. For  
23 purposes of this section, an offense was committed before the  
24 effective date of this article if any element of the offense  
25 occurred before that date.

26           SECTION 20. Except as otherwise provided by this Act, this  
27 Act takes effect September 1, 2017.