

1 H.868

2 Introduced by Representatives Christie of Hartford, Buckholz of Hartford,

3 Kitzmiller of Montpelier, Gonzalez of Winooski, and Morris of

4 Bennington

5 Referred to Committee on

6 Date:

7 Subject: Government operations; systemic racism

8 Statement of purpose of bill as introduced: This bill proposes to: 1) prohibit

9 racial profiling; 2) require the collection and distribution data regarding the use

10 of force used in a traffic stop; 3) require the Criminal Justice Training Council

11 to develop a model policy regarding the use of force, de-escalation, and cross-

12 cultural awareness; 4) require law enforcement agencies to adopt a policy

13 regarding the use of force, de-escalation, and cross-cultural awareness

14 containing each component of the Council's model policy, and require each

15 agency receive training on the policy in order to meet basic training

16 requirements; and 5) expand the jurisdiction of the Human Rights Commission

17 to include: managing the collection and public dissemination of race-based

18 data; developing a model fairness and diversity policy and reviewing the

19 policies of all State government agencies to manage their compliance with the

20 model policy; developing a training program for all State government agencies,

21 public schools, and the general public regarding the nature and scope of

1 systemic racism and the institutionalized nature of race-based bias; and
2 advising and consulting with the Executive and Legislative Branches of State
3 government on the impact of policies and legislation on mitigating systemic
4 racism.

5 An act relating to mitigating statewide systemic racism

6 It is hereby enacted by the General Assembly of the State of Vermont:

7 Sec. 1. 9 V.S.A. § 4551 is amended to read:

8 § 4551. HUMAN RIGHTS COMMISSION; MEMBERS; COMPENSATION

9 (a) The Human Rights Commission is hereby established. It shall consist
10 of five members to be appointed by the Governor, with the advice and consent
11 of the Senate, who shall designate one member to be its Chair. ~~No~~ Not more
12 than three members shall be of the same political party. At least ~~one member~~
13 ~~shall be of a racial minority~~ two members shall identify as persons of color.

14 (b) The members of the Commission shall be appointed for terms of five
15 years each, except that of the members first appointed, the Governor shall
16 designate one for a term of one year, one for a term of two years, one for a
17 term of three years, and one for a term of four years. A member of the
18 Commission appointed to fill a vacancy occurring other than by expiration of a
19 term shall be appointed only for the unexpired portion of the term. Members
20 of the Commission shall be eligible for reappointment.

1 (c) A member of the Commission whose term has expired or who resigned
2 during a term shall be eligible to act as an alternate at the request of the
3 Executive Director of the Commission if necessary to convene a quorum of the
4 Commission to act upon complaints pursuant to section 4554 of this title. An
5 alternate shall only participate in the consideration of complaints at meetings
6 attended and shall not be involved in setting the policies of the Commission.

7 (d) Each member of the Commission, including an alternate who is called
8 to act, shall receive compensation as provided by 32 V.S.A. § 1010 with a
9 maximum of \$1,000.00 a year, and shall be entitled to expenses actually and
10 necessarily incurred in the performance of his or her duties.

11 (e) Three members of the Commission shall constitute a quorum. Alternate
12 members may not make up a majority of a quorum.

13 Sec. 2. 9 V.S.A. § 4552 is amended to read:

14 § 4552. DUTIES; JURISDICTION

15 (a) Duties.

16 (1) The Commission shall endeavor through public education to increase
17 awareness of the importance of full civil and human rights for each inhabitant
18 of this State. The Commission shall also examine and evaluate generally the
19 effectiveness of this chapter as well as the existence of practices of
20 discrimination ~~which that~~ detract from the enjoyment of full civil and human
21 rights and shall recommend measures designed to protect those rights.

1 (2) The Commission shall also endeavor to mitigate systemic racism
2 throughout the systems of State government and public education. To this end,
3 the Commission shall:

4 (A) create a strategy for implementing a centralized platform for
5 race-based data collection and manage the aggregation, correlation, and public
6 dissemination of the data;

7 (B) develop a model fairness and diversity policy and review and
8 make recommendations regarding the fairness and diversity policies held by all
9 State government systems and public schools;

10 (C) develop a training program for all State government systems,
11 public schools, and the general public regarding the nature and scope of
12 systemic racism and the institutionalized nature of race-based bias; and
13 (D) advise and consult with the Executive and Legislative Branches
14 of State government on the impact of policies and legislation on mitigating
15 systemic racism.

16 (b) Jurisdiction. The Commission shall have jurisdiction to investigate and
17 enforce complaints of unlawful discrimination in violation of chapter 139 of
18 this title, discrimination in public accommodations and rental and sale of real
19 estate. The Commission shall also have jurisdiction when the party
20 complained against is a State agency in matters for which the Attorney General
21 would otherwise have jurisdiction under subsection (c) of this section.

1 (c) Referral to Attorney General. All complaints of unlawful
2 discrimination in violation of 21 V.S.A. §§ 495 et seq. and 710, the Fair
3 Employment Practices Act and the provisions for workers' compensation
4 discrimination, respectively, and of 21 V.S.A. § 471 et seq. shall be referred to
5 the Attorney General's office, for investigation and enforcement.

6 Sec. 3. 9 V.S.A. § 4553 is amended to read:

7 § 4553. POWERS

8 (a) To carry out its duties, the Commission may:

9 (1) Establish and maintain a principal office and such other offices
10 within the State as it deems necessary.

11 (2) Meet and hold hearings at any place within the State.

12 (3) Appoint employees as necessary to carry out the purposes of this
13 chapter.

14 (4) Administer oaths and take the testimony of any person under oath in
15 connection with a complaint filed under section 4554 of this title.

16 (5) Issue subpoenas to compel testimony or access to or production of
17 records, documents, and other evidence or possible sources of evidence or the
18 appearance of persons, provided that the subpoena is issued pursuant to a
19 complaint filed in accordance with section 4554 of this title and that there is
20 reasonable cause to believe that those materials or the testimony of the person
21 ~~are~~ is material to the complaint. Subpoenas issued under this subdivision shall

1 be accompanied with a notice that informs the person that the person has a
2 right to contest the subpoena at a hearing before not less than three members of
3 the Commission and that the person has the additional right to contest the
4 subpoena in court. Subpoenas issued under this subdivision shall be enforced
5 as provided in 3 V.S.A. §§ 809a and 809b.

6 (6)(A) Enforce conciliation agreements and prohibitions against
7 discrimination by bringing an action in the name of the Commission seeking
8 any of the following:

9 (i) Temporary or permanent injunctive relief in the public interest
10 and for an individual aggrieved by unlawful discrimination.

11 (ii) The imposition of a civil penalty of not more than \$10,000.00
12 for each violation of law, including violations of any temporary restraining
13 order issued pursuant to this section. For an intentional and continuing
14 violation of a court order after a date set in the order, each day of violation
15 shall be a separate offense.

16 (iii) Compensatory and punitive damages on behalf of an
17 aggrieved individual or class of individuals similarly situated.

18 (iv) Costs and reasonable attorney's fees associated with the
19 investigation and enforcement of actions; any such costs or fees recovered by
20 the Human Rights Commission under this chapter shall be deposited in the

1 Commission's special fund and shall be available to the Commission to offset
2 the costs of providing legal services.

3 (v) Other appropriate relief.

4 (vi) Trial by jury.

5 (B) The action may be brought in the Superior Court of the county in
6 which the violation is alleged to have occurred, or in Washington County, and
7 the court is authorized to render all of the relief listed in this subdivision (6).

8 (7) Utilize voluntary and uncompensated services of private individuals
9 and organizations for administrative and educational purposes as may from
10 time to time be offered and needed; however, volunteers may not be used to
11 investigate complaints.

12 (8) Conduct educational activities and publicize how and where to file
13 complaints.

14 (9) Publish periodic public reports that document the legal, economic,
15 social, and political status of people of color in Vermont.

16 (b) The Human Rights Commission shall forward, on or before January 1
17 of each year, to the Speaker of the House and the President of the Senate an
18 annual report on the status of Commission program operations, the number and
19 type of calls received, complaints filed and investigated, closure of litigated
20 and nonlitigated complaints, public educational activities undertaken, and
21 recommendations for improved human rights advocacy and activities,

1 including recommendations for the mitigation of systemic racism across the
2 State. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall
3 not apply to the report to be made under this subsection.

4 (c) To carry out its duties under this chapter, the Commission shall adopt
5 procedural and substantive rules in accordance with the provisions of 3 V.S.A.
6 chapter 25.

7 Sec. 4. HUMAN RIGHTS COMMISSION; STATE GOVERNMENT
8 AGENCIES; DUTIES TO MITIGATE SYSTEMIC RACISM
9 STATEWIDE

10 (a) The Human Rights Commission shall:

11 (1) on or before October 1, 2018, develop a fairness and diversity model
12 policy and make it available to all State government agencies;

13 (2) on or before December 1, 2018, in consultation with the Criminal
14 Justice Training Council, the Attorney General, the Defender General, the
15 Agency of Human Services, the Department of Health, the Agency of
16 Commerce and Community Development, and the Agency of Education,
17 develop and implement a plan for statewide, race-based data collection; and

18 (3) on or before January 1, 2019:

19 (A) establish the functional and operational requirements of a
20 centralized system capable of automatically aggregating and correlating race-

based data collected pursuant to this section and 20 V.S.A. § 2366, and report to the General Assembly on the estimated cost; and

(B) create a framework for systemic racism training and education and make it available to all State government agencies.

5 (b) Each State government agency shall:

(1) on or before March 1, 2019, submit its policy on fairness and

7 diversity to the Commission for review; and

8 (2) on or before June 30, 2019, conduct a systemic racism training for its
9 employees that meets the standards set forth in the Commission's training
10 framework and report to the Commission on a plan for conducting ongoing
11 annual trainings.

12 Sec. 5. 20 V.S.A. § 2366(e) is amended to read:

13 (e)(1) On or before ~~September 1, 2014~~ June 30, 2019, every state, county,
14 and municipal law enforcement agency shall collect roadside stop data
15 consisting of the following:

* * *

17 (E) the outcome of the stop, including whether:

(i) a written warning was issued;

(ii) a citation for a civil violation was issued;

(iii) a citation or arrest for a misdemeanor or a felony occurred; or

(iv) no subsequent action was taken; and

1 (v) the type of use of force employed, if any.

2 (2) Law enforcement agencies shall work with the Criminal Justice

3 Training Council ~~and~~, a vendor chosen by the Council, and the Human Rights

4 Commission with the goals of collecting uniform data, adopting uniform

5 storage methods and periods, and ensuring that data can be analyzed.

6 Roadside stop data, as well as reports and analysis of roadside stop data, shall

7 be public.

8 (3) On or before ~~September 1, 2016~~ June 30, 2019 and annually

9 thereafter, law enforcement agencies shall provide the data collected under this

10 subsection to the vendor chosen by the Criminal Justice Training Council

11 under subdivision (2) of this subsection ~~or, in the event the vendor is unable to~~

12 ~~continue receiving data under this section, to the CounciI and the Human~~

13 Rights Commission. Law enforcement agencies shall provide the data

14 collected under this subsection in an electronic format specified by the

15 receiving entity.

16 (4) The data provided pursuant to subdivision (3) of this subsection shall

17 be posted electronically in a manner that is analyzable and accessible to the

18 public on the receiving agency's website.

19 Sec. 6. 20 V.S.A. § 2358(e) is amended to read:

20 (e)(1) The criteria for all minimum training standards under this section

21 shall include anti-bias training approved by the Vermont Criminal Justice

1 Training Council ~~and~~; training on the State, county, or municipal law
2 enforcement agency's fair and impartial policing policy, adopted pursuant to
3 subsection 2366(a) of this title; and training on the agency's policy regarding
4 appropriate use of force, de-escalation, and cross-cultural awareness, adopted
5 pursuant to section 2326 of this title.

6 (2) On or before ~~December 31, 2018~~ March 1, 2019, law enforcement
7 officers shall receive a minimum of four hours of training as required by this
8 subsection.

9 (3) In order to remain certified, law enforcement officers shall receive a
10 refresher course on the training required by this subsection during every odd-
11 numbered year in a program approved by the Vermont Criminal Justice
12 Training Council.

13 (4) The Criminal Justice Training Council shall, on an annual basis,
14 report to:

15 (A) the Racial Disparities in the Criminal and Juvenile Justice
16 System Advisory Panel regarding:

17 (A)(i) the adoption and implementation of the Panel's recommended
18 data collection methods and trainings and policies pursuant to 3 V.S.A.
19 § 168(f)(2) and (3);

20 (B)(ii) the incorporation of implicit bias training into the
21 requirements of basic training pursuant to this subsection (e); and

1 (C)(iii) the implementation of all trainings as required by this

2 subsection: (e); and

3 (B) the Human Rights Commission regarding:

4 (i) the adoption and implementation of the Commission's

5 recommended data collection methods and trainings and policies pursuant to

6 9 V.S.A. § 4552;

7 (ii) the incorporation of the policy regarding appropriate use of

8 force, de-escalation, and cross-cultural awareness training into the

9 requirements of basic training pursuant to this subsection (e); and

10 (iii) the implementation of all trainings as required by this

11 subsection (e).

12 Sec. 7. 20 V.S.A. § 2368 is added to read:

13 § 2368. APPROPRIATE USE OF FORCE, DE-ESCALATION, AND

14 CROSS-CULTURAL AWARENESS POLICY

15 (a)(1) On or before October 1, 2018, the Criminal Justice Training Council,

16 in consultation with stakeholders, including the Vermont League of Cities and

17 Towns, the Vermont Human Rights Commission, and Migrant Justice, shall

18 create a model policy regarding the appropriate use of force, de-escalation, and

19 cross-cultural awareness.

20 (2) On or before January 1, 2019, every State, local, county, and

21 municipal law enforcement agency and every constable who exercises law

1 enforcement authority pursuant to 24. V.S.A. § 1936a and who is trained in
2 compliance with section 2358 of this title shall adopt a policy regarding the
3 appropriate use of force, de-escalation, and cross-cultural awareness that
4 includes, at a minimum, each component of the Criminal Justice Training
5 Council's model policy.

6 (b) If a law enforcement agency or constable that is required to adopt a
7 policy pursuant to subsection (a) of this section fails to do so on or before
8 January 1, 2019, that agency or constable shall be deemed to have adopted, and
9 shall follow and enforce, the model policy issued by the Criminal Justice
10 Training Council.

11 (c) On or before September 15, 2019, and annually thereafter as part of
12 their annual training report to the Council, every State, county, and municipal
13 law enforcement agency and every constable who exercises law enforcement
14 authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with
15 section 2358 of this title shall report to the Council regarding whether the
16 agency or constable has adopted a policy regarding the appropriate use of
17 force, de-escalation, and cross-cultural awareness in accordance with this
18 section. The Criminal Justice Training Council shall determine, as part of the
19 Council's annual certification of training requirements, whether current
20 officers have received training on the appropriate use of force, de-escalation,
21 and cross-cultural awareness as required by subsection 2358(e) of this title.

1 (d) On or before October 15, 2019, and annually thereafter on or before
2 April 1, the Criminal Justice Training Council shall report to the House and
3 Senate Committees on Judiciary which departments and officers have adopted
4 a policy regarding the appropriate use of force, de-escalation, and cross-
5 cultural awareness.

6 (e) On or before October 1, 2019, and every even-numbered year
7 thereafter, the Criminal Justice Training Council, in consultation with others,
8 including the Attorney General and the Human Rights Commission, shall
9 review and, if necessary, update the model policy.

10 Sec. 8. 13 V.S.A. § 1455a is added to read:

11 § 1455a. RACIAL PROFILING PROHIBITED

12 (a) As used in this section, “racial profiling” means:

13 (1) the disparate treatment of any person solely on the basis of perceived
14 race or ethnic origin by a law enforcement officer acting in an official
15 capacity; or

16 (2) a law enforcement officer forming a basis of probable cause to
17 detain, arrest, or cite an individual or conduct an investigatory stop of a motor
18 vehicle, solely on the basis of the individual’s perceived race or ethnicity.

19 (b) No law enforcement officer as defined in 23 V.S.A. § 4(11) shall
20 engage in racial profiling.

1 (c) A law enforcement officer who violates subsection (b) of this section
2 shall be imprisoned not more than three years or fined not more than
3 \$10,000.00, or both.

4 Sec. 9. 13 V.S.A. § 1457 is amended to read:

5 § 1457. CIVIL LIABILITY AND ENFORCEMENT

6 Independent of any criminal prosecution or the result thereof, any person
7 suffering damage, loss, or injury as a result of conduct prohibited by section
8 1455, 1455a, or 1456 of this title may bring an action for injunctive relief,
9 compensatory and punitive damages, costs and reasonable attorneys attorney's
10 fees, and other appropriate relief against any person who engaged in such
11 conduct.

12 Sec. 10. EFFECTIVE DATES

13 (a) This section, and Secs. 1-4, 7, 8, and 9 shall take effect on July 1, 2018.
14 (b) Sec. 5 shall take effect on June 30, 2019.
15 (c) Sec. 6 shall take effect on January 1, 2019.