Introduced by Representatives Christie of Hartford, Buckholz of Hartford, Kitzmiller of Montpelier, Gonzalez of Winooski, and Morris of Bennington

Referred to Committee on

Date:

Subject: Government operations; systemic racism

Statement of purpose of bill as introduced: This bill proposes to: 1) prohibit racial profiling; 2) require the collection and distribution data regarding the use of force used in a traffic stop; 3) require the Criminal Justice Training Council to develop a model policy regarding the use of force, de-escalation, and cross-cultural awareness; 4) require law enforcement agencies to adopt a policy regarding the use of force, de-escalation, and cross-cultural awareness containing each component of the Council’s model policy, and require each agency receive training on the policy in order to meet basic training requirements; and 5) expand the jurisdiction of the Human Rights Commission to include: managing the collection and public dissemination of race-based data; developing a model fairness and diversity policy and reviewing the policies of all State government agencies to manage their compliance with the model policy; developing a training program for all State government agencies, public schools, and the general public regarding the nature and scope of
systemic racism and the institutionalized nature of race-based bias; and

advising and consulting with the Executive and Legislative Branches of State
government on the impact of policies and legislation on mitigating systemic
racism.

An act relating to mitigating statewide systemic racism

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

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

§ 4551. HUMAN RIGHTS COMMISSION; MEMBERS; COMPENSATION

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

(b) The members of the Commission shall be appointed for terms of five
years each, except that of the members first appointed, the Governor shall
designate one for a term of one year, one for a term of two years, one for a
term of three years, and one for a term of four years. A member of the
Commission appointed to fill a vacancy occurring other than by expiration of a
term shall be appointed only for the unexpired portion of the term. Members
of the Commission shall be eligible for reappointment.
(c) A member of the Commission whose term has expired or who resigned during a term shall be eligible to act as an alternate at the request of the Executive Director of the Commission if necessary to convene a quorum of the Commission to act upon complaints pursuant to section 4554 of this title. An alternate shall only participate in the consideration of complaints at meetings attended and shall not be involved in setting the policies of the Commission.

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

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

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

§ 4552. DUTIES; JURISDICTION

(a) Duties.

(1) The Commission shall endeavor through public education to increase awareness of the importance of full civil and human rights for each inhabitant of this State. The Commission shall also examine and evaluate generally the effectiveness of this chapter as well as the existence of practices of discrimination which detract from the enjoyment of full civil and human rights and shall recommend measures designed to protect those rights.
(2) The Commission shall also endeavor to mitigate systemic racism throughout the systems of State government and public education. To this end, the Commission shall:

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

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

(C) develop a training program for all State government systems, public schools, and the general public regarding the nature and scope of systemic racism and the institutionalized nature of race-based bias; and

(D) advise and consult with the Executive and Legislative Branches of State government on the impact of policies and legislation on mitigating systemic racism.

(b) Jurisdiction. The Commission shall have jurisdiction to investigate and enforce complaints of unlawful discrimination in violation of chapter 139 of this title, discrimination in public accommodations and rental and sale of real estate. The Commission shall also have jurisdiction when the party complained against is a State agency in matters for which the Attorney General would otherwise have jurisdiction under subsection (c) of this section.
(c) **Referral to Attorney General.** All complaints of unlawful discrimination in violation of 21 V.S.A. §§ 495 et seq. and 710, the Fair Employment Practices Act and the provisions for workers’ compensation discrimination, respectively, and of 21 V.S.A. § 471 et seq. shall be referred to the Attorney General’s office, for investigation and enforcement.

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

§ 4553. **POWERS**

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

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

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

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

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

(5) Issue subpoenas to compel testimony or access to or production of records, documents, and other evidence or possible sources of evidence or the appearance of persons, provided that the subpoena is issued pursuant to a complaint filed in accordance with section 4554 of this title and that there is reasonable cause to believe that those materials or the testimony of the person are material to the complaint. Subpoenas issued under this subdivision shall
be accompanied with a notice that informs the person that the person has a
right to contest the subpoena at a hearing before not less than three members of
the Commission and that the person has the additional right to contest the
subpoena in court. Subpoenas issued under this subdivision shall be enforced
as provided in 3 V.S.A. §§ 809a and 809b.

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

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

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

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

(iv) Costs and reasonable attorney’s fees associated with the
investigation and enforcement of actions; any such costs or fees recovered by
the Human Rights Commission under this chapter shall be deposited in the
Commission’s special fund and shall be available to the Commission to offset the costs of providing legal services.

(v) Other appropriate relief.

(vi) Trial by jury.

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

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

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

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

(b) The Human Rights Commission shall forward, on or before January 1 of each year, to the Speaker of the House and the President of the Senate an annual report on the status of Commission program operations, the number and type of calls received, complaints filed and investigated, closure of litigated and nonlitigated complaints, public educational activities undertaken, and recommendations for improved human rights advocacy and activities.
including recommendations for the mitigation of systemic racism across the State. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

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

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

(a) The Human Rights Commission shall:

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

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

(3) on or before January 1, 2019:

(A) establish the functional and operational requirements of a 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.

(b) Each State government agency shall:

(1) on or before March 1, 2019, submit its policy on fairness and
diversity to the Commission for review; and

(2) on or before June 30, 2019, conduct a systemic racism training for its

employees that meets the standards set forth in the Commission’s training
framework and report to the Commission on a plan for conducting ongoing
annual trainings.

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

(e)(1) On or before September 1, 2014 June 30, 2019, every state, county,

and municipal law enforcement agency shall collect roadside stop data
consisting of the following:

* * *

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

(2) Law enforcement agencies shall work with the Criminal Justice Training Council and a vendor chosen by the Council, and the Human Rights Commission with the goals of collecting uniform data, adopting uniform storage methods and periods, and ensuring that data can be analyzed. Roadside stop data, as well as reports and analysis of roadside stop data, shall be public.

(3) On or before September 1, 2016 June 30, 2019 and annually thereafter, law enforcement agencies shall provide the data collected under this subsection to the vendor chosen by the Criminal Justice Training Council under subdivision (2) of this subsection or, in the event the vendor is unable to continue receiving data under this section, to the Council and the Human Rights Commission. Law enforcement agencies shall provide the data collected under this subsection in an electronic format specified by the receiving entity.

(4) The data provided pursuant to subdivision (3) of this subsection shall be posted electronically in a manner that is analyzable and accessible to the public on the receiving agency’s website.

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

(e)(1) The criteria for all minimum training standards under this section shall include anti-bias training approved by the Vermont Criminal Justice
Training Council and training on the State, county, or municipal law enforcement agency’s fair and impartial policing policy, adopted pursuant to subsection 2366(a) of this title; and training on the agency’s policy regarding appropriate use of force, de-escalation, and cross-cultural awareness, adopted pursuant to section 2326 of this title.

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

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

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

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

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

(B)(ii) the incorporation of implicit bias training into the requirements of basic training pursuant to this subsection (e); and
(C)(iii) the implementation of all trainings as required by this subsection; (e); and

(B) the Human Rights Commission regarding:

(i) the adoption and implementation of the Commission’s recommended data collection methods and trainings and policies pursuant to 9 V.S.A. § 4552;

(ii) the incorporation of the policy regarding appropriate use of force, de-escalation, and cross-cultural awareness training into the requirements of basic training pursuant to this subsection (e); and

(iii) the implementation of all trainings as required by this subsection (e).

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

§ 2368. APPROPRIATE USE OF FORCE, DE-ESCALATION, AND CROSS-CULTURAL AWARENESS POLICY

(a)(1) On or before October 1, 2018, the Criminal Justice Training Council, in consultation with stakeholders, including the Vermont League of Cities and Towns, the Vermont Human Rights Commission, and Migrant Justice, shall create a model policy regarding the appropriate use of force, de-escalation, and cross-cultural awareness.

(2) On or before January 1, 2019, every State, local, county, and municipal law enforcement agency and every constable who exercises law
enforcement authority pursuant to 24. V.S.A. § 1936a and who is trained in
compliance with section 2358 of this title shall adopt a policy regarding the
appropriate use of force, de-escalation, and cross-cultural awareness that
includes, at a minimum, each component of the Criminal Justice Training
Council’s model policy.

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

(c) On or before September 15, 2019, and annually thereafter as part of
their annual training report to the Council, every State, county, and municipal
law enforcement agency and every constable who exercises law enforcement
authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with
section 2358 of this title shall report to the Council regarding whether the
agency or constable has adopted a policy regarding the appropriate use of
force, de-escalation, and cross-cultural awareness in accordance with this
section. The Criminal Justice Training Council shall determine, as part of the
Council’s annual certification of training requirements, whether current
officials have received training on the appropriate use of force, de-escalation,
and cross-cultural awareness as required by subsection 2358(e) of this title.
(d) On or before October 15, 2019, and annually thereafter on or before April 1, the Criminal Justice Training Council shall report to the House and Senate Committees on Judiciary which departments and officers have adopted a policy regarding the appropriate use of force, de-escalation, and cross-cultural awareness.

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

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

§ 1455a. RACIAL PROFILING PROHIBITED

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

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

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

(b) No law enforcement officer as defined in 23 V.S.A. § 4(11) shall engage in racial profiling.
(c) A law enforcement officer who violates subsection (b) of this section shall be imprisoned not more than three years or fined not more than $10,000.00, or both.

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

§ 1457. CIVIL LIABILITY AND ENFORCEMENT

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

Sec. 10. EFFECTIVE DATES

(a) This section, and Secs. 1-4, 7, 8, and 9 shall take effect on July 1, 2018.

(b) Sec. 5 shall take effect on June 30, 2019.

(c) Sec. 6 shall take effect on January 1, 2019.