

108TH CONGRESS
2D SESSION

S. 2132

To prohibit racial profiling.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2004

Mr. FEINGOLD (for himself, Mr. CORZINE, Mrs. CLINTON, Mr. LAUTENBERG, Mr. KENNEDY, Mr. SCHUMER, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, Mr. REID, Mr. DODD, Ms. CANTWELL, Ms. MIKULSKI, and Mr. EDWARDS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit racial profiling.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “End Racial Profiling Act of 2004”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—PROHIBITION OF RACIAL PROFILING

Sec. 101. Prohibition.
Sec. 102. Enforcement.

TITLE II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY
FEDERAL LAW ENFORCEMENT AGENCIES

Sec. 201. Policies to eliminate racial profiling.

TITLE III—PROGRAMS TO ELIMINATE RACIAL PROFILING BY
STATE AND LOCAL LAW ENFORCEMENT AGENCIES

Sec. 301. Policies required for grants.

Sec. 302. Best practices development grants.

TITLE IV—DEPARTMENT OF JUSTICE REPORTS ON RACIAL
PROFILING IN THE UNITED STATES

Sec. 401. Attorney General to issue reports on racial profiling in the United States.

Sec. 402. Limitation on use of data.

TITLE V—DEFINITIONS AND MISCELLANEOUS PROVISIONS

Sec. 501. Definitions.

Sec. 502. Severability.

Sec. 503. Savings clause.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds the following:

3 (1) Federal, State, and local law enforcement
4 agents play a vital role in protecting the public from
5 crime and protecting the Nation from terrorism. The
6 vast majority of law enforcement agents nationwide
7 discharge their duties professionally and without
8 bias.

9 (2) The use by police officers of race, ethnicity,
10 religion, or national origin in deciding which persons
11 should be subject to traffic stops, stops and frisks,
12 questioning, searches, and seizures is improper.

13 (3) In his address to a Joint Session of Con-
14 gress on February 27, 2001, President George W.
15 Bush declared that “racial profiling is wrong and we

1 will end it in America.” He directed the Attorney
2 General to implement this policy.

3 (4) In June 2003, the Department of Justice
4 issued a Policy Guidance regarding racial profiling
5 by Federal law enforcement agencies which stated:
6 “Racial profiling in law enforcement is not merely
7 wrong, but also ineffective. Race-based assumptions
8 in law enforcement perpetuate negative racial stereo-
9 types that are harmful to our rich and diverse de-
10 mocracy, and materially impair our efforts to main-
11 tain a fair and just society.”

12 (5) The Department of Justice Guidance is a
13 useful first step, but does not achieve the President’s
14 stated goal of ending racial profiling in America: it
15 does not apply to State and local law enforcement
16 agencies, does not contain a meaningful enforcement
17 mechanism, does not require data collection, and
18 contains an overbroad exception for immigration and
19 national security matters.

20 (6) Current efforts by State and local govern-
21 ments to eradicate racial profiling and redress the
22 harms it causes, while also laudable, have been lim-
23 ited in scope and insufficient to address this national
24 problem. Therefore, Federal legislation is needed.

1 (7) Statistical evidence from across the country
2 demonstrates that racial profiling is a real and
3 measurable phenomenon.

4 (8) As of November 15, 2000, the Department
5 of Justice had 14 publicly noticed, ongoing, pattern
6 or practice investigations involving allegations of ra-
7 cial profiling, and had filed 5 pattern and practice
8 lawsuits involving allegations of racial profiling, with
9 4 of those cases resolved through consent decrees.

10 (9) A large majority of individuals subjected to
11 stops and other enforcement activities based on race,
12 ethnicity, religion, or national origin are found to be
13 law abiding and therefore racial profiling is not an
14 effective means to uncover criminal activity.

15 (10) A 2001 Department of Justice report on
16 citizen-police contacts in 1999 found that, although
17 African-Americans and Hispanics were more likely
18 to be stopped and searched, they were less likely to
19 be in possession of contraband. On average, searches
20 and seizures of African-American drivers yielded evi-
21 dence only 8 percent of the time, searches and sei-
22 zures of Hispanic drivers yielded evidence only 10
23 percent of the time, and searches and seizures of
24 white drivers yielded evidence 17 percent of the
25 time.

1 (11) A 2000 General Accounting Office report
2 on the activities of the United States Customs Serv-
3 ice during fiscal year 1998 found that—

4 (A) black women who were United States
5 citizens were 9 times more likely than white
6 women who were United States citizens to be x-
7 rayed after being frisked or patted down;

8 (B) black women who were United States
9 citizens were less than half as likely as white
10 women who were United States citizens to be
11 found carrying contraband; and

12 (C) in general, the patterns used to select
13 passengers for more intrusive searches resulted
14 in women and minorities being selected at rates
15 that were not consistent with the rates of find-
16 ing contraband.

17 (12) In some jurisdictions, local law enforce-
18 ment practices such as ticket and arrest quotas, and
19 similar management practices, may have the unin-
20 tended effect of encouraging law enforcement agents
21 to engage in racial profiling.

22 (13) Racial profiling harms individuals sub-
23 jected to it because they experience fear, anxiety, hu-
24 miliation, anger, resentment, and cynicism when
25 they are unjustifiably treated as criminal suspects.

1 By discouraging individuals from traveling freely, ra-
2 cial profiling impairs both interstate and intrastate
3 commerce.

4 (14) Racial profiling damages law enforcement
5 and the criminal justice system as a whole by under-
6 mining public confidence and trust in the police, the
7 courts, and the criminal law.

8 (15) In the wake of the September 11, 2001,
9 terrorist attacks, many Arabs, Muslims, Central and
10 South Asians, and Sikhs, as well as other immi-
11 grants and Americans of foreign descent, were treat-
12 ed with generalized suspicion and subjected to
13 searches and seizures based upon religion and na-
14 tional origin, without trustworthy information link-
15 ing specific individuals to criminal conduct. Such
16 profiling has failed to produce tangible benefits, yet
17 has created a fear and mistrust of law enforcement
18 agencies in these communities.

19 (16) Racial profiling violates the equal protec-
20 tion clause of the Constitution. Using race, ethnicity,
21 religion, or national origin as a proxy for criminal
22 suspicion violates the constitutional requirement that
23 police and other government officials accord to all
24 citizens the equal protection of the law. Arlington

1 Heights v. Metropolitan Housing Development Cor-
2 poration, 429 U.S. 252 (1977).

3 (17) Racial profiling is not adequately ad-
4 dressed through suppression motions in criminal
5 cases for two reasons. First, the Supreme Court
6 held, in *Whren v. United States*, 517 U.S. 806
7 (1996), that the racially discriminatory motive of a
8 police officer in making an otherwise valid traffic
9 stop does not warrant the suppression of evidence.
10 Second, since most stops do not result in the dis-
11 covery of contraband, there is no criminal prosecu-
12 tion and no evidence to suppress.

13 (18) A comprehensive national solution is need-
14 ed to address racial profiling at the Federal, State,
15 and local levels. Federal support is needed to combat
16 racial profiling through specialized training of law
17 enforcement agents, improved management systems,
18 and the acquisition of technology such as in-car
19 video cameras.

20 (b) PURPOSES.—The purposes of this Act are—

21 (1) to enforce the constitutional right to equal
22 protection of the laws, pursuant to the Fifth Amend-
23 ment and section 5 of the 14th Amendment to the
24 Constitution of the United States;

1 (2) to enforce the constitutional right to protec-
2 tion against unreasonable searches and seizures,
3 pursuant to the Fourth Amendment to the Constitu-
4 tion of the United States;

5 (3) to enforce the constitutional right to inter-
6 state travel, pursuant to section 2 of article IV of
7 the Constitution of the United States; and

8 (4) to regulate interstate commerce, pursuant
9 to clause 3 of section 8 of article I of the Constitu-
10 tion of the United States.

11 **TITLE I—PROHIBITION OF**
12 **RACIAL PROFILING**

13 **SEC. 101. PROHIBITION.**

14 No law enforcement agent or law enforcement agency
15 shall engage in racial profiling.

16 **SEC. 102. ENFORCEMENT.**

17 (a) **REMEDY.**—The United States, or an individual
18 injured by racial profiling, may enforce this title in a civil
19 action for declaratory or injunctive relief, filed either in
20 a State court of general jurisdiction or in a district court
21 of the United States.

22 (b) **PARTIES.**—In any action brought pursuant to
23 this title, relief may be obtained against—

1 (1) any governmental unit that employed any
2 law enforcement agent who engaged in racial
3 profiling;

4 (2) any agent of such unit who engaged in ra-
5 cial profiling; and

6 (3) any person with supervisory authority over
7 such agent.

8 (c) NATURE OF PROOF.—Proof that the routine or
9 spontaneous investigatory activities of law enforcement
10 agents in a jurisdiction have had a disparate impact on
11 racial, ethnic, or religious minorities shall constitute prima
12 facie evidence of a violation of this title.

13 (d) ATTORNEY’S FEES.—In any action or proceeding
14 to enforce this title against any governmental unit, the
15 court may allow a prevailing plaintiff, other than the
16 United States, reasonable attorney’s fees as part of the
17 costs, and may include expert fees as part of the attorney’s
18 fee.

19 **TITLE II—PROGRAMS TO ELIMI-**
20 **NATE RACIAL PROFILING BY**
21 **FEDERAL LAW ENFORCE-**
22 **MENT AGENCIES**

23 **SEC. 201. POLICIES TO ELIMINATE RACIAL PROFILING.**

24 (a) IN GENERAL.—Federal law enforcement agencies
25 shall—

1 (1) maintain adequate policies and procedures
2 designed to eliminate racial profiling; and

3 (2) cease existing practices that encourage ra-
4 cial profiling.

5 (b) POLICIES.—The policies and procedures de-
6 scribed in subsection (a)(1) shall include—

7 (1) a prohibition on racial profiling;

8 (2) the collection of data on routine investiga-
9 tory activities sufficient to determine if law enforce-
10 ment agents are engaged in racial profiling and sub-
11 mission of that data to the Attorney General;

12 (3) independent procedures for receiving, inves-
13 tigating, and responding meaningfully to complaints
14 alleging racial profiling by law enforcement agents of
15 the agency;

16 (4) procedures to discipline law enforcement
17 agents who engage in racial profiling; and

18 (5) such other policies or procedures that the
19 Attorney General deems necessary to eliminate racial
20 profiling.

1 **TITLE III—PROGRAMS TO ELIMI-**
2 **NATE RACIAL PROFILING BY**
3 **STATE AND LOCAL LAW EN-**
4 **FORCEMENT AGENCIES**

5 **SEC. 301. POLICIES REQUIRED FOR GRANTS.**

6 (a) IN GENERAL.—An application by a State or gov-
7 ernmental unit for funding under a covered program shall
8 include a certification that such unit and any agency to
9 which it is redistributing program funds—

10 (1) maintains adequate policies and procedures
11 designed to eliminate racial profiling; and

12 (2) has ceased any existing practices that en-
13 courage racial profiling.

14 (b) POLICIES.—The policies and procedures de-
15 scribed in subsection (a) shall include—

16 (1) a prohibition on racial profiling;

17 (2) the collection of data on routine investiga-
18 tory activities sufficient to determine if law enforce-
19 ment agents are engaged in racial profiling, and sub-
20 mission of that data to the Attorney General;

21 (3) independent procedures for receiving, inves-
22 tigating, and responding meaningfully to complaints
23 alleging racial profiling by law enforcement agents;

24 (4) procedures to discipline law enforcement
25 agents who engage in racial profiling; and

1 (5) such other policies or procedures that the
2 Attorney General deems necessary to eliminate racial
3 profiling.

4 (c) NONCOMPLIANCE.—If the Attorney General de-
5 termines that a grantee is not in compliance with condi-
6 tions established under this title, the Attorney General
7 shall withhold the grant, in whole or in part, until the
8 grantee establishes compliance. The Attorney General
9 shall provide notice regarding State grants and opportuni-
10 ties for private parties to present evidence to the Attorney
11 General that a grantee is not in compliance with condi-
12 tions established under this title.

13 **SEC. 302. BEST PRACTICES DEVELOPMENT GRANTS.**

14 (a) GRANT AUTHORIZATION.—The Attorney General
15 may make grants to States, law enforcement agencies and
16 other governmental units, Indian tribal governments, or
17 other public and private entities, to develop and implement
18 best practice devices and systems to ensure the racially
19 neutral administration of justice.

20 (b) USES.—The funds provided pursuant to sub-
21 section (a) may be used to support—

22 (1) development and implementation of training
23 to prevent racial profiling and to encourage more re-
24 spectful interaction with the public;

1 (2) acquisition and use of technology to facili-
2 tate the collection of data regarding routine inves-
3 tigatory activities in order to determine if law en-
4 forcement agents are engaged in racial profiling;

5 (3) acquisition and use of technology to verify
6 the accuracy of data collection, including in-car video
7 cameras and portable computer systems;

8 (4) development and acquisition of early warn-
9 ing systems and other feedback systems that help
10 identify officers or units of officers engaged in or at
11 risk of racial profiling or other misconduct, including
12 the technology to support such systems;

13 (5) establishment or improvement of systems
14 and procedures for receiving, investigating, and re-
15 sponding meaningfully to complaints alleging racial,
16 ethnic, or religious bias by law enforcement agents;
17 and

18 (6) establishment or improvement of manage-
19 ment systems to ensure that supervisors are held ac-
20 countable for the conduct of their subordinates.

21 (c) **EQUITABLE DISTRIBUTION.**—The Attorney Gen-
22 eral shall ensure that grants under this section are award-
23 ed in a manner that reserves an equitable share of funding
24 for small and rural law enforcement agencies.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—The At-
2 torney General shall make available such sums as are nec-
3 essary to carry out this section from amounts appro-
4 priated for programs administered by the Attorney Gen-
5 eral.

6 **TITLE IV—DEPARTMENT OF JUS-**
7 **TICE REPORTS ON RACIAL**
8 **PROFILING IN THE UNITED**
9 **STATES**

10 **SEC. 401. ATTORNEY GENERAL TO ISSUE REPORTS ON RA-**
11 **CIAL PROFILING IN THE UNITED STATES.**

12 (a) REPORTS.—

13 (1) IN GENERAL.—Not later than 2 years after
14 the enactment of this Act, and each year thereafter,
15 the Attorney General shall submit to Congress a re-
16 port on racial profiling by Federal, State, and local
17 law enforcement agencies in the United States.

18 (2) SCOPE.—The reports issued pursuant to
19 paragraph (1) shall include—

20 (A) a summary of data collected pursuant
21 to sections 201(b)(2) and 301(b)(2) and any
22 other reliable source of information regarding
23 racial profiling in the United States;

24 (B) the status of the adoption and imple-
25 mentation of policies and procedures by Federal

1 law enforcement agencies pursuant to section
2 201;

3 (C) the status of the adoption and imple-
4 mentation of policies and procedures by State
5 and local law enforcement agencies pursuant to
6 sections 301 and 302; and

7 (D) a description of any other policies and
8 procedures that the Attorney General believes
9 would facilitate the elimination of racial
10 profiling.

11 (b) DATA COLLECTION.—Not later than 6 months
12 after the enactment of this Act, the Attorney General shall
13 by regulation establish standards for the collection of data
14 under sections 201(b)(2) and 301(b)(2), including stand-
15 ards for setting benchmarks against which collected data
16 shall be measured. Such standards shall result in the col-
17 lection of data, including data with respect to stops,
18 searches, seizures, and arrests, that is sufficiently detailed
19 to determine whether law enforcement agencies are en-
20 gaged in racial profiling and to monitor the effectiveness
21 of policies and procedures designed to eliminate racial
22 profiling.

23 (c) PUBLIC ACCESS.—Data collected under sections
24 201(b)(2) and 301(b)(2) shall be available to the public.

1 **SEC. 402. LIMITATION ON USE OF DATA.**

2 Information released pursuant to section 401 shall
3 not reveal the identity of any individual who is detained
4 or any law enforcement officer involved in a detention.

5 **TITLE V—DEFINITIONS AND**
6 **MISCELLANEOUS PROVISIONS**

7 **SEC. 501. DEFINITIONS.**

8 In this Act:

9 (1) COVERED PROGRAM.—The term “covered
10 program” means any program or activity funded in
11 whole or in part with funds made available under—

12 (A) the Edward Byrne Memorial State and
13 Local Law Enforcement Assistance Programs
14 (part E of title I of the Omnibus Crime Control
15 and Safe Streets Act of 1968 (42 U.S.C. 3750
16 et seq.));

17 (B) the “Cops on the Beat” program
18 under part Q of title I of the Omnibus Crime
19 Control and Safe Streets Act of 1968 (42
20 U.S.C. 3796dd et seq.), but not including any
21 program, project, or other activity specified in
22 section 1701(d)(8) of that Act (42 U.S.C.
23 3796dd(d)(8)); and

24 (C) the Local Law Enforcement Block
25 Grant program of the Department of Justice,
26 as described in appropriations Acts.

1 (2) GOVERNMENTAL UNIT.—The term “govern-
2 mental unit” means any department, agency, special
3 purpose district, or other instrumentality of Federal,
4 State, local, or Indian tribal government.

5 (3) LAW ENFORCEMENT AGENCY.—The term
6 “law enforcement agency” means a Federal, State,
7 local, or Indian tribal public agency engaged in the
8 prevention, detection, or investigation of violations of
9 criminal, immigration, or customs laws.

10 (4) LAW ENFORCEMENT AGENT.—The term
11 “law enforcement agent” means any Federal, State,
12 local, or Indian tribal official responsible for enforce-
13 ing criminal, immigration, or customs laws, includ-
14 ing police officers and other agents of Federal,
15 State, and local law enforcement agencies.

16 (5) RACIAL PROFILING.—The term “racial
17 profiling” means the practice of a law enforcement
18 agent relying, to any degree, on race, ethnicity, reli-
19 gion, or national origin in selecting which individuals
20 to subject to routine or spontaneous investigatory
21 activities, or in deciding upon the scope and sub-
22 stance of law enforcement activity following the ini-
23 tial investigatory procedure, except when there is
24 trustworthy information, relevant to the locality and
25 timeframe, that links persons of a particular race,

1 ethnicity, religion, or national origin to an identified
2 criminal incident or scheme.

3 (6) ROUTINE OR SPONTANEOUS INVESTIGATORY
4 ACTIVITIES.—The term “routine or spontaneous in-
5 vestigatory activities” means the following activities
6 by law enforcement agents: interviews; traffic stops;
7 pedestrian stops; frisks and other types of body
8 searches; consensual or nonconsensual searches of
9 the persons or possessions (including vehicles) of
10 motorists or pedestrians; inspections and interviews
11 of entrants into the United States that are more ex-
12 tensive than those customarily carried out; immigra-
13 tion related workplace investigations; and such other
14 types of law enforcement encounters compiled by the
15 FBI and the Justice Department’s Bureau of Jus-
16 tice Statistics.

17 **SEC. 502. SEVERABILITY.**

18 If any provision of this Act or the application of such
19 provision to any person or circumstance is held to be un-
20 constitutional, the remainder of this Act and the applica-
21 tion of the provisions of such to any person or cir-
22 cumstance shall not be affected thereby.

23 **SEC. 503. SAVINGS CLAUSE.**

24 Nothing in this Act shall be construed to limit legal
25 or administrative remedies under section 1979 of the Re-

1 vised Statutes of the United States (42 U.S.C. 1983), sec-
2 tion 210401 of the Violent Crime Control and Law En-
3 forcement Act of 1994 (42 U.S.C. 14141), the Omnibus
4 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
5 3701 et seq.), and title VI of the Civil Rights Act of 1964
6 (42 U.S.C. 2000d et seq.).

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