

THE END RACIAL PROFILING ACT of 2011

The End Racial Profiling Act is designed to enforce the constitutional right to equal protection of the laws by eliminating racial profiling through changing the policies and procedures underlying the practice.

- First, the bill provides a prohibition on racial profiling, enforceable by declaratory or injunctive relief.
- Second, the bill mandates training on racial profiling issues as part of Federal law enforcement training, the collection of data on all routine or spontaneous investigatory activities that is to be submitted through a standardized form to the Department of Justice.
- Third, the receipt of federal law enforcement and other funds that go to state and local governments is conditioned on their adoption of effective policies that prohibit racial profiling.
- Fourth, the Justice Department is authorized to provide grants for the development and implementation of best policing practices, such as early warning systems, technology integration, and other management protocols that discourage profiling.
- Finally, the Attorney General is required to provide periodic reports to assess the nature of any ongoing discriminatory profiling practices.

Definitions and Title I: Prohibition of Racial Profiling

This Title would ban racial profiling, defined as the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, religion, or national origin in selecting which individuals to subject to routine or spontaneous investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and time frame, that links persons of a particular race, ethnicity, religion, or national origin to an identified criminal incident or scheme.

“Routine or spontaneous investigatory activities” are activities by law enforcement that include: interviews; traffic and pedestrian stops; frisks and other types of body searches; consensual or nonconsensual searches of the persons or possessions (including vehicles) of individuals using any form of public or private transportation, including motorists and pedestrians; data collection and analysis, assessments, and predicated investigations; inspections and interviews of individuals entering the United States; and immigration-related workplace investigations.

“Law enforcement agency” means any Federal, State, local, or Indian tribal public agency engaged in the prevention, detection, or investigation of violations of criminal, immigration, or customs laws.

The Department of Justice or individuals would be able to enforce this prohibition by filing a suit for declaratory or injunctive relief in state court or in a federal district court.

Title II: Programs to Eliminate Racial Profiling by Federal Law Enforcement Agencies

This Title would require federal law enforcement agencies to cease practices that permit racial profiling and to maintain adequate policies and procedures to eliminate racial profiling, including the following:

- A prohibition on racial profiling;
- Training on racial profiling issues as part of federal law enforcement training;
- The collection of data on routine investigatory activities, in accordance with Title IV;
- Procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement agencies; and
- Any other policies and procedures the Attorney General determines to be necessary to eliminate racial profiling by Federal law enforcement agencies.

Title III: Programs to Eliminate Racial Profiling by State, Local, and Indian Tribal Law Enforcement Agencies.

This Title would require as a condition of funding for State, local, or Indian tribal law enforcement agencies to cease practices that encourage racial profiling and adopt policies and procedures to eliminate racial profiling, including the following:

- a prohibition on racial profiling;
- training on racial profiling issues as part of law enforcement training;
- the collection of data on routine investigatory activities, in accordance with Title IV
- participation in an administrative complaint procedure or independent audit program that meets the requirements of Title III.

If the Attorney General determines that a grantee of specified federal funds is not in compliance with these requirements, the Attorney General shall withhold all or part of the grant, until compliance is established. The Attorney General shall provide notice and an opportunity for private parties to present evidence that a grant recipient is not in compliance with the Title.

The Attorney General may administer a two-year, demonstration project for up to 5 grants or contracts for the purpose of developing and implementing data collection on hit rates for stops and searches. The data collected shall be disaggregated by race, ethnicity, national origin, and religion.

Competitive grant activities shall include:

- Developing a data collection tool and reporting the compiled data to the Attorney General;
- Training law enforcement personnel on data collection.

This Title would also authorize the Attorney General to provide grants for the development and implementation of best practices to eliminate racial profiling, such as the following activities:

- Training to prevent racial profiling and to encourage more respectful interaction with the public;
- Acquisition and use of technology to facilitate the accurate collection and analysis of data;

- Development of feedback systems and technologies that identify officers or units of officers engaged in, or at risk of engaging in, racial profiling or other misconduct;
- Establishment and maintenance of an administrative complaint procedure or independent auditor program.

Title IV: Data Collection

Not later than six months after enactment of this Act, the Attorney General shall issue regulations for the collection and compilation of data pursuant to Titles II and III. The regulations issued shall:

- Provide for the collection of data on all routine or spontaneous investigatory activities;
- Provide that the data collected shall—
 - o be collected by race, ethnicity, national origin, gender, and religion, as perceived by the law enforcement officer;
 - o include the date, time, and location of such investigatory activities;
 - o include detail sufficient to permit an analysis of whether a law enforcement agency is engaging in racial profiling; and
 - o not include personally identifiable information.
- Include guidelines for setting comparative benchmarks, consistent with best practices, against which data shall be measured.
- Not later than three years after enactment of this Act and annually thereafter, the Bureau of Justice Statistics must issue a report to Congress analyzing the data for any statistically significant disparities. The annual report and data must be made available to the public, including on a website of the Department of Justice.
- The regulations shall protect the privacy of individuals whose data is collected by: limiting the use of the data collected under the Act to the purposes set forth in the Act; limiting access to the data collected to agents who require access; requiring contractors who are permitted access to the data collected to sign use agreements and disclosure restrictions; requiring the maintenance of adequate security measures to prevent unauthorized access to the data collected under the Act.
- Identifying information of the law enforcement officer, complainant, or any other individual involved in any activity shall not be
 - o Released to the public; or
 - o Disclosed to any person, except as necessary to comply with this Act.
 - o Subject to disclosure under the Freedom of Information Act.

Title V: Department of Justice Regulations and Reports on Racial Profiling in the United States

The Attorney General is authorized to promulgate other regulations deemed necessary to implement this Act. Not later than two years after enactment of this Act and each year thereafter,

the Attorney General must submit to Congress a report on racial profiling by law enforcement agencies. This report shall include a summary of the data collected pursuant to Titles II and III.

Title VI: Miscellaneous Provisions

If any provision of this Act is held unconstitutional, the remainder of the Act shall not be affected. Additionally, nothing in this Act shall be construed to limit legal or administrative remedies under specified statutes. Nothing in this Act shall be construed to limit legal or administrative remedies under specified statutes, or affects any Federal, State, or tribal law that applies to an Indian tribe because of the political status of the tribe or waives the sovereign immunity of an Indian tribe without consent of the tribe.