

108TH CONGRESS
2D SESSION

H. R. 3847

To prohibit racial profiling.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2004

Mr. CONYERS (for himself, Mr. BERMAN, Mr. NADLER, Mr. SCOTT of Virginia, Mr. WATT, Ms. JACKSON-LEE of Texas, Ms. WATERS, Mr. DELAHUNT, Ms. BALDWIN, Mr. WEINER, Ms. LINDA T. SÁNCHEZ of California, Mr. ABERCROMBIE, Mr. ACEVEDO-VILÁ, Mr. ANDREWS, Mr. BALLANCE, Mr. BELL, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BRADY of Pennsylvania, Ms. CORRINE BROWN of Florida, Mr. BROWN of Ohio, Mrs. CAPPS, Ms. CARSON of Indiana, Mrs. CHRISTENSEN, Mr. CLAY, Mr. CLYBURN, Mr. CUMMINGS, Mr. DAVIS of Alabama, Mr. DAVIS of Illinois, Mr. DAVIS of Florida, Mr. DEUTSCH, Mr. ENGEL, Mr. FALEOMAVAEGA, Mr. FARR, Mr. FATTAH, Mr. FILNER, Mr. FORD, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEPHARDT, Mr. GREEN of Texas, Mr. GUTIERREZ, Mr. GONZALEZ, Mr. GRIJALVA, Mr. HASTINGS of Florida, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOFFEL, Mr. HOLT, Mr. HONDA, Mr. JACKSON of Illinois, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KILDEE, Ms. KILPATRICK, Mr. KLECZKA, Mr. KUCINICH, Mr. LAMPSON, Mr. LANTOS, Mr. LARSEN of Washington, Ms. LEE, Mr. LEWIS of Georgia, Ms. MAJETTE, Mrs. MALONEY, Mr. MATHESON, Mr. MATSUI, Ms. MCCARTHY of Missouri, Mrs. MCCARTHY of New York, Ms. MCCOLLUM, Mr. McDERMOTT, Mr. MCGOVERN, Mr. McNULTY, Mr. MEEKS of New York, Mr. MENENDEZ, Ms. MILLENDER-McDONALD, Mr. GEORGE MILLER of California, Ms. NORTON, Mr. OLVER, Mr. OWENS, Mr. PASTOR, Mr. PAYNE, Ms. PELOSI, Mr. PRICE of North Carolina, Mr. RANGEL, Mr. RODRIGUEZ, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. SANDERS, Ms. LORETTA SANCHEZ of California, Mr. SANDLIN, Ms. SCHAKOWSKY, Mr. SCOTT of Georgia, Mr. SERRANO, Mr. SHAYS, Ms. SLAUGHTER, Ms. SOLIS, Mr. SPRATT, Mr. STARK, Mrs. TAUSCHER, Mr. THOMPSON of Mississippi, Mr. TIERNEY, Mr. TOWNS, Mrs. JONES of Ohio, Mr. WALSH, Ms. WATSON, Ms. WOOLSEY, Mr. WU, and Mr. WYNN) 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.

8 **SEC. 2. FINDINGS AND PURPOSES.**

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

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

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

11 (3) In his address to a Joint Session of Con-
12 gress on February 27, 2001, President George W.
13 Bush declared that “racial profiling is wrong and we
14 will end it in America.” He directed the Attorney
15 General to implement this policy.

16 (4) In June 2003, the Department of Justice
17 issued a Policy Guidance regarding racial profiling
18 by Federal law enforcement agencies which stated:
19 “Racial profiling in law enforcement is not merely
20 wrong, but also ineffective. Race-based assumptions
21 in law enforcement perpetuate negative racial stereo-
22 types that are harmful to our rich and diverse de-
23 mocracy, and materially impair our efforts to main-
24 tain a fair and just society.”

1 (5) The Department of Justice Guidance is a
2 useful first step, but does not achieve the President's
3 stated goal of ending racial profiling in America: it
4 does not apply to State and local law enforcement
5 agencies, does not contain a meaningful enforcement
6 mechanism, does not require data collection, and
7 contains an overbroad exception for immigration and
8 national security matters.

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

14 (7) Statistical evidence from across the country
15 demonstrates that racial profiling is a real and
16 measurable phenomenon.

17 (8) As of November 15, 2000, the Department
18 of Justice had 14 publicly noticed, ongoing, pattern
19 or practice investigations involving allegations of ra-
20 cial profiling, and had filed 5 pattern and practice
21 lawsuits involving allegations of racial profiling, with
22 4 of those cases resolved through consent decrees.

23 (9) A large majority of individuals subjected to
24 stops and other enforcement activities based on race,
25 ethnicity, religion, or national origin are found to be

1 law abiding and therefore racial profiling is not an
2 effective means to uncover criminal activity.

3 (10) A 2001 Department of Justice report on
4 citizen-police contacts in 1999 found that, although
5 African-Americans and Hispanics were more likely
6 to be stopped and searched, they were less likely to
7 be in possession of contraband. On average, searches
8 and seizures of African-American drivers yielded evi-
9 dence only 8 percent of the time, searches and sei-
10 zures of Hispanic drivers yielded evidence only 10
11 percent of the time, and searches and seizures of
12 white drivers yielded evidence 17 percent of the
13 time.

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

17 (A) black women who were United States
18 citizens were 9 times more likely than white
19 women who were United States citizens to be x-
20 rayed after being frisked or patted down;

21 (B) black women who were United States
22 citizens were less than half as likely as white
23 women who were United States citizens to be
24 found carrying contraband; and

1 (C) in general, the patterns used to select
2 passengers for more intrusive searches resulted
3 in women and minorities being selected at rates
4 that were not consistent with the rates of find-
5 ing contraband.

6 (12) In some jurisdictions, local law enforce-
7 ment practices such as ticket and arrest quotas, and
8 similar management practices, may have the unin-
9 tended effect of encouraging law enforcement agents
10 to engage in racial profiling.

11 (13) Racial profiling harms individuals sub-
12 jected to it because they experience fear, anxiety, hu-
13 miliation, anger, resentment, and cynicism when
14 they are unjustifiably treated as criminal suspects.
15 By discouraging individuals from traveling freely, ra-
16 cial profiling impairs both interstate and intrastate
17 commerce.

18 (14) Racial profiling damages law enforcement
19 and the criminal justice system as a whole by under-
20 mining public confidence and trust in the police, the
21 courts, and the criminal law.

22 (15) In the wake of the September 11, 2001,
23 terrorist attacks, many Arabs, Muslims, Central and
24 South Asians, and Sikhs, as well as other immi-
25 grants and Americans of foreign descent, were treat-

1 ed with generalized suspicion and subjected to
2 searches and seizures based upon religion and na-
3 tional origin, without trustworthy information link-
4 ing specific individuals to criminal conduct. Such
5 profiling has failed to produce tangible benefits, yet
6 has created a fear and mistrust of law enforcement
7 agencies in these communities.

8 (16) Racial profiling violates the equal protec-
9 tion clause of the Constitution. Using race, ethnicity,
10 religion, or national origin as a proxy for criminal
11 suspicion violates the constitutional requirement that
12 police and other government officials accord to all
13 citizens the equal protection of the law. *Arlington*
14 *Heights v. Metropolitan Housing Development Cor-*
15 *poration*, 429 U.S. 252 (1977).

16 (17) Racial profiling is not adequately ad-
17 dressed through suppression motions in criminal
18 cases for two reasons. First, the Supreme Court
19 held, in *Whren v. United States*, 517 U.S. 806
20 (1996), that the racially discriminatory motive of a
21 police officer in making an otherwise valid traffic
22 stop does not warrant the suppression of evidence.
23 Second, since most stops do not result in the dis-
24 covery of contraband, there is no criminal prosecu-
25 tion and no evidence to suppress.

1 (18) A comprehensive national solution is need-
2 ed to address racial profiling at the Federal, State,
3 and local levels. Federal support is needed to combat
4 racial profiling through specialized training of law
5 enforcement agents, improved management systems,
6 and the acquisition of technology such as in-car
7 video cameras.

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

9 (1) to enforce the constitutional right to equal
10 protection of the laws, pursuant to the Fifth Amend-
11 ment and section 5 of the 14th Amendment to the
12 Constitution of the United States;

13 (2) to enforce the constitutional right to protec-
14 tion against unreasonable searches and seizures,
15 pursuant to the Fourth Amendment to the Constitu-
16 tion of the United States;

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

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

TITLE I—PROHIBITION OF RACIAL PROFILING

3 SEC. 101. PROHIBITION.

4 No law enforcement agent or law enforcement agency
5 shall engage in racial profiling.

6 SEC. 102. ENFORCEMENT.

7 (a) REMEDY.—The United States, or an individual
8 injured by racial profiling, may enforce this title in a civil
9 action for declaratory or injunctive relief, filed either in
10 a State court of general jurisdiction or in a district court
11 of the United States.

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

14 (1) any governmental unit that employed any
15 law enforcement agent who engaged in racial
16 profiling;

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

19 (3) any person with supervisory authority over
20 such agent.

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

1 (d) ATTORNEY'S FEES.—In any action or proceeding
2 to enforce this title against any governmental unit, the
3 court may allow a prevailing plaintiff, other than the
4 United States, reasonable attorney's fees as part of the
5 costs, and may include expert fees as part of the attorney's
6 fee.

7 **TITLE II—PROGRAMS TO ELIMI-**
8 **NATE RACIAL PROFILING BY**
9 **FEDERAL LAW ENFORCE-**
10 **MENT AGENCIES**

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

12 (a) IN GENERAL.—Federal law enforcement agencies
13 shall—

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

16 (2) cease existing practices that encourage ra-
17 cial profiling.

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

20 (1) a prohibition on racial profiling;

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

1 (3) independent procedures for receiving, inves-
2 tigating, and responding meaningfully to complaints
3 alleging racial profiling by law enforcement agents of
4 the agency;

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

7 (5) such other policies or procedures that the
8 Attorney General deems necessary to eliminate racial
9 profiling.

10 **TITLE III—PROGRAMS TO ELIMI-**
11 **NATE RACIAL PROFILING BY**
12 **STATE AND LOCAL LAW EN-**
13 **FORCEMENT AGENCIES**

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

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

19 (1) maintains adequate policies and procedures
20 designed to eliminate racial profiling; and

21 (2) has ceased any existing practices that en-
22 courage racial profiling.

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

25 (1) a prohibition on racial profiling;

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

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

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

10 (5) such other policies or procedures that the
11 Attorney General deems necessary to eliminate racial
12 profiling.

13 (c) NONCOMPLIANCE.—If the Attorney General de-
14 termines that a grantee is not in compliance with condi-
15 tions established under this title, the Attorney General
16 shall withhold the grant, in whole or in part, until the
17 grantee establishes compliance. The Attorney General
18 shall provide notice regarding State grants and opportuni-
19 ties for private parties to present evidence to the Attorney
20 General that a grantee is not in compliance with condi-
21 tions established under this title.

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

23 (a) GRANT AUTHORIZATION.—The Attorney General
24 may make grants to States, law enforcement agencies and
25 other governmental units, Indian tribal governments, or

1 other public and private entities, to develop and implement
2 best practice devices and systems to ensure the racially
3 neutral administration of justice.

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

6 (1) development and implementation of training
7 to prevent racial profiling and to encourage more re-
8 spectful interaction with the public;

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

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

16 (4) development and acquisition of early warn-
17 ing systems and other feedback systems that help
18 identify officers or units of officers engaged in or at
19 risk of racial profiling or other misconduct, including
20 the technology to support such systems;

21 (5) establishment or improvement of systems
22 and procedures for receiving, investigating, and re-
23 sponding meaningfully to complaints alleging racial,
24 ethnic, or religious bias by law enforcement agents;
25 and

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

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

8 (d) **AUTHORIZATION OF APPROPRIATIONS.**—The At-
9 torney General shall make available such sums as are nec-
10 essary to carry out this section from amounts appro-
11 priated for programs administered by the Attorney Gen-
12 eral.

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

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

19 (a) **REPORTS.**—

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

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

3 (A) a summary of data collected pursuant
4 to sections 201(b)(2) and 301(b)(2) and any
5 other reliable source of information regarding
6 racial profiling in the United States;

7 (B) the status of the adoption and imple-
8 mentation of policies and procedures by Federal
9 law enforcement agencies pursuant to section
10 201;

11 (C) the status of the adoption and imple-
12 mentation of policies and procedures by State
13 and local law enforcement agencies pursuant to
14 sections 301 and 302; and

15 (D) a description of any other policies and
16 procedures that the Attorney General believes
17 would facilitate the elimination of racial
18 profiling.

19 (b) DATA COLLECTION.—Not later than 6 months
20 after the enactment of this Act, the Attorney General shall
21 by regulation establish standards for the collection of data
22 under sections 201(b)(2) and 301(b)(2), including stand-
23 ards for setting benchmarks against which collected data
24 shall be measured. Such standards shall result in the col-
25 lection of data, including data with respect to stops,

1 searches, seizures, and arrests, that is sufficiently detailed
 2 to determine whether law enforcement agencies are en-
 3 gaged in racial profiling and to monitor the effectiveness
 4 of policies and procedures designed to eliminate racial
 5 profiling.

6 (c) PUBLIC ACCESS.—Data collected under sections
 7 201(b)(2) and 301(b)(2) shall be available to the public.

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

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

12 **TITLE V—DEFINITIONS AND**
 13 **MISCELLANEOUS PROVISIONS**

14 **SEC. 501. DEFINITIONS.**

15 In this Act:

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

19 (A) the Edward Byrne Memorial State and
 20 Local Law Enforcement Assistance Programs
 21 (part E of title I of the Omnibus Crime Control
 22 and Safe Streets Act of 1968 (42 U.S.C. 3750
 23 et seq.));

24 (B) the “Cops on the Beat” program
 25 under part Q of title I of the Omnibus Crime

1 Control and Safe Streets Act of 1968 (42
2 U.S.C. 3796dd et seq.), but not including any
3 program, project, or other activity specified in
4 section 1701(d)(8) of that Act (42 U.S.C.
5 3796dd(d)(8)); and

6 (C) the Local Law Enforcement Block
7 Grant program of the Department of Justice,
8 as described in appropriations Acts.

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

13 (3) LAW ENFORCEMENT AGENCY.—The term
14 “law enforcement agency” means a Federal, State,
15 local, or Indian tribal public agency engaged in the
16 prevention, detection, or investigation of violations of
17 criminal, immigration, or customs laws.

18 (4) LAW ENFORCEMENT AGENT.—The term
19 “law enforcement agent” means any Federal, State,
20 local, or Indian tribal official responsible for enforce-
21 ing criminal, immigration, or customs laws, includ-
22 ing police officers and other agents of Federal,
23 State, and local law enforcement agencies.

24 (5) RACIAL PROFILING.—The term “racial
25 profiling” means the practice of a law enforcement

1 agent relying, to any degree, on race, ethnicity, reli-
2 gion, or national origin in selecting which individuals
3 to subject to routine or spontaneous investigatory
4 activities, or in deciding upon the scope and sub-
5 stance of law enforcement activity following the ini-
6 tial investigatory procedure, except when there is
7 trustworthy information, relevant to the locality and
8 timeframe, that links persons of a particular race,
9 ethnicity, religion, or national origin to an identified
10 criminal incident or scheme.

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

1 **SEC. 502. SEVERABILITY.**

2 If any provision of this Act or the application of such
3 provision to any person or circumstance is held to be un-
4 constitutional, the remainder of this Act and the applica-
5 tion of the provisions of such to any person or cir-
6 cumstance shall not be affected thereby.

7 **SEC. 503. SAVINGS CLAUSE.**

8 Nothing in this Act shall be construed to limit legal
9 or administrative remedies under section 1979 of the Re-
10 vised Statutes of the United States (42 U.S.C. 1983), sec-
11 tion 210401 of the Violent Crime Control and Law En-
12 forcement Act of 1994 (42 U.S.C. 14141), the Omnibus
13 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
14 3701 et seq.), and title VI of the Civil Rights Act of 1964
15 (42 U.S.C. 2000d et seq.).

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