

112TH CONGRESS
1ST SESSION

H. R. 3618

To eliminate racial profiling by law enforcement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2011

Mr. CONYERS (for himself, Mr. ACKERMAN, Ms. BROWN of Florida, Mr. COHEN, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. DINGELL, Mr. ELLISON, Mr. FALEOMAVAEGA, Mr. FARR, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HONDA, Mr. JACKSON of Illinois, Mr. JOHNSON of Georgia, Mr. JOHNSON of Illinois, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. JACKSON LEE of Texas, Ms. LEE of California, Mr. LEWIS of Georgia, Ms. ZOE LOFGREN of California, Mrs. MCCARTHY of New York, Ms. MCCOLLUM, Mr. GEORGE MILLER of California, Ms. NORTON, Mr. PAYNE, Mr. PRICE of North Carolina, Mr. RANGEL, Ms. RICHARDSON, Mr. RICHMOND, Mr. ROTHMAN of New Jersey, Mr. RUSH, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. TOWNS, and Mr. WATT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To eliminate racial profiling by law enforcement, and for other purposes.

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 2011”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

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, LOCAL, AND INDIAN TRIBAL LAW ENFORCEMENT
AGENCIES

- Sec. 301. Policies required for grants.
- Sec. 302. Involvement of Attorney General.
- Sec. 303. Data collection demonstration project.
- Sec. 304. Best practices development grants.

TITLE IV—DATA COLLECTION

- Sec. 401. Attorney General to issue regulations.
- Sec. 402. Duties of the Bureau of Justice Statistics.
- Sec. 403. Limitations on publication of data.

TITLE V—DEPARTMENT OF JUSTICE REGULATIONS AND
REPORTS ON RACIAL PROFILING IN THE UNITED STATES

- Sec. 501. Attorney General to issue regulations and reports.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Severability.
- Sec. 602. Savings clause.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

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

8 (A) the Edward Byrne Memorial Justice
9 Assistance Grant Program under part E of title

1 I of the Omnibus Crime Control and Safe
2 Streets Act of 1968 (42 U.S.C. 3750 et seq.);
3 and

4 (B) the “Cops on the Beat” program
5 under part Q of title I of the Omnibus Crime
6 Control and Safe Streets Act of 1968 (42
7 U.S.C. 3796dd et seq.), except that no pro-
8 gram, project, or other activity specified in sec-
9 tion 1701(b)(13) of such part shall be a covered
10 program under this paragraph.

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

15 (3) HIT RATE.—The term “hit rate” means the
16 percentage of stops and searches in which a law en-
17 forcement officer finds drugs, a gun, or something
18 else that leads to an arrest. The hit rate is cal-
19 culated by dividing the total number of searches by
20 the number of searches that yield contraband. The
21 hit rate is complementary to the rate of false stops.

22 (4) INDIAN TRIBE.—The term “Indian tribe”
23 has the meaning given the term in section 102 of the
24 Federally Recognized Indian Tribe List Act of 1994
25 (25 U.S.C. 479a)).

1 (5) LAW ENFORCEMENT AGENCY.—The term
2 “law enforcement agency” means any Federal,
3 State, local, or Indian tribal public agency engaged
4 in the prevention, detection, or investigation of viola-
5 tions of criminal, immigration, or customs laws.

6 (6) LAW ENFORCEMENT AGENT.—The term
7 “law enforcement agent” means any Federal, State,
8 local, or Indian tribal official responsible for enforce-
9 ing criminal, immigration, or customs laws, includ-
10 ing police officers and other agents of a law enforce-
11 ment agency.

12 (7) RACIAL PROFILING.—

13 (A) DEFINITION.—The term “racial
14 profiling” means the practice of a law enforce-
15 ment agent or agency relying, to any degree, on
16 race, ethnicity, national origin, gender, or reli-
17 gion—

18 (i) in selecting which individual to
19 subject to routine or spontaneous inves-
20 tigatory activities; or

21 (ii) in deciding upon the scope and
22 substance of law enforcement activity fol-
23 lowing the initial investigatory activity.

24 (B) EXCEPTION.—The term “racial
25 profiling” does not include a practice of a law

1 enforcement agent or agency that relies on race,
2 ethnicity, national origin, gender, or religion
3 when there is trustworthy information, relevant
4 to the locality and timeframe, that links a per-
5 son of a particular race, ethnicity, national ori-
6 gin, gender, or religion to an identified criminal
7 incident or scheme.

8 (8) ROUTINE OR SPONTANEOUS INVESTIGATORY
9 ACTIVITIES.—The term “routine or spontaneous in-
10 vestigatory activities” means the following activities
11 by a law enforcement agent:

12 (A) Interviews.

13 (B) Traffic stops.

14 (C) Pedestrian stops.

15 (D) Frisks and other types of body
16 searches.

17 (E) Consensual or nonconsensual searches
18 of the persons, property, or possessions (includ-
19 ing vehicles) of individuals using any form of
20 public or private transportation, including mo-
21 torists and pedestrians.

22 (F) Data collection and analysis, assess-
23 ments, and predicated investigations.

1 (G) Inspections and interviews of entrants
2 into the United States that are more extensive
3 than those customarily carried out.

4 (H) Immigration-related workplace inves-
5 tigations.

6 (I) Such other types of law enforcement
7 encounters about which statistical information
8 is compiled for or by the Federal Bureau of In-
9 vestigation or the Department of Justice Bu-
10 reau of Justice Statistics.

11 (9) REASONABLE REQUEST.—The term “rea-
12 sonable request” means all requests for information,
13 except for those that—

14 (A) are immaterial to the investigation;

15 (B) would result in the unnecessary dislo-
16 sure of personal information; or

17 (C) would place a severe burden on the re-
18 sources of the law enforcement agency given its
19 size.

20 (10) STATE.—The term “State” means each of
21 the 50 States, the District of Columbia, the Com-
22 monwealth of Puerto Rico, and any other territory
23 or possession of the United States.

24 (11) UNIT OF LOCAL GOVERNMENT.—The term
25 “unit of local government” means—

1 (A) any city, county, township, town, bor-
2 ough, parish, village, or other general purpose
3 political subdivision of a State;

4 (B) any law enforcement district or judicial
5 enforcement district that—

6 (i) is established under applicable
7 State law; and

8 (ii) has the authority to, in a manner
9 independent of other State entities, estab-
10 lish a budget and impose taxes; or

11 (C) any Indian tribe that performs law en-
12 forcement functions, as determined by the Sec-
13 retary of the Interior.

14 **TITLE I—PROHIBITION OF**
15 **RACIAL PROFILING**

16 **SEC. 101. PROHIBITION.**

17 No law enforcement agent or law enforcement agency
18 shall engage in racial profiling.

19 **SEC. 102. ENFORCEMENT.**

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

1 (b) PARTIES.—In any action brought under this title,
2 relief may be obtained against—

3 (1) any governmental body that employed any
4 law enforcement agent who engaged in racial
5 profiling;

6 (2) any agent of such body who engaged in ra-
7 cial profiling; and

8 (3) any person with supervisory authority over
9 such agent.

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

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

1 **TITLE II—PROGRAMS TO ELIMI-**
2 **NATE RACIAL PROFILING BY**
3 **FEDERAL LAW ENFORCE-**
4 **MENT AGENCIES**

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

6 (a) IN GENERAL.—Federal law enforcement agencies
7 shall—

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

10 (2) cease existing practices that permit racial
11 profiling.

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

14 (1) a prohibition on racial profiling;

15 (2) training on racial profiling issues as part of
16 Federal law enforcement training;

17 (3) the collection of data in accordance with the
18 regulations issued by the Attorney General under
19 section 401;

20 (4) procedures for receiving, investigating, and
21 responding meaningfully to complaints alleging ra-
22 cial profiling by law enforcement agents; and

23 (5) any other policies and procedures the Attor-
24 ney General determines to be necessary to eliminate
25 racial profiling by Federal law enforcement agencies.

1 **TITLE III—PROGRAMS TO ELIMI-**
2 **NATE RACIAL PROFILING BY**
3 **STATE, LOCAL, AND INDIAN**
4 **TRIBAL LAW ENFORCEMENT**
5 **AGENCIES**

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

7 (a) IN GENERAL.—An application by a State, a unit
8 of local government, or a State, local, or Indian tribal law
9 enforcement agency for funding under a covered program
10 shall include a certification that such State, unit of local
11 government, or law enforcement agency, and any law en-
12 forcement agency to which it will distribute funds—

13 (1) maintains adequate policies and procedures
14 designed to eliminate racial profiling; and

15 (2) has eliminated any existing practices that
16 permit or encourage racial profiling.

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

19 (1) a prohibition on racial profiling;

20 (2) training on racial profiling issues as part of
21 law enforcement training;

22 (3) the collection of data in accordance with the
23 regulations issued by the Attorney General under
24 section 401; and

1 (4) participation in an administrative complaint
2 procedure or independent audit program that meets
3 the requirements of section 302.

4 (c) EFFECTIVE DATE.—This section shall take effect
5 12 months after the date of enactment of this Act.

6 **SEC. 302. INVOLVEMENT OF ATTORNEY GENERAL.**

7 (a) REGULATIONS.—

8 (1) IN GENERAL.—Not later than 6 months
9 after the date of enactment of this Act and in con-
10 sultation with stakeholders, including Federal, State,
11 tribal, and local law enforcement agencies and com-
12 munity, professional, research, and civil rights orga-
13 nizations, the Attorney General shall issue regula-
14 tions for the operation of administrative complaint
15 procedures and independent audit programs to en-
16 sure that such procedures and programs provide an
17 appropriate response to allegations of racial profiling
18 by law enforcement agents or agencies.

19 (2) GUIDELINES.—The regulations issued
20 under paragraph (1) shall contain guidelines that
21 ensure the fairness, effectiveness, and independence
22 of the administrative complaint procedures and inde-
23 pendent auditor programs.

24 (b) NONCOMPLIANCE.—If the Attorney General de-
25 termines that the recipient of a grant from any covered

1 program is not in compliance with the requirements of sec-
2 tion 301 or the regulations issued under subsection (a),
3 the Attorney General shall withhold, in whole or in part
4 (at the discretion of the Attorney General), funds for 1
5 or more grants to the recipient under the covered pro-
6 gram, until the recipient establishes compliance.

7 (c) PRIVATE PARTIES.—The Attorney General shall
8 provide notice and an opportunity for private parties to
9 present evidence to the Attorney General that a recipient
10 of a grant from any covered program is not in compliance
11 with the requirements of this title.

12 **SEC. 303. DATA COLLECTION DEMONSTRATION PROJECT.**

13 (a) COMPETITIVE AWARDS.—

14 (1) IN GENERAL.—The Attorney General may,
15 through competitive grants or contracts, carry out a
16 2-year demonstration project for the purpose of de-
17 veloping and implementing data collection programs
18 on the hit rates for stops and searches by law en-
19 forcement agencies. The data collected shall be
20 disaggregated by race, ethnicity, national origin,
21 gender, and religion.

22 (2) NUMBER OF GRANTS.—The Attorney Gen-
23 eral shall provide not more than 5 grants or con-
24 tracts under this section.

1 (3) ELIGIBLE GRANTEES.—Grants or contracts
2 under this section shall be awarded to law enforce-
3 ment agencies that serve communities where there is
4 a significant concentration of racial or ethnic minori-
5 ties and that are not already collecting data volun-
6 tarily.

7 (b) REQUIRED ACTIVITIES.—Activities carried out
8 with a grant or contract under this section shall include—

9 (1) developing a data collection tool, compiling
10 data related to hit rates, and reporting the compiled
11 data to the Attorney General; and

12 (2) training of law enforcement personnel on
13 data collection, particularly for data collection on hit
14 rates for stops and searches.

15 (c) EVALUATION.—Not later than 3 years after the
16 date of enactment of this Act, the Attorney General shall
17 enter into a contract with an institution of higher edu-
18 cation (as defined in section 101 of the Higher Education
19 Act of 1965 (20 U.S.C. 1001)) to analyze the data col-
20 lected by each of the law enforcement agencies funded
21 under this section.

22 (d) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to carry out activities
24 under this section—

1 (1) \$5,000,000, over a 2-year period, to carry
2 out the demonstration program under subsection
3 (a); and

4 (2) \$500,000 to carry out the evaluation under
5 subsection (c).

6 **SEC. 304. BEST PRACTICES DEVELOPMENT GRANTS.**

7 (a) GRANT AUTHORIZATION.—The Attorney General,
8 through the Bureau of Justice Assistance, may make
9 grants to States, local law enforcement agencies, and units
10 of local government to develop and implement best prac-
11 tice devices and systems to eliminate racial profiling.

12 (b) USE OF FUNDS.—The funds provided under sub-
13 section (a) shall be used for programs that include the
14 following purposes:

15 (1) The development and implementation of
16 training to prevent racial profiling and to encourage
17 more respectful interaction with the public.

18 (2) The acquisition and use of technology to fa-
19 cilitate the accurate collection and analysis of data
20 related to racial profiling.

21 (3) The development and acquisition of feed-
22 back systems and technologies that identify officers
23 or units of officers engaged in, or at risk of engag-
24 ing in, racial profiling or other misconduct.

1 (4) The establishment and maintenance of an
2 administrative complaint procedure or independent
3 auditor program that meets the requirements of sec-
4 tion 302.

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

9 (d) **APPLICATION.**—Each State, local law enforce-
10 ment agency, or unit of local government desiring a grant
11 under this section shall submit an application to the Attor-
12 ney General at such time, in such manner, and accom-
13 panied by such information as the Attorney General may
14 require.

15 **TITLE IV—DATA COLLECTION**

16 **SEC. 401. ATTORNEY GENERAL TO ISSUE REGULATIONS.**

17 (a) **REGULATIONS.**—Not later than 6 months after
18 the date of enactment of this Act, the Attorney General,
19 in consultation with stakeholders, including Federal,
20 State, and local law enforcement agencies and community,
21 professional, research, and civil rights organizations, shall
22 issue regulations for the collection and compilation of data
23 under sections 201 and 301.

24 (b) **REQUIREMENTS.**—The regulations issued under
25 subsection (a) shall—

1 (1) provide for the collection of data on all rou-
2 tine or spontaneous investigatory activities;

3 (2) provide that the data collected shall—

4 (A) be collected by race, ethnicity, national
5 origin, gender, and religion, as perceived by the
6 law enforcement officer;

7 (B) include the date, time, and location of
8 such investigatory activities;

9 (C) include detail sufficient to permit an
10 analysis of whether a law enforcement agency is
11 engaging in racial profiling; and

12 (D) not include personally identifiable in-
13 formation described in section 403;

14 (3) provide that a standardized form shall be
15 made available to law enforcement agencies for the
16 submission of collected data to the Department of
17 Justice;

18 (4) provide that law enforcement agencies shall
19 compile data on the standardized form made avail-
20 able under paragraph (3), and submit the form to
21 the Civil Rights Division and the Department of
22 Justice Bureau of Justice Statistics;

23 (5) provide that law enforcement agencies shall
24 maintain all data collected under this Act for not
25 less than 4 years;

1 (6) include guidelines for setting comparative
2 benchmarks, consistent with best practices, against
3 which collected data shall be measured; and

4 (7) provide for the protection of the privacy of
5 individuals whose data is collected by—

6 (A) limiting the use and disclosure of the
7 data collected under this Act to the purposes
8 set forth in this Act;

9 (B) except as otherwise provided in this
10 Act, limiting access to the data collected under
11 this Act to those Federal, State, local, or tribal
12 employees or agents who require such access in
13 order to fulfill the purposes for the data set
14 forth in this Act;

15 (C) requiring contractors or other non-gov-
16 ernmental agents who are permitted access to
17 the data collected under this Act to sign use
18 agreements incorporating the use and disclosure
19 restrictions set forth in subparagraph (A); and

20 (D) requiring the maintenance of adequate
21 security measures to prevent unauthorized ac-
22 cess to the data collected under this Act.

23 **SEC. 402. DUTIES OF THE BUREAU OF JUSTICE STATISTICS.**

24 (a) ANALYSIS AND REPORTS.—The Department of
25 Justice Bureau of Justice Statistics shall—

1 (1) analyze the data collected under sections
2 201 and 301 for any statistically significant dispari-
3 ties, including—

4 (A) disparities in the percentage of drivers
5 or pedestrians stopped relative to the proportion
6 of the population passing through the neighbor-
7 hood;

8 (B) disparities in the hit rate; and

9 (C) disparities in the frequency of searches
10 performed on minority drivers and the fre-
11 quency of searches performed on non-minority
12 drivers; and

13 (2) not later than 3 years after the date of en-
14 actment of this Act, and annually thereafter—

15 (A) prepare a report regarding the findings
16 of the analysis conducted under paragraph (1);

17 (B) provide such report to Congress and
18 the Attorney General; and

19 (C) make such report available to the pub-
20 lic, including on a Web site of the Department
21 of Justice.

22 (b) PUBLICATION OF DATA.—The Department of
23 Justice Bureau of Justice Statistics shall provide to Con-
24 gress and make available to the public, together with each
25 annual report described in subsection (a)(2), the data col-

1 lected pursuant to this Act, excluding any personally iden-
2 tifiable information described in section 403.

3 **SEC. 403. LIMITATIONS ON PUBLICATION OF DATA.**

4 The name or identifying information of a law enforce-
5 ment officer, complainant, or any other individual involved
6 in any activity for which data is collected and compiled
7 under this Act shall not be—

8 (1) released to the public;

9 (2) disclosed to any person, except for—

10 (A) such disclosures as are necessary to
11 comply with this Act;

12 (B) disclosures of information regarding a
13 particular person to that person; or

14 (C) disclosures pursuant to litigation; or

15 (3) subject to disclosure under section 552 of
16 title 5, United States Code (commonly know as the
17 Freedom of Information Act), except for disclosures
18 of information regarding a particular person to that
19 person.

1 **TITLE V—DEPARTMENT OF JUS-**
2 **TICE REGULATIONS AND RE-**
3 **PORTS ON RACIAL**
4 **PROFILING IN THE UNITED**
5 **STATES**

6 **SEC. 501. ATTORNEY GENERAL TO ISSUE REGULATIONS**
7 **AND REPORTS.**

8 (a) REGULATIONS.—In addition to the regulations re-
9 quired under sections 302 and 401, the Attorney General
10 shall issue such other regulations as the Attorney General
11 determines are necessary to implement this Act.

12 (b) REPORTS.—

13 (1) IN GENERAL.—Not later than 2 years after
14 the date of enactment of this Act, and annually
15 thereafter, the Attorney General shall submit to
16 Congress a report on racial profiling by law enforce-
17 ment agencies.

18 (2) SCOPE.—Each report submitted under
19 paragraph (1) shall include—

20 (A) a summary of data collected under sec-
21 tions 201(b)(3) and 301(b)(3) and from any
22 other reliable source of information regarding
23 racial profiling in the United States;

24 (B) a discussion of the findings in the
25 most recent report prepared by the Department

1 of Justice Bureau of Justice Statistics under
2 section 401(b)(7);

3 (C) the status of the adoption and imple-
4 mentation of policies and procedures by Federal
5 law enforcement agencies under section 201
6 and by the State and local law enforcement
7 agencies under sections 301 and 302; and

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

12 **TITLE VI—MISCELLANEOUS** 13 **PROVISIONS**

14 **SEC. 601. SEVERABILITY.**

15 If any provision of this Act, or the application of such
16 a provision to any person or circumstance, is held to be
17 unconstitutional, the remainder of this Act and the appli-
18 cation of the remaining provisions of this Act to any per-
19 son or circumstance shall not be affected thereby.

20 **SEC. 602. SAVINGS CLAUSE.**

21 Nothing in this Act shall be construed—

22 (1) to limit legal or administrative remedies
23 under section 1979 of the Revised Statutes of the
24 United States (42 U.S.C. 1983), section 210401 of
25 the Violent Crime Control and Law Enforcement

1 Act of 1994 (42 U.S.C. 14141), the Omnibus Crime
2 Control and Safe Streets Act of 1968 (42 U.S.C.
3 3701 et seq.), or title VI of the Civil Rights Act of
4 1964 (42 U.S.C. 2000d et seq.);

5 (2) to affect any Federal, State, or tribal law
6 that applies to an Indian tribe because of the polit-
7 ical status of the tribe; or

8 (3) to waive the sovereign immunity of an In-
9 dian tribe without the consent of the tribe.

○