

115TH CONGRESS  
1ST SESSION

# S. 411

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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2017

Mr. CARDIN (for himself, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Ms. CANTWELL, Mr. COONS, Ms. DUCKWORTH, Mr. DURBIN, Mr. FRANKEN, Ms. HARRIS, Mr. HEINRICH, Ms. HIRONO, Mr. LEAHY, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mr. MURPHY, Mrs. MURRAY, Mr. SANDERS, Ms. STABENOW, Mr. UDALL, Mr. WYDEN, Ms. WARREN, Mrs. GILLIBRAND, Mr. KAINE, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To eliminate racial, religious, and other discriminatory 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 and Religious Profiling Act of 2017” or  
6 “ERRPA”.

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.
- Sec. 305. Authorization of appropriations.

TITLE IV—DATA COLLECTION

- Sec. 401. Attorney General to issue regulations.
- Sec. 402. Publication of data.
- 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.—The term “racial  
13          profiling” means the practice of a law enforcement  
14          agent or agency relying, to any degree, on actual or  
15          perceived race, ethnicity, national origin, religion,  
16          gender, gender identity, or sexual orientation in se-  
17          lecting which individual to subject to routine or  
18          spontaneous investigatory activities or in deciding  
19          upon the scope and substance of law enforcement ac-  
20          tivity following the initial investigatory procedure,  
21          except when there is trustworthy information, rel-  
22          evant to the locality and timeframe, that links a per-  
23          son with a particular characteristic described in this  
24          paragraph to an identified criminal incident or  
25          scheme.

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

5                   (A) Interviews.

6                   (B) Traffic stops.

7                   (C) Pedestrian stops.

8                   (D) Frisks and other types of body  
9           searches.

10                  (E) Consensual or nonconsensual searches  
11           of the persons, property, or possessions (includ-  
12           ing vehicles) of individuals using any form of  
13           public or private transportation, including mo-  
14           torists and pedestrians.

15                  (F) Data collection and analysis, assess-  
16           ments, and predicated investigations.

17                  (G) Inspections and interviews of entrants  
18           into the United States that are more extensive  
19           than those customarily carried out.

20                  (H) Immigration-related workplace inves-  
21           tigations.

22                  (I) Such other types of law enforcement  
23           encounters compiled for or by the Federal Bu-  
24           reau of Investigation or the Department of Jus-  
25           tice Bureau of Justice Statistics.

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

4                   (A) are immaterial to the investigation;

5                   (B) would result in the unnecessary disclo-  
6           sure of personal information; or

7                   (C) would place a severe burden on the re-  
8           sources of the law enforcement agency given its  
9           size.

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

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

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

19                   (B) any law enforcement district or judicial  
20           enforcement district that—

21                           (i) is established under applicable  
22                           State law; and

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

1 (C) any Indian tribe that performs law en-  
 2 forcement functions, as determined by the Sec-  
 3 retary of the Interior.

4 **TITLE I—PROHIBITION OF**  
 5 **RACIAL PROFILING**

6 **SEC. 101. PROHIBITION.**

7 No law enforcement agent or law enforcement agency  
 8 shall engage in racial profiling.

9 **SEC. 102. ENFORCEMENT.**

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

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

17 (1) any governmental body that employed any  
 18 law enforcement agent who engaged in racial  
 19 profiling;

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

22 (3) any person with supervisory authority over  
 23 such agent.

24 (c) NATURE OF PROOF.—Proof that the routine or  
 25 spontaneous investigatory activities of law enforcement

1 agents in a jurisdiction have had a disparate impact on  
 2 individuals with a particular characteristic described in  
 3 section 2(7) shall constitute prima facie evidence of a vio-  
 4 lation of this title.

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

11 **TITLE II—PROGRAMS TO ELIMI-**  
 12 **NATE RACIAL PROFILING BY**  
 13 **FEDERAL LAW ENFORCE-**  
 14 **MENT AGENCIES**

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

16 (a) IN GENERAL.—Federal law enforcement agencies  
 17 shall—

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

20 (2) cease existing practices that permit racial  
 21 profiling.

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

24 (1) a prohibition on racial profiling;



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

3           (3) the collection of data in accordance with the  
4 regulations issued by the Attorney General under  
5 section 401;

6           (4) procedures for receiving, investigating, and  
7 responding meaningfully to complaints alleging ra-  
8 cial profiling by law enforcement agents; and

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

12 **TITLE III—PROGRAMS TO ELIMI-**  
13 **NATE RACIAL PROFILING BY**  
14 **STATE, LOCAL, AND INDIAN**  
15 **TRIBAL LAW ENFORCEMENT**  
16 **AGENCIES**

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

18           (a) IN GENERAL.—An application by a State, a unit  
19 of local government, or a State, local, or Indian tribal law  
20 enforcement agency for funding under a covered program  
21 shall include a certification that such State, unit of local  
22 government, or law enforcement agency, and any law en-  
23 forcement agency to which it will distribute funds—

24           (1) maintains adequate policies and procedures  
25 designed to eliminate racial profiling; and

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

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

5           (1) a prohibition on racial profiling;

6           (2) training on racial profiling issues as part of  
7 law enforcement training;

8           (3) the collection of data in accordance with the  
9 regulations issued by the Attorney General under  
10 section 401; and

11           (4) participation in an administrative complaint  
12 procedure or independent audit program that meets  
13 the requirements of section 302.

14           (c) EFFECTIVE DATE.—This section shall take effect  
15 12 months after the date of enactment of this Act.

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

17           (a) REGULATIONS.—

18           (1) IN GENERAL.—Not later than 6 months  
19 after the date of enactment of this Act and in con-  
20 sultation with stakeholders, including Federal, State,  
21 tribal, and local law enforcement agencies and com-  
22 munity, professional, research, and civil rights orga-  
23 nizations, the Attorney General shall issue regula-  
24 tions for the operation of administrative complaint  
25 procedures and independent audit programs to en-

1       sure that such programs and procedures provide an  
2       appropriate response to allegations of racial profiling  
3       by law enforcement agents or agencies.

4           (2) GUIDELINES.—The regulations issued  
5       under paragraph (1) shall contain guidelines that  
6       ensure the fairness, effectiveness, and independence  
7       of the administrative complaint procedures and inde-  
8       pendent auditor programs.

9           (b) NONCOMPLIANCE.—If the Attorney General de-  
10      termines that the recipient of a grant from any covered  
11      program is not in compliance with the requirements of sec-  
12      tion 301 or the regulations issued under subsection (a),  
13      the Attorney General shall withhold, in whole or in part  
14      (at the discretion of the Attorney General), funds for one  
15      or more grants to the recipient under the covered pro-  
16      gram, until the recipient establishes compliance.

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

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

23          (a) COMPETITIVE AWARDS.—

24              (1) IN GENERAL.—The Attorney General may,  
25      through competitive grants or contracts, carry out a

1 2-year demonstration project for the purpose of de-  
2 veloping and implementing data collection programs  
3 on the hit rates for stops and searches by law en-  
4 forcement agencies. The data collected shall be  
5 disaggregated by race, ethnicity, national origin,  
6 gender, and religion.

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

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

16 (b) REQUIRED ACTIVITIES.—Activities carried out  
17 with a grant under this section shall include—

18 (1) developing a data collection tool and report-  
19 ing the compiled data to the Attorney General; and

20 (2) training of law enforcement personnel on  
21 data collection, particularly for data collection on hit  
22 rates for stops and searches.

23 (c) EVALUATION.—Not later than 3 years after the  
24 date of enactment of this Act, the Attorney General shall  
25 enter into a contract with an institution of higher edu-

1 cation (as defined in section 101 of the Higher Education  
2 Act of 1965 (20 U.S.C. 1001)) to analyze the data col-  
3 lected by each of the grantees funded under this section.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
5 are authorized to be appropriated to carry out activities  
6 under this section—

7 (1) \$5,000,000, over a 2-year period, to carry  
8 out the demonstration program under subsection  
9 (a); and

10 (2) \$500,000 to carry out the evaluation under  
11 subsection (c).

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

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

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

21 (1) The development and implementation of  
22 training to prevent racial profiling and to encourage  
23 more respectful interaction with the public.

24 (2) The acquisition and use of technology to fa-  
25 cilitate the accurate collection and analysis of data.

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

5           (4) The establishment and maintenance of an  
6           administrative complaint procedure or independent  
7           auditor program.

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

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

18          **SEC. 305. AUTHORIZATION OF APPROPRIATIONS.**

19          There are authorized to be appropriated such sums  
20          as are necessary to carry out this title.

21          **TITLE IV—DATA COLLECTION**

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

23          (a) **REGULATIONS.**—Not later than 6 months after  
24          the date of enactment of this Act, the Attorney General,  
25          in consultation with stakeholders, including Federal,

1 State, and local law enforcement agencies and community,  
2 professional, research, and civil rights organizations, shall  
3 issue regulations for the collection and compilation of data  
4 under sections 201 and 301.

5 (b) REQUIREMENTS.—The regulations issued under  
6 subsection (a) shall—

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

9 (2) provide that the data collected shall—

10 (A) be collected by race, ethnicity, national  
11 origin, gender, and religion, as perceived by the  
12 law enforcement officer;

13 (B) include the date, time, and location of  
14 such investigatory activities;

15 (C) include detail sufficient to permit an  
16 analysis of whether a law enforcement agency is  
17 engaging in racial profiling; and

18 (D) not include personally identifiable in-  
19 formation;

20 (3) provide that a standardized form shall be  
21 made available to law enforcement agencies for the  
22 submission of collected data to the Department of  
23 Justice;

24 (4) provide that law enforcement agencies shall  
25 compile data on the standardized form made avail-

1 able under paragraph (3), and submit the form to  
2 the Civil Rights Division and the Department of  
3 Justice Bureau of Justice Statistics;

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

7 (6) include guidelines for setting comparative  
8 benchmarks, consistent with best practices, against  
9 which collected data shall be measured;

10 (7) provide that the Department of Justice Bu-  
11 reau of Justice Statistics shall—

12 (A) analyze the data for any statistically  
13 significant disparities, including—

14 (i) disparities in the percentage of  
15 drivers or pedestrians stopped relative to  
16 the proportion of the population passing  
17 through the neighborhood;

18 (ii) disparities in the hit rate; and

19 (iii) disparities in the frequency of  
20 searches performed on racial or ethnic mi-  
21 nority drivers and the frequency of  
22 searches performed on nonminority drivers;  
23 and



1 (B) not later than 3 years after the date  
2 of enactment of this Act, and annually there-  
3 after—

4 (i) prepare a report regarding the  
5 findings of the analysis conducted under  
6 subparagraph (A);

7 (ii) provide such report to Congress;  
8 and

9 (iii) make such report available to the  
10 public, including on a website of the De-  
11 partment of Justice; and

12 (8) protect the privacy of individuals whose  
13 data is collected by—

14 (A) limiting the use of the data collected  
15 under this Act to the purposes set forth in this  
16 Act;

17 (B) except as otherwise provided in this  
18 Act, limiting access to the data collected under  
19 this Act to those Federal, State, local, or tribal  
20 employees or agents who require such access in  
21 order to fulfill the purposes for the data set  
22 forth in this Act;

23 (C) requiring contractors or other non-  
24 governmental agents who are permitted access  
25 to the data collected under this Act to sign use

1 agreements incorporating the use and disclosure  
2 restrictions set forth in subparagraph (A); and  
3 (D) requiring the maintenance of adequate  
4 security measures to prevent unauthorized ac-  
5 cess to the data collected under this Act.

6 **SEC. 402. PUBLICATION OF DATA.**

7 The Department of Justice Bureau of Justice Statis-  
8 tics shall provide to Congress and make available to the  
9 public, together with each annual report described in sec-  
10 tion 401, the data collected pursuant to this Act, excluding  
11 any personally identifiable information described in section  
12 403.

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

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

18 (1) released to the public;

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

20 (A) such disclosures as are necessary to  
21 comply with this Act;

22 (B) disclosures of information regarding a  
23 particular person to that person; or

24 (C) disclosures pursuant to litigation; or

1           (3) subject to disclosure under section 552 of  
2 title 5, United States Code (commonly known as the  
3 Freedom of Information Act), except for disclosures  
4 of information regarding a particular person to that  
5 person.

6 **TITLE V—DEPARTMENT OF JUSTICE REGULATIONS AND RE-**  
7 **PORTS ON RACIAL PROFIL-**  
8 **ING IN THE UNITED STATES**

10 **SEC. 501. ATTORNEY GENERAL TO ISSUE REGULATIONS**  
11 **AND REPORTS.**

12           (a) REGULATIONS.—In addition to the regulations re-  
13 quired under sections 303 and 401, the Attorney General  
14 shall issue such other regulations as the Attorney General  
15 determines are necessary to implement this Act.

16           (b) REPORTS.—

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

22               (2) SCOPE.—Each report submitted under  
23 paragraph (1) shall include—

24                       (A) a summary of data collected under sec-  
25 tions 201(b)(3) and 301(b)(3) and from any

1 other reliable source of information regarding  
2 racial profiling in the United States;

3 (B) a discussion of the findings in the  
4 most recent report prepared by the Department  
5 of Justice Bureau of Justice Statistics under  
6 section 401(b)(7);

7 (C) the status of the adoption and imple-  
8 mentation of policies and procedures by Federal  
9 law enforcement agencies under section 201  
10 and by the State and local law enforcement  
11 agencies under sections 301 and 302; and

12 (D) a description of any other policies and  
13 procedures that the Attorney General believes  
14 would facilitate the elimination of racial  
15 profiling.

## 16 **TITLE VI—MISCELLANEOUS** 17 **PROVISIONS**

### 18 **SEC. 601. SEVERABILITY.**

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

### 24 **SEC. 602. SAVINGS CLAUSE.**

25 Nothing in this Act shall be construed—

1           (1) to limit legal or administrative remedies  
2           under section 1979 of the Revised Statutes of the  
3           United States (42 U.S.C. 1983), section 210401 of  
4           the Violent Crime Control and Law Enforcement  
5           Act of 1994 (42 U.S.C. 14141), the Omnibus Crime  
6           Control and Safe Streets Act of 1968 (42 U.S.C.  
7           3701 et seq.), or title VI of the Civil Rights Act of  
8           1964 (42 U.S.C. 2000d et seq.);

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

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

○