

115TH CONGRESS
1ST SESSION

S. 411

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

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

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.

(9) REASONABLE REQUEST.—The term “reasonable request” means all requests for information, except for those that—

(A) are immaterial to the investigation;

(B) would result in the unnecessary disclosure of personal information; or

(C) would place a severe burden on the resources of the law enforcement agency given its size.

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

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

(A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State;

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

(i) is established under applicable State law; and

(ii) has the authority to, in a manner independent of other State entities, establish 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

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

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

(C) the status of the adoption and implementation of policies and procedures by Federal law enforcement agencies under section 201 and by the State and local law enforcement agencies under sections 301 and 302; and

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

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. SEVERABILITY.

If any provision of this Act, or the application of such a provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the application of the remaining provisions of this Act to any person or circumstance shall not be affected thereby.

SEC. 602. SAVINGS CLAUSE.

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.

○