

ARKANSAS SENATE
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of Senate Bill No. 96

"AN ACT TO PROHIBIT RACIAL PROFILING BY LAW ENFORCEMENT OFFICERS."

Amendment No. 1 to Senate Bill No. 96.

Amend Senate Bill No. 96 as originally introduced:

Delete everything after the Enacting Clause and substitute the following:

SECTION 1. Definition.

(a) "Committee" means the Profiling Advisory Committee created by this act;

(b) "Criminal Justice Department" means the Criminal Justice Department at the University of Arkansas at Pine Bluff; and

(c) "Racial profiling" means the practice of a law enforcement officer relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity, except that racial profiling does not include reliance on the criteria in combination with other identifying factors when the law enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect, and the description is thought to be reliable and locally relevant.

SECTION 2. Prohibition on racial profiling.

(a) No member of the Arkansas State Police, Arkansas Highway Police, a sheriff's department, a municipal police department, constable, or any other law enforcement officer of this state shall engage in racial profiling.

(b) The detention of an individual based on any noncriminal factor or combination of noncriminal factors is inconsistent with this policy.

SECTION 3. Policies.

(a) Not later than January 1, 2004, the Arkansas State Police, Arkansas Highway Police, all sheriffs' departments, municipal police departments, constables, and all other law enforcement agencies of this state shall adopt a written policy that:

(1) Prohibits racial profiling as defined in section 1 of this act;

(2) Requires that law enforcement officers articulate reasonable suspicion prior to a stop, frisk, arrest, or detention;



(3) Defines reasonable suspicion, to ensure that individuals are stopped for valid reasons, and that race, ethnicity, national origin, or religion are not a basis for stops for violations for which other nongroup members would not be stopped;

(4) Requires law enforcement officers to identify themselves by full name and jurisdiction, and proffer written identification;

(5) Provides for a regular review by the law enforcement agency of the annual report of the Profiling Advisory Committee required by this act;

(6)(A) Provides for a systematic review process for investigating allegations of racial profiling to determine whether any officers of the law enforcement agency have a pattern of stopping or searching members of minority groups; and

(B) If the review reveals a pattern, requires an investigation to determine whether any officers of the law enforcement agency routinely stop persons on the basis of race, ethnicity, national origin, or religion as a pretext for investigating other violations of criminal law;

(7) Provides, where a supervisor or other reviewer has detected a pattern of racial profiling, timely assistance, remediation, or discipline for individual law enforcement officers who have been found to be profiling by race, ethnicity, national origin, or religion;

(8) Ensures that supervisors will not retaliate against officers who report racial profiling by others;

(9) Provides for the creation, maintenance, and disposition of documents evidencing a traffic or pedestrian stop; and

(10) Provides standards for the use of in-car audio and visual equipment, including the duration for which the recordings are preserved.

SECTION 4. Training.

(a) Each law enforcement agency shall provide annual training to all officers that:

(1) Emphasizes the prohibition against racial profiling;

(2) Ensures that operating procedures adequately implement the prohibition against profiling and that their law enforcement personnel have copies of, understand, and follow the operating procedures; and

(3) Includes foreign language instruction when appropriate, to ensure adequate communication with residents of a community.

(b) The course or courses of instruction and the guidelines shall stress understanding and respect for racial, ethnic, national, religious, and cultural differences, and development of effective and appropriate methods of carrying out law enforcement duties.

SECTION 5. Data.

(a) Commencing January 1, 2004, the Arkansas State Police, Arkansas Highway Police, each sheriff's department, municipal police department, constable, and any other law enforcement agency of this state shall collect from each police officer who stops a driver of a motor vehicle or a pedestrian the following information:

(1) The date, time, and location of the stop;

(2) The age, gender, race, and ethnicity of the individual stopped;

(3) The reason for the stop and duration of the stop;

- (4) If a vehicle is stopped, the license plate number, state, and description of the vehicle, including make, model, and color;
- (5) Whether a search was conducted as a result of the stop;
- (6) The basis for a search, if one was conducted;
- (7) If the individual consented to the search;
- (8) Whether any person or persons were searched;
- (9) Whether any person's property was searched, and the scope of the search;
- (10) Whether any contraband or other property was discovered in the course of the search, the type of any contraband discovered, and whether any contraband or other property was seized;
- (11) Whether any warning or citation was issued as a result of the stop;
- (12) If a warning or citation was issued, the violation charged or warning provided;
- (13) Whether an arrest was made as a result of either the stop or the search;
- (14) If an arrest was made, the offense or offenses charged; and
- (15) The identification of the officer and the officer's name and badge number.

(b) The information required under subsection (a) of this section may be reported using a form developed and promulgated by the Profiling Advisory Committee in consultation with the Criminal Justice Department.

(c) In addition, each law enforcement agency shall preserve the information required under subsection (a) of this section for five (5) years and shall turn over to the committee upon request the following:

- (1) All of the data referred to in this section;
- (2) Any complaints filed by persons asserting that they were stopped, detained, searched, arrested, or charged on the basis of racial profiling; and
- (3) Any other information the law enforcement agency, or the Profiling Advisory Committee deems appropriate.

SECTION 6. Audits.

The Profiling Advisory Committee may conduct an audit of the data required under this act and in support of that power may seek further information from the law enforcement agency of any other state, county or municipal agency, and if necessary file suit to obtain this information from any agency failing to comply with the request.

SECTION 7. Report.

(a) On or before January 1, 2005, and annually thereafter, the Criminal Justice Department shall provide a report to the Profiling Advisory Committee of the information recorded in the form prescribed under this act.

(b) The committee shall determine the format that the Criminal Justice Department shall use to submit the report.

(c) The committee, with the assistance of the Criminal Justice Department, shall analyze the annual reports required by this section and submit a report of the findings to the Governor, the members of the General Assembly, and each law enforcement agency no later than the first of August of each year.

(d) The report of the committee shall include at least the following

information for each agency:

(1) The total number of vehicles stopped by officers during the previous calendar year;

(2) The number and percentage of stopped motor vehicles that were driven by members of each racial or ethnic group;

(3) A comparison of the percentage of stopped motor vehicles driven by each racial or ethnic group and the percentage of the state's population, driving age population, and owners of motor vehicles that each racial or ethnic group comprises; and

(4) A compilation of the information reported by law enforcement agencies under this section.

(e)(1) The report authorized under this section shall include a multivariate analysis of the collected data in accordance with general statistical standards.

(2) The report, findings, and conclusions submitted under this subsection shall be a public record.

(f)(1) After the effective date of this act, the committee, shall obtain the services of an organization, company, person, or other entity with sufficient expertise in the field of statistics to assist with the implementation of this act.

(2) The organization, company, person, or other entity so retained shall assist the committee with the design of the methodology for gathering statistics, monitoring compliance, and conducting a statistical analysis at the conclusion of each year to determine the extent to which racial profiling exists within the state.

SECTION 8. Advisory Committee Established.

(a)(1) There is established an advisory committee, consisting of nine (9) members, to be called the "Profiling Advisory Committee".

(2) The Governor shall appoint the members as follows:

(A) Four (4) members shall be active or retired law enforcement officers or prosecuting attorneys;

(B) Two (2) members shall be associated with civil rights or community organizations;

(C) Two (2) members shall be lawyers practicing substantially in the field of criminal defense; and

(D) One (1) member shall be a citizen representative.

(b)(1)(A) Members shall serve three-year terms or until a successor is appointed.

(B)(i) Within thirty (30) days after all members are appointed, the members shall meet to organize at a time and place determined by the Governor and determine by lot their respective staggered terms so that the terms of three (3) members expire in one (1), two (2), and three (3) years respectively.

(ii) Upon the expiration of the original terms, all successor members shall serve three-year terms.

(2) The advisory committee shall select a member to serve as chairperson each year.

(3) The advisory committee shall meet as necessary to carry out its duties under this act and at the call of the chair.

(c) There shall be no compensation for the members of the committee, though each member may receive expense reimbursement in accordance with

Arkansas Code § 25-16-902 to the extent funds are available.

(d) The committee shall be advised by the statistician responsible for the data collection and design of the study.

(e) General staff support, facilities, and operating assistance for the committee may be provided by the University of Arkansas at Pine Bluff.

SECTION 9. Complaints.

(a) The Profiling Advisory Committee shall establish independent procedures for receiving, investigating, and responding to complaints alleging racial profiling by law enforcement officers or agencies.

(b) The committee shall establish a toll free telephone number for complaints of racial profiling not later than January 1, 2004.

SECTION 10. Public Disclosure.

(a)(1) The reports required by this act shall be obtainable under the Arkansas Freedom of Information Act.

(2) The underlying data of the report may be obtained upon demonstration to a court of competent jurisdiction of a reasonable need for the information.

(b) All data collected under this act shall be made public upon the completion of each year's study and the submission of the report, which shall also be made public.

SECTION 11. Compliance.

If any law enforcement agency fails to comply with this act, the Governor shall withhold any state funds appropriated to the noncompliant law enforcement agency.

SECTION 12. Cause of Action.

(a) Any person may seek appropriate relief in a civil action against any law enforcement agency for failing to collect or transmit the data required by this act, and may be awarded costs, including attorneys' fees, for prevailing.

(b) As a condition precedent to the filing of a civil action by a person under this section, the person shall send a notice to the Profiling Advisory Committee identifying the law enforcement agency which is failing to collect or transmit the data and then allow fifteen (15) days to elapse to allow the law enforcement agency to come into compliance."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Wilkins

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Secretary