

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

SENATE BILL 96

4  
5 By: Senator Wilkins  
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## For An Act To Be Entitled

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9 AN ACT TO PROHIBIT RACIAL PROFILING BY LAW  
10 ENFORCEMENT OFFICERS; AND FOR OTHER PURPOSES.  
11

## Subtitle

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13 AN ACT TO PROHIBIT RACIAL PROFILING BY  
14 LAW ENFORCEMENT OFFICERS.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 Section 1. Definition.

20 “Racial profiling” means the practice of a law enforcement officer  
21 relying, to any degree, on race, ethnicity, national origin, or religion in  
22 selecting which individuals to subject to routine investigatory activities,  
23 or in deciding upon the scope and substance of law enforcement activity  
24 following the initial routine investigatory activity, except that racial  
25 profiling does not include reliance on the criteria in combination with other  
26 identifying factors when the law enforcement officer is seeking to apprehend  
27 a specific suspect whose race, ethnicity, or national origin is part of the  
28 description of the suspect, and the description is thought to be reliable and  
29 locally relevant.  
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31 SECTION 2. Prohibition on racial profiling.

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

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



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2 SECTION 3. Conduct of searches.

3 No member of the Arkansas State Police, Arkansas Highway Police, a  
4 sheriff's department, a municipal police department, constable, or any other  
5 law enforcement officer of this state shall conduct a search in the absence  
6 of reasonable suspicion or probable cause without informing the person to be  
7 searched of the right to refuse a search, and when consent is given to a  
8 search, obtaining the consent in writing.

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10 SECTION 4. Policies.

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

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

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

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

23 (4) Requires informing the person to be searched that he or she  
24 has a right to refuse consent to a search, and if a search by consent is  
25 obtained, that the consent must be in writing and signed by the individual;

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

28 (6) Provides for a regular review by the law enforcement agency  
29 of the collected data and the annual report of the Attorney General required  
30 by section 4 of this act;

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

35 (B) If the review reveals a pattern, requires an  
36 investigation to determine whether any officers of the law enforcement agency

1 routinely stop persons on the basis of race, ethnicity, national origin, or  
2 religion as a pretext for investigating other violations of criminal law;

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

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

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

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

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14 SECTION 5. Training.

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

17 (1) Emphasizes the prohibition against racial profiling;

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

21 (3) Includes foreign language instruction when appropriate, to  
22 ensure adequate communication with residents of a community; and

23 (4) Requires that all law enforcement officers actively  
24 participate in and undergo this training to ensure that they react  
25 appropriately to impermissible behavior.

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

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31 SECTION 6. Data.

32 (a) Commencing January 1, 2004, the Arkansas State Police, Arkansas  
33 Highway Police, each sheriff's department, municipal police department,  
34 constable, and any other law enforcement agency of this state, using the form  
35 developed and promulgated by the Attorney General under subsection (b) of  
36 this section, shall collect from each police officer who stops a driver of a

1 motor vehicle or a pedestrian the following information:

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

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

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

6 (4) If a vehicle is stopped, the license plate number, state,  
7 and description of the vehicle, including make, model, and color;

8 (5) Whether a search was conducted as a result of the stop;

9 (6) The basis for a search, if one was conducted;

10 (7) If the individual consented to the search, whether the  
11 individual was informed of the right to refuse, and whether the consent was  
12 signed by the individual;

13 (8) Whether any person or persons were searched;

14 (9) Whether any person's property was searched, and the scope of  
15 the search;

16 (10) Whether any contraband or other property was discovered in  
17 the course of the search, the type of any contraband discovered, and whether  
18 any contraband or other property was seized;

19 (11) Whether any warning or citation was issued as a result of  
20 the stop;

21 (12) If a warning or citation was issued, the violation charged  
22 or warning provided;

23 (13) Whether an arrest was made as a result of either the stop  
24 or the search;

25 (14) If an arrest was made, the offense or offenses charged; and

26 (15) The identification of the officer, his name and badge  
27 number.

28 (b) The information required under subsection (a) of this section may  
29 be reported using a format determined by the Attorney General in consultation  
30 with the law enforcement agencies and the Profiling Advisory Committee  
31 established in section 7 of this act.

32 (c) In addition, each law enforcement agency shall preserve the  
33 information required under subsection (a) of this section for five (5) years  
34 and shall turn over to the Attorney General upon his or her request the  
35 following:

36 (1) All of the data referred to in section 6 of this act;

1           (2) Any complaints filed by persons asserting that they were  
2 stopped, detained, searched, arrested, or charged on the basis of racial  
3 profiling; and

4           (3) Any other information the Attorney General, the law  
5 enforcement agency, or the Profiling Advisory Committee deems appropriate.

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7           SECTION 7. Audits.

8           The Attorney General may conduct an audit of the data required under  
9 section 6 of this act, and in support of that power, may seek further  
10 information from the law enforcement agency of any other state, county or  
11 municipal agency, and if necessary file suit to obtain this information from  
12 any agency failing to comply with the requests.

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14           SECTION 8. Report.

15           (a) On or before January 1, 2005, and annually thereafter, each law  
16 enforcement agency shall provide a report to the Attorney General of the  
17 information recorded in the form prescribed under section 6 of this act.

18           (b) The Attorney General shall determine the format that all law  
19 enforcement agencies shall use to submit the report.

20           (c) The Attorney General shall analyze the annual reports of law  
21 enforcement agencies required by this section and submit a report of the  
22 findings to the Governor, the members of the General Assembly, and each law  
23 enforcement agency no later than the first of August of each year.

24           (d) The report of the Attorney General shall include at least the  
25 following information for each agency:

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

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

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

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

36           (e)(1) The report authorized under this section shall include a

1 multivariate analysis of the collected data in accordance with general  
 2 statistical standards.

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

5 (f)(1) After the effective date of this act, the Attorney General,  
 6 with the advice of the Profiling Advisory Committee, shall procure the  
 7 services of an organization, company, person, or other entity with sufficient  
 8 expertise in the field of statistics to assist with the implementation of  
 9 this act.

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

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 16 SECTION 9. Advisory Committee Established.

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

19 (2)(A) The Governor shall appoint eight (8) members who shall  
 20 serve at the pleasure of the Governor.

21 (i) Four (4) of these members shall be active or  
 22 retired law enforcement officers or prosecuting attorneys;

23 (ii) Two (2) of these members shall be associated  
 24 with civil rights or community organizations; and

25 (iii) Two (2) members shall be lawyers practicing  
 26 substantially in the field of criminal defense.

27 (B) The Attorney General shall appoint one (1) member who  
 28 shall serve at the pleasure of the Attorney General.

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

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

36 (ii) Upon the expiration of the original terms, all

1 successor members shall serve three-year terms.

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

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

6 (c) There shall be no compensation for the members of the committee,  
7 though each member of the board may receive expense reimbursement in  
8 accordance with § 25-16-902 to the extent funds are available.

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

11 (e)(1) The committee shall advise the Attorney General throughout the  
12 course of the traffic stop study authorized by this act.

13 (2) The Attorney General shall work in cooperation with the  
14 committee and shall keep the committee informed on all matters relating to  
15 the implementation and enforcement of this act, including but not limited to,  
16 information on all data collected and budgetary expenditures.

17 (3) General staff support, facilities, and operating assistance  
18 for the Profiling Advisory Committee shall be provided by the Office of the  
19 Attorney General.

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21 SECTION 10. Complaints.

22 (a) The Attorney General shall establish independent procedures for  
23 receiving, investigating, and responding to complaints alleging racial  
24 profiling by law enforcement officers or agencies.

25 (b) The Attorney General shall establish a tollfree telephone number  
26 for complaints of racial profiling not later than January 1, 2004.

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28 SECTION 11. Public Disclosure.

29 (a)(1) The reports referred to in section 6 of this act shall be  
30 obtainable under the Arkansas Freedom of Information Act.

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

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

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SECTION 12. 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 13. 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 Attorney General and 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.