

107TH CONGRESS
1ST SESSION

S. 989

To prohibit racial profiling.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2001

Mr. FEINGOLD (for himself, Mr. CORZINE, Mrs. CLINTON, Mr. KENNEDY, Mr. TORRICELLI, Mr. SCHUMER, Mr. DURBIN, Ms. STABENOW, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit racial profiling.

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 2001”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

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 AND LOCAL LAW ENFORCEMENT AGENCIES

Sec. 301. Policies required for grants.

Sec. 302. Best practices development grants.

TITLE IV—DEPARTMENT OF JUSTICE REPORT ON RACIAL
PROFILING IN THE UNITED STATES

Sec. 401. Attorney General to issue report on racial profiling in the United States.

Sec. 402. Limitation on use of data.

TITLE V—DEFINITIONS AND MISCELLANEOUS PROVISIONS

Sec. 501. Definitions.

Sec. 502. Severability.

Sec. 503. Savings clause.

Sec. 504. Effective dates.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) The vast majority of law enforcement
5 agents nationwide discharge their duties profes-
6 sionally, without bias, and protect the safety of their
7 communities.

8 (2) The use by police officers of race, ethnicity,
9 or national origin in deciding which persons should
10 be subject to traffic stops, stops and frisks, ques-
11 tioning, searches, and seizures is a problematic law
12 enforcement tactic. Statistical evidence from across
13 the country demonstrates that such racial profiling
14 is a real and measurable phenomenon.

1 (3) As of November 15, 2000, the Department
2 of Justice had 14 publicly noticed, ongoing, pattern
3 or practice investigations involving allegations of ra-
4 cial profiling and had filed five pattern and practice
5 lawsuits involving allegations of racial profiling, with
6 four of those cases resolved through consent decrees.

7 (4) A large majority of individuals subjected to
8 stops and other enforcement activities based on race,
9 ethnicity, or national origin are found to be law-
10 abiding and therefore racial profiling is not an effec-
11 tive means to uncover criminal activity.

12 (5) A 2001 Department of Justice report on
13 citizen-police contacts in 1999 found that, although
14 African-Americans and Hispanics were more likely
15 to be stopped and searched, they were less likely to
16 be in possession of contraband. On average, searches
17 and seizures of African-American drivers yielded evi-
18 dence only eight percent of the time, searches and
19 seizures of Hispanic drivers yielded evidence only 10
20 percent of the time, and searches and seizures of
21 white drivers yielded evidence 17 percent of the
22 time.

23 (6) A 2000 General Accounting Office report on
24 the activities of the United States Customs Service
25 during fiscal year 1998 found that black women who

1 were United States citizens were 9 times more likely
2 than white women who were United States citizens
3 to be X-rayed after being frisked or patted down
4 and, on the basis of X-ray results, black women who
5 were United States citizens were less than half as
6 likely as white women who were United States citi-
7 zens to be found carrying contraband. In general,
8 the report found that the patterns used to select
9 passengers for more intrusive searches resulted in
10 women and minorities being selected at rates that
11 were not consistent with the rates of finding contra-
12 band.

13 (7) Current local law enforcement practices,
14 such as ticket and arrest quotas, and similar man-
15 agement practices, may have the unintended effect
16 of encouraging law enforcement agents to engage in
17 racial profiling.

18 (8) Racial profiling harms individuals subjected
19 to it because they experience fear, anxiety, humilia-
20 tion, anger, resentment, and cynicism when they are
21 unjustifiably treated as criminal suspects. By dis-
22 couraging individuals from traveling freely, racial
23 profiling impairs both interstate and intrastate com-
24 merce.

1 (9) Racial profiling damages law enforcement
2 and the criminal justice system as a whole by under-
3 mining public confidence and trust in the police, the
4 courts, and the criminal law.

5 (10) Racial profiling violates the Equal Protec-
6 tion Clause of the Constitution. Using race, eth-
7 nicity, or national origin as a proxy for criminal sus-
8 picion violates the constitutional requirement that
9 police and other government officials accord to all
10 citizens the equal protection of the law. *Arlington*
11 *Heights v. Metropolitan Housing Development Cor-*
12 *poration*, 429 U.S. 252 (1977).

13 (11) Racial profiling is not adequately ad-
14 dressed through suppression motions in criminal
15 cases for two reasons. First, the Supreme Court
16 held, in *Whren v. United States*, 517 U.S. 806
17 (1996), that the racially discriminatory motive of a
18 police officer in making an otherwise valid traffic
19 stop does not warrant the suppression of evidence.
20 Second, since most stops do not result in the dis-
21 covery of contraband, there is no criminal prosecu-
22 tion and no evidence to suppress.

23 (12) Current efforts by State and local govern-
24 ments to eradicate racial profiling and redress the
25 harms it causes, while laudable, have been limited in

1 scope and insufficient to address this national prob-
2 lem.

3 (b) PURPOSES.—The independent purposes of this
4 Act are—

5 (1) to enforce the constitutional right to equal
6 protection of the laws, pursuant to the Fifth Amend-
7 ment and section 5 of the 14th Amendment to the
8 Constitution of the United States;

9 (2) to enforce the constitutional right to protec-
10 tion against unreasonable searches and seizures,
11 pursuant to the Fourth Amendment to the Constitu-
12 tion of the United States;

13 (3) to enforce the constitutional right to inter-
14 state travel, pursuant to section 2 of article IV of
15 the Constitution of the United States; and

16 (4) to regulate interstate commerce, pursuant
17 to clause 3 of section 8 of article I of the Constitu-
18 tion of the United States.

19 **TITLE I—PROHIBITION OF**
20 **RACIAL PROFILING**

21 **SEC. 101. PROHIBITION.**

22 No law enforcement agent or law enforcement agency
23 shall engage in racial profiling.

1 **SEC. 102. ENFORCEMENT.**

2 (a) REMEDY.—The United States, or an individual
3 injured by racial profiling, may enforce this title in a civil
4 action for declaratory or injunctive relief, filed either in
5 a State court of general jurisdiction or in a District Court
6 of the United States.

7 (b) PARTIES.—In any action brought pursuant to
8 this title, relief may be obtained against: any governmental
9 unit that employed any law enforcement agent who en-
10 gaged in racial profiling; any agent of such unit who en-
11 gaged in racial profiling; and any person with supervisory
12 authority over such agent.

13 (c) NATURE OF PROOF.—Proof that the routine in-
14 vestigatory activities of law enforcement agents in a juris-
15 diction have had a disparate impact on racial or ethnic
16 minorities shall constitute prima facie evidence of a viola-
17 tion of this title.

18 (d) ATTORNEYS' FEES.—In any action or proceeding
19 to enforce this title against any governmental unit, the
20 court may allow a prevailing plaintiff, other than the
21 United States, reasonable attorneys' fees as part of the
22 costs, and may include expert fees as part of the attorney's
23 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 encourage ra-
11 cial profiling.

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

14 (1) A prohibition on racial profiling.

15 (2) The collection of data on routine investiga-
16 tory activities sufficient to determine if law enforce-
17 ment agents are engaged in racial profiling and sub-
18 mission of that data to the Attorney General.

19 (3) Independent procedures for receiving, inves-
20 tigating, and responding meaningfully to complaints
21 alleging racial profiling by law enforcement agents of
22 the agency.

23 (4) Procedures to discipline law enforcement
24 agents who engage in racial profiling.

1 (5) Such other policies or procedures that the
 2 Attorney General deems necessary to eliminate racial
 3 profiling.

4 **TITLE III—PROGRAMS TO ELIMI-**
 5 **NATE RACIAL PROFILING BY**
 6 **STATE AND LOCAL LAW EN-**
 7 **FORCEMENT AGENCIES**

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

9 (a) IN GENERAL.—An application by a State or gov-
 10 ernmental unit for funding under a covered program shall
 11 include a certification that such unit and any agency to
 12 which it is redistributing program funds—

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

15 (2) has ceased existing practices that encourage
 16 racial profiling.

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

19 (1) A prohibition on racial profiling.

20 (2) The collection of data on routine investiga-
 21 tory activities sufficient to determine if law enforce-
 22 ment agents are engaged in racial profiling and sub-
 23 mission of that data to the Attorney General.

1 (3) Independent procedures for receiving, inves-
2 tigating, and responding meaningfully to complaints
3 alleging racial profiling by law enforcement agents.

4 (4) Procedures to discipline law enforcement
5 agents who engage in racial profiling.

6 (5) Such other policies or procedures that the
7 Attorney General deems necessary to eliminate racial
8 profiling.

9 (c) NONCOMPLIANCE.—If the Attorney General de-
10 termines that a grantee is not in compliance with condi-
11 tions established pursuant to this title, the Attorney Gen-
12 eral shall withhold the grant, in whole or in part, until
13 the grantee establishes compliance. The Attorney General
14 shall provide notice regarding State grants and opportuni-
15 ties for private parties to present evidence to the Attorney
16 General that a grantee is not in compliance with condi-
17 tions established pursuant to this title.

18 **SEC. 302. BEST PRACTICES DEVELOPMENT GRANTS.**

19 (a) GRANT AUTHORIZATION.—The Attorney General
20 may make grants to States, law enforcement agencies and
21 other governmental units, Indian tribal governments, or
22 other public and private entities to develop and implement
23 best practice devices and systems to ensure the racially
24 neutral administration of justice.

1 (b) USES.—The funds provided pursuant to sub-
2 section (a) may be used to support the following activities:

3 (1) Development and implementation of train-
4 ing to prevent racial profiling and to encourage more
5 respectful interaction with the public.

6 (2) Acquisition and use of technology to facili-
7 tate the collection of data regarding routine inves-
8 tigatory activities in order to determine if law en-
9 forcement agents are engaged in racial profiling.

10 (3) Acquisition and use of technology to verify
11 the accuracy of data collection, including in-car video
12 cameras and portable computer systems.

13 (4) Development and acquisition of early warn-
14 ing systems and other feedback systems that help
15 identify officers or units of officers engaged in or at
16 risk of racial profiling or other misconduct, including
17 the technology to support such systems.

18 (5) Establishment or improvement of systems
19 and procedures for receiving, investigating, and re-
20 sponding meaningfully to complaints alleging racial
21 or ethnic bias by law enforcement agents.

22 (6) Establishment or improvement of manage-
23 ment systems to ensure that supervisors are held ac-
24 countable for the conduct of their subordinates.

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

5 (d) **AUTHORIZATION OF APPROPRIATIONS.**—The At-
 6 torney General shall make available such sums as are nec-
 7 essary to carry out this section from amounts appro-
 8 priated for programs administered by the Attorney Gen-
 9 eral.

10 **TITLE IV—DEPARTMENT OF JUS-**
 11 **TICE REPORTS ON RACIAL**
 12 **PROFILING IN THE UNITED**
 13 **STATES**

14 **SEC. 401. ATTORNEY GENERAL TO ISSUE REPORTS ON RA-**
 15 **CIAL PROFILING IN THE UNITED STATES.**

16 (a) **REPORTS.**—

17 (1) **IN GENERAL.**—Not later than two years
 18 after the enactment of this Act, and each year there-
 19 after, the Attorney General shall submit to Congress
 20 a report on racial profiling by Federal, State, and
 21 local law enforcement agencies in the United States.

22 (2) **SCOPE.**—The reports issued pursuant to
 23 paragraph (1) shall include—

24 (A) a summary of data collected pursuant
 25 to sections 201(b)(2) and 301(b)(2) and any

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

3 (B) the status of the adoption and imple-
4 mentation of policies and procedures by Federal
5 law enforcement agencies pursuant to section
6 201;

7 (C) the status of the adoption and imple-
8 mentation of policies and procedures by State
9 and local law enforcement agencies pursuant to
10 sections 301 and 302; and

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

15 (b) DATA COLLECTION.—Not later than six months
16 after the enactment of this Act, the Attorney General shall
17 by regulation establish standards for the collection of data
18 pursuant to sections 201(b)(2) and 301(b)(2), including
19 standards for setting benchmarks against which collected
20 data shall be measured. Such standards shall result in the
21 collection of data, including data with respect to stops,
22 searches, seizures, and arrests, that is sufficiently detailed
23 to determine whether law enforcement agencies are en-
24 gaged in racial profiling and to monitor the effectiveness

1 of policies and procedures designed to eliminate racial
2 profiling.

3 (c) PUBLIC ACCESS.—Data collected pursuant to sec-
4 tion 201(b)(2) and 301(b)(2) shall be available to the pub-
5 lic.

6 **SEC. 402. LIMITATION ON USE OF DATA.**

7 Information released pursuant to section 401 shall
8 not reveal the identity of any individual who is detained
9 or any law enforcement officer involved in a detention.

10 **TITLE V—DEFINITIONS AND**
11 **MISCELLANEOUS PROVISIONS**

12 **SEC. 501. DEFINITIONS.**

13 In this Act:

14 (1) COVERED PROGRAM.—The term “covered
15 program” means any program or activity funded in
16 whole or in part with funds made available under
17 any of the following:

18 (A) The Edward Byrne Memorial State
19 and Local Law Enforcement Assistance Pro-
20 grams (part E of title I of the Omnibus Crime
21 Control and Safe Streets Act of 1968 (42
22 U.S.C. 3750 et seq.)).

23 (B) The “Cops on the Beat” program
24 under part Q of title I of the Omnibus Crime
25 Control and Safe Streets Act of 1968 (42

1 U.S.C. 3796dd et seq.), but not including any
2 program, project, or other activity specified in
3 section 1701(d)(8) of that Act (42 U.S.C.
4 3796dd(d)(8)).

5 (C) The Local Law Enforcement Block
6 Grant program of the Department of Justice,
7 as described in appropriations Acts.

8 (2) GOVERNMENTAL UNIT.—The term “govern-
9 mental unit” means any department, agency, special
10 purpose district, or other instrumentality of Federal,
11 State, local, or Indian tribal government.

12 (3) LAW ENFORCEMENT AGENCY.—The term
13 “law enforcement agency” means a Federal, State,
14 local, or Indian tribal public agency engaged in the
15 prevention, detection, or investigation of violations of
16 criminal, immigration, or customs laws.

17 (4) LAW ENFORCEMENT AGENT.—The term
18 “law enforcement agent” means any Federal, State,
19 local, or Indian tribal official responsible for enforce-
20 ing criminal, immigration, or customs laws, includ-
21 ing police officers and other agents of Federal,
22 State, and local law enforcement agencies.

23 (5) RACIAL PROFILING.—The term “racial
24 profiling” means the practice of a law enforcement
25 agent relying, to any degree, on race, ethnicity, or

1 national origin in selecting which individuals to sub-
2 ject to routine investigatory activities, or in deciding
3 upon the scope and substance of law enforcement ac-
4 tivity following the initial routine investigatory activ-
5 ity, except that racial profiling does not include reli-
6 ance on such criteria in combination with other iden-
7 tifying factors when the law enforcement agent is
8 seeking to apprehend a specific suspect whose race,
9 ethnicity, or national origin is part of the description
10 of the suspect.

11 (6) ROUTINE INVESTIGATORY ACTIVITIES.—The
12 term “routine investigatory activities” includes the
13 following activities by law enforcement agents: traf-
14 fic stops; pedestrian stops; frisks and other types of
15 body searches; consensual or nonconsensual searches
16 of the persons or possessions (including vehicles) of
17 motorists or pedestrians; inspections and interviews
18 of entrants into the United States that are more ex-
19 tensive than those customarily carried out; and im-
20 migration-related workplace investigations.

21 **SEC. 502. SEVERABILITY.**

22 If any provision of this Act, an amendment made by
23 this Act, or the application of such provision or amend-
24 ment to any person or circumstance is held to be unconsti-
25 tutional, the remainder of this Act, the amendments made

1 by this Act, and the application of the provisions of such
2 to any person or circumstance shall not be affected there-
3 by.

4 **SEC. 503. SAVINGS CLAUSE.**

5 Nothing in this Act shall be construed to limit legal
6 or administrative remedies under section 1979 of the Re-
7 vised Statutes of the United States (42 U.S.C. 1983), sec-
8 tion 210401 of the Violent Crime Control and Law En-
9 forcement Act of 1994 (42 U.S.C. 14141), the Omnibus
10 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
11 3701 et seq.), and title VI of the Civil Rights Act of 1964
12 (42 U.S.C. 2000d et seq.).

13 **SEC. 504. EFFECTIVE DATES.**

14 (a) IN GENERAL.—Except as provided in subsection
15 (b), the provisions of this Act shall take effect on the date
16 of the enactment of this Act.

17 (b) CONDITIONS ON FUNDING.—Section 301 shall
18 take effect 1 year after the date of enactment of this Act.

○