

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



STATE LAW LIBRARY
ALEXISTA, MAINE

124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1442

S.P. 526

In Senate, April 7, 2009

An Act To Ban Racial Profiling

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BLISS of Cumberland.

Cosponsored by Representative SOCTOMAH of the Passamaquoddy Tribe and

Senators: ALFOND of Cumberland, BARTLETT of Cumberland, BOWMAN of York, COURTNEY of York, CRAVEN of Androscoggin, DAMON of Hancock, GERZOFKY of Cumberland, GOODALL of Sagadahoc, JACKSON of Aroostook, MARRACHÉ of Kennebec, President MITCHELL of Kennebec, SCHNEIDER of Penobscot, SULLIVAN of York, Representatives: BECK of Waterville, BERRY of Bowdoinham, BRIGGS of Mexico, BRYANT of Windham, CAIN of Orono, CEBRA of Naples, CORNELL du HOUX of Brunswick, DILL of Cape Elizabeth, DRISCOLL of Westbrook, EVES of North Berwick, FLEMINGS of Bar Harbor, FLOOD of Winthrop, GILBERT of Jay, GOODE of Bangor, HANLEY of Gardiner, HARLOW of Portland, HINCK of Portland, HUNT of Buxton, WALSH INNES of Yarmouth, LEGG of Kennebunk, LOVEJOY of Portland, MacDONALD of Boothbay, MAGNAN of Stockton Springs, McCABE of Skowhegan, MITCHELL of the Penobscot Nation, MORRISON of South Portland, PERRY of Calais, PILON of Saco, Speaker PINGREE of North Haven, PIOTTI of Unity, PRATT of Eddington, PRIEST of Brunswick, ROTUNDO of Lewiston, RUSSELL of Portland, SANBORN of Gorham, SCHATZ of Blue Hill, SIROIS of Turner, STEVENS of Bangor, STUCKEY of Portland, TARDY of Newport, VAN WIE of New Gloucester.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §4552**, as amended by PL 2005, c. 10, §1, is further amended to
3 read:

4 **§4552. Policy**

5 To protect the public health, safety and welfare, it is declared to be the policy of this
6 State to keep continually in review all practices infringing on the basic human right to a
7 life with dignity, and the causes of these practices, so that corrective measures may,
8 where possible, be promptly recommended and implemented, and to prevent
9 discrimination in employment, housing or access to public accommodations on account
10 of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or
11 national origin; and in employment, discrimination on account of age or because of the
12 previous assertion of a claim or right under former Title 39 or Title 39-A and in housing
13 because of familial status; and to prevent discrimination in the extension of credit on
14 account of age, race, color, sex, sexual orientation, marital status, religion, ancestry or
15 national origin; and to prevent discrimination in education on account of sex, sexual
16 orientation or physical or mental disability; and to prevent discrimination by law
17 enforcement based on racial profiling.

18 **Sec. 2. 5 MRSA §4553, sub-§6-B** is enacted to read:

19 **6-B. Law enforcement officer.** "Law enforcement officer" means a person who by
20 virtue of public employment is vested by law with the power to make arrests for crimes or
21 serve criminal process, whether that power extends to all crimes or is limited to specific
22 crimes. "Law enforcement officer" does not include federal law enforcement officers or
23 attorneys prosecuting for the State.

24 **Sec. 3. 5 MRSA c. 337, sub-c. 5-C** is enacted to read:

25 **SUBCHAPTER 5-C**

26 **RACIAL PROFILING**

27 **§4605. Right to freedom from racial profiling**

28 Every individual in this State has a right to be free of racial profiling by law
29 enforcement officers on account of race, ethnicity, national origin or religion pursuant to
30 Title 25, chapter 409.

31 For the purposes of this subchapter, "racial profiling" has the same meaning as in
32 Title 25, section 3841, subsection 6.

33 **§4606. Racial profiling unlawful**

34 It is unlawful discrimination for a law enforcement officer to use racial profiling by
35 relying on race, ethnicity, national origin or religion in selecting which individuals are

1 subject to an investigatory activity as defined by Title 25, section 3841, subsection 3
2 unless there are other identifying factors when the law enforcement officer is seeking to
3 apprehend a specific subject whose race, ethnicity or national origin is part of the
4 description of the suspect.

5 **§4607. Complaint period**

6 Notwithstanding section 4611, a person who believes that that person has been
7 subject to unlawful discrimination by racial profiling, or an employee of the commission,
8 may file a complaint under oath with the commission stating the facts concerning the
9 alleged discrimination. The complaint must be filed with the commission not more than
10 2 years after the alleged act of unlawful discrimination.

11 **Sec. 4. 5 MRSA §4684-C is enacted to read:**

12 **§4684-C. Racial profiling**

13 **1. Violation.** It is a violation of this section for any law enforcement officer to
14 engage in a pattern or practice of racial profiling pursuant to Title 25, chapter 409.

15 **2. Civil action.** The Attorney General may bring a civil action under section 4681
16 for injunctive relief or other appropriate relief to remedy a violation of subsection 1.

17 **Sec. 5. 5 MRSA §12004-I, sub-§74-F is enacted to read:**

18 **74-F.**

19 <u>Public Safety</u>	<u>Advisory Committee</u>	<u>Not Authorized</u>	<u>25 MRSA §3843</u>
20	<u>on Racial Profiling</u>		

21 **Sec. 6. 25 MRSA §2803-B, sub-§1, ¶J, as corrected by RR 2003, c. 2, §90, is**
22 **amended to read:**

23 **J.** Public notification regarding persons in the community required to register under
24 Title 34-A, chapter 15; and

25 **Sec. 7. 25 MRSA §2803-B, sub-§1, ¶K, as reallocated by RR 2003, c. 2, §91, is**
26 **amended to read:**

27 **K.** Digital, electronic, audio, video or other recording of law enforcement interviews
28 of suspects in serious crimes and the preservation of investigative notes and records
29 in such cases; and

30 **Sec. 8. 25 MRSA §2803-B, sub-§1, ¶L is enacted to read:**

31 **L. Racial profiling.**

32 **Sec. 9. 25 MRSA §2803-B, sub-§2, as repealed and replaced by PL 2005, c. 397,**
33 **Pt. C, §17, is amended to read:**

1 **2. Minimum policy standards.** The board shall establish minimum standards for
2 each law enforcement policy no later than June 1, 1995, except that policies for expanded
3 requirements for domestic violence under subsection 1, paragraph D, subparagraphs (1)
4 to (3) must be established no later than January 1, 2003; policies for death investigations
5 under subsection 1, paragraph I must be established no later than January 1, 2004;
6 policies for public notification regarding persons in the community required to register
7 under Title 34-A, chapter 15 under subsection 1, paragraph J must be established no later
8 than January 1, 2006; ~~and~~ policies for the recording and preservation of interviews of
9 suspects in serious crimes under subsection 1, paragraph K must be established no later
10 than January 1, 2005; and policies regarding racial profiling under subsection 1,
11 paragraph L must be established no later than January 1, 2010.

12 **Sec. 10. 25 MRSA §2803-B, sub-§3,** as repealed and replaced by PL 2005, c.
13 331, §16 and affected by §33, is amended to read:

14 **3. Agency compliance.** The chief administrative officer of each law enforcement
15 agency shall certify to the board no later than January 1, 1996 that the agency has adopted
16 written policies consistent with the minimum standards established by the board pursuant
17 to subsection 2, except that certification to the board for expanded policies for domestic
18 violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the
19 board no later than June 1, 2003; certification to the board for adoption of a death
20 investigation policy under subsection 1, paragraph I must be made to the board no later
21 than June 1, 2004; certification to the board for adoption of a public notification policy
22 under subsection 1, paragraph J must be made to the board no later than June 1, 2006; ~~and~~
23 certification to the board for adoption of a policy for the recording and preservation of
24 interviews of suspects in serious crimes under subsection 1, paragraph K must be made to
25 the board no later than June 1, 2005; and certification to the board for adoption of a
26 policy regarding racial profiling under subsection 1, paragraph L must be made to the
27 board no later than June 1, 2010. The certification must be accompanied by copies of the
28 agency policies. The chief administrative officer of each agency shall certify to the board
29 no later than June 1, 1996 that the agency has provided orientation and training for its
30 members with respect to the policies, except that certification for orientation and training
31 with respect to expanded policies for domestic violence under subsection 1, paragraph D,
32 subparagraphs (1) and (3) must be made to the board no later than January 1, 2004;
33 certification for orientation and training with respect to policies regarding death
34 investigations under subsection 1, paragraph I must be made to the board no later than
35 January 1, 2005; certification for orientation and training with respect to policies
36 regarding public notification under subsection 1, paragraph J must be made to the board
37 no later than January 1, 2007; ~~and~~ certification for orientation and training with respect to
38 policies regarding the recording and preservation of ~~interview~~ interviews of suspects in
39 serious crimes under subsection 1, paragraph K must be made to the board no later than
40 January 1, 2006; and certification with respect to policies regarding racial profiling under
41 subsection 1, paragraph L must be made to the board no later than January 1, 2011.

42 **Sec. 11. 25 MRSA §2804-C, sub-§2-D** is enacted to read:

43 **2-D. Training regarding racial profiling.** Beginning January 1, 2010, the Maine
44 Criminal Justice Academy shall provide training for municipal, county and state law

1 enforcement officers regarding racial profiling pursuant to section 2803-B, subsection 1,
2 paragraph L. Such training must include education concerning the prohibition of racial
3 profiling, procedures to implement the prohibition, scenario-based sessions and respectful
4 methods of carrying out law enforcement in environments that are diverse with respect to
5 race, ethnicity, national origin or religion.

6 **Sec. 12. 25 MRSA c. 409** is enacted to read:

7 **CHAPTER 409**

8 **PROHIBITION ON RACIAL PROFILING**

9 **§3841. Definitions**

10 As used in this chapter, unless the context otherwise indicates, the following terms
11 have the following meanings.

12 **1. Advisory committee.** "Advisory committee" means the Advisory Committee on
13 Racial Profiling established in Title 5, section 12004-I, subsection 74-F.

14 **2. Commissioner.** "Commissioner" means the Commissioner of Public Safety.

15 **3. Investigatory activity.** "Investigatory activity" means any field contact, field
16 investigation, motor vehicle stop, questioning, frisk, search, arrest or detention conducted
17 by a law enforcement officer.

18 **4. Law enforcement agency.** "Law enforcement agency" means any municipal,
19 county or state law enforcement agency.

20 **5. Law enforcement officer or officer.** "Law enforcement officer" or "officer"
21 means any person who by virtue of public employment is vested by law with the power to
22 make arrests for crimes or serve criminal process, whether that power extends to all
23 crimes or is limited to specific crimes. "Law enforcement officer" or "officer" does not
24 include federal law enforcement officers or attorneys prosecuting for the State.

25 **6. Racial profiling.** "Racial profiling" means the practice of a law enforcement
26 officer's relying, to any degree, on race, ethnicity, national origin or religion in selecting
27 which individuals to subject to an investigatory activity or in deciding upon the scope and
28 substance of law enforcement activity following the initial investigatory activity, except
29 that "racial profiling" does not include reliance on such criteria in combination with other
30 identifying factors when the law enforcement officer is seeking to apprehend a specific
31 subject whose race, ethnicity or national origin is part of the description of the suspect.

32 **§3842. Prohibition against racial profiling**

33 A law enforcement officer may not engage in racial profiling.

34 **§3843. Advisory Committee on Racial Profiling**

35 **1. Establishment.** The Advisory Committee on Racial Profiling, established in Title
36 5, section 12004-I, subsection 74-F, is created to provide advice to the commissioner on

1 issues related to racial profiling and efforts to increase understanding and respect for
2 racial, ethnic, national, religious and cultural differences.

3 **2. Membership.** The advisory committee consists of the following members:

4 A. The commissioner or the commissioner's designee, who shall act as chair;

5 B. At least one and no more than 3 representatives of the Office of the Attorney
6 General;

7 C. Two representatives that are law enforcement officers, appointed by the
8 Governor;

9 D. One representative of the Maine Criminal Justice Academy who oversees
10 training, reporting and certification of law enforcement officers in the State,
11 appointed by the Governor;

12 E. Three representatives of civil rights organizations in the State, appointed by the
13 Governor;

14 F. Two representatives of organizations working with minorities in the State,
15 appointed by the Governor; and

16 G. At least one and no more than 2 representatives from federally recognized Indian
17 tribes in this State, appointed by the Governor.

18 **3. Terms.** The term of office for members is 3 years. When a vacancy occurs, it
19 must be filled by the same appointing authority, and the new member shall serve for the
20 remainder of the term. Members who serve on the advisory committee by virtue of their
21 offices serve terms coincident with their terms in office. Members may continue to serve
22 until their replacements are designated.

23 **4. Meetings.** The advisory committee shall meet at least 4 times per year.

24 **5. Duties.** The advisory committee shall:

25 A. Assist the commissioner in developing forms for use by persons wishing to file
26 complaints of racial profiling with law enforcement agencies;

27 B. Advise the commissioner regarding data collection and analysis;

28 C. Advise the commissioner and the Maine Criminal Justice Academy regarding the
29 development of criteria pursuant to section 2803-B, subsection 1, paragraph L and
30 section 2804-C, subsection 2-D;

31 D. Collect research and trend data related to racial profiling or law enforcement in
32 diverse communities and keep the commissioner informed of this research;

33 E. Provide guidance for outreach and public awareness campaigns to educate the
34 public that racial profiling by law enforcement officers is prohibited; and

35 F. Advise the commissioner on any other matter involving racial profiling or diverse
36 communities when requested.

