

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

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Legislative Document

No. 1475

H.P. 1077

House of Representatives, April 2, 2019

An Act To Eliminate Profiling in Maine

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HICKMAN of Winthrop.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: BAILEY of Saco, COLLINGS of Portland, DUNPHY of Old Town,
EVANGELOS of Friendship, MEYER of Eliot, TALBOT ROSS of Portland, Senators:
MOORE of Washington, WOODSOME of York.

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

2 **Sec. 1. 5 MRSA c. 337-D** is enacted to read:

3 **CHAPTER 337-D**

4 **ACT TO ELIMINATE PROFILING IN MAINE**

5 **§4801. Short title**

6 This chapter may be known and cited as "the Act To Eliminate Profiling in Maine."

7 **§4802. Definitions**

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

10 **1. Governmental body.** "Governmental body" means any department, agency,
11 special purpose district or other instrumentality of the State or a local or Indian tribal
12 government.

13 **2. Hit rate.** "Hit rate" means the percentage of stops and searches in which a law
14 enforcement officer finds drugs, a gun or other illegal contraband that leads to an arrest.
15 The hit rate is calculated by dividing the total number of searches by the number of
16 searches that yield contraband.

17 **3. Indian tribe.** "Indian tribe" means a federally recognized Indian nation, tribe or
18 band in the State.

19 **4. Law enforcement agency.** "Law enforcement agency" means an agency in the
20 State charged with enforcement of state, county, municipal or federal laws or laws of an
21 Indian tribe, with the prevention, detection or investigation of criminal, immigration or
22 customs laws or with managing custody of detained persons in the State and includes, but
23 is not limited to, municipal police departments, sheriffs' departments, the State Police, a
24 university or college police department and the Department of Public Safety.

25 **5. Law enforcement officer.** "Law enforcement officer" means a state, county or
26 municipal official or an official of an Indian tribe responsible for enforcing criminal,
27 immigration or customs laws, including, but not limited to, a law enforcement officer
28 who possesses a current and valid certificate issued by the Board of Trustees of the Maine
29 Criminal Justice Academy pursuant to Title 25, section 2803-A.

30 **6. Profiling.** "Profiling" means the discriminatory practice of a law enforcement
31 officer or law enforcement agency relying, to any degree, on actual or perceived race,
32 gender, ethnicity, religion, socioeconomic status, ancestry or national origin in targeting
33 an individual for routine or spontaneous investigatory activities or in deciding upon the
34 scope and substance of law enforcement activity following the initial investigatory
35 procedure, except when there is trustworthy information, relevant to the locality and time
36 frame, that links a person with a particular characteristic described in this subsection to an
37 identified criminal incident or scheme.

1 **7. Routine or spontaneous investigatory activities.** "Routine or spontaneous
2 investigatory activities" means the following activities by a law enforcement officer:

3 A. Interviews;

4 B. Traffic stops;

5 C. Pedestrian stops;

6 D. Frisks and other types of body searches;

7 E. Consensual or nonconsensual searches of the persons, property or possessions,
8 including vehicles, of pedestrians and individuals using any form of public or private
9 transportation;

10 F. Data collection and analysis, assessments and predicated investigations;

11 G. Inspections and interviews of entrants into the United States that are more
12 extensive than those customarily carried out;

13 H. Immigration-related workplace investigations; and

14 I. Other types of law enforcement encounters for which information is compiled for
15 or by the Office of the Attorney General or the Department of Public Safety, State
16 Bureau of Identification.

17 **§4803. Profiling prohibited**

18 **1. Profiling prohibited.** In enforcing the laws of this State, a law enforcement
19 officer or law enforcement agency may not engage in the practice of profiling or take any
20 action that results from profiling.

21 **2. Enforcement.** The Attorney General or an individual injured by profiling may
22 bring a civil action for declaratory or injunctive relief filed in the Superior Court.

23 A. In any action brought under this chapter, relief may be obtained against:

24 (1) A law enforcement agency that employed a law enforcement officer who
25 engaged in profiling;

26 (2) A law enforcement officer who engaged in profiling; or

27 (3) A person with supervisory authority over a law enforcement officer or law
28 enforcement agency that engaged in profiling.

29 B. Proof that the routine or spontaneous investigatory activities of law enforcement
30 officers in a jurisdiction have had a disparate impact on individuals with a particular
31 characteristic described in section 4802, subsection 6 constitutes prima facie evidence
32 of a violation of this chapter.

33 C. In an action or proceeding to enforce this chapter against a governmental body,
34 the court may award the prevailing plaintiff, other than the Attorney General or the
35 State, costs, expert witness fees and any other reasonable attorney's fees.

1 **§4804. Policies and procedures to eliminate profiling by law enforcement agencies**

2 This section establishes policies and procedures to eliminate profiling by law
3 enforcement agencies.

4 **1. Prohibition on profiling.** As provided in Title 25, section 2803-B, a law
5 enforcement agency shall maintain policies and procedures to prohibit and eliminate
6 profiling and cease existing practices that permit profiling.

7 **2. Mandatory training.** The training and certification requirements set by the
8 Board of Trustees of the Maine Criminal Justice Academy pursuant to section 2803-A for
9 all law enforcement officers must include annual anti-profiling education and training.

10 **3. Administrative procedures.** A law enforcement agency shall implement
11 procedures for receiving, investigating and responding to complaints alleging profiling by
12 law enforcement officers.

13 **4. Data collection.** A law enforcement agency shall collect data as required by the
14 guidelines issued by the Attorney General under section 4806.

15 **5. Other policies and procedures.** The Attorney General may require law
16 enforcement agencies to adopt any other policies and procedures the Attorney General
17 determines appropriate to eliminate profiling by law enforcement agencies and law
18 enforcement officers.

19 **§4805. Attorney General procedures and programs to eliminate profiling**

20 By March 15, 2020, in consultation with interested parties, including law
21 enforcement agencies and community, professional, research, civil liberties and civil
22 rights organizations, the Attorney General shall adopt rules for the operation of
23 administrative complaint procedures and independent audit programs to ensure that
24 programs and procedures provide an appropriate response to allegations of profiling by
25 law enforcement officers or law enforcement agencies. Rules must contain guidelines
26 and ensure the fairness, effectiveness and independence of the administrative complaint
27 procedures and independent auditor programs. Rules adopted pursuant to this section are
28 routine technical rules as defined in chapter 375, subchapter 2-A.

29 **§4806. Data collection**

30 **1. Collection and compilation of data.** By March 15, 2020, the Attorney General,
31 in consultation with interested parties, including law enforcement agencies and
32 community, professional, research, civil liberties and civil rights organizations, shall
33 adopt rules and guidelines for the collection and compilation of data under subsection 2.
34 Rules adopted pursuant to this subsection are routine technical rules as defined in chapter
35 375, subchapter 2-A.

36 **2. Requirements.** The rules adopted under subsection 1 must:

37 A. Require the collection of data on all routine or spontaneous investigatory
38 activities;

- 1 B. Require that the data collected:
- 2 (1) Be collected by race, gender, ethnicity, religion, socioeconomic status,
3 ancestry or national origin, as perceived by the law enforcement officer;
- 4 (2) Include the date, time and location of such investigatory activities;
- 5 (3) Include detail sufficient to permit an analysis of whether a law enforcement
6 agency is engaging in profiling; and
- 7 (4) Exclude personally identifiable information;
- 8 C. Provide that a standardized form be made available to law enforcement agencies
9 for the submission of collected data to the Office of the Attorney General, the
10 Department of Public Safety and the Maine Human Rights Commission;
- 11 D. Require that law enforcement agencies compile data on the standardized form
12 made available under paragraph C and submit the form to the Office of the Attorney
13 General, the Department of Public Safety and the Maine Human Rights Commission;
- 14 E. Require that law enforcement agencies maintain all data collected under this
15 chapter for not less than 5 years;
- 16 F. Include guidelines for setting comparative benchmarks, consistent with best
17 practices, against which collected data must be measured;
- 18 G. Require the Office of the Attorney General to:
- 19 (1) Analyze the data for any statistically significant disparities between those
20 who are identified as of an ethnic or racial minority or of a gender, religion or
21 socioeconomic status and those who are not, including:
- 22 (a) In the percentage of drivers or pedestrians stopped relative to the
23 population traveling through the neighborhood;
- 24 (b) In the hit rate; and
- 25 (c) In the frequency of searches performed; and
- 26 (2) By October 15, 2022, and annually thereafter:
- 27 (a) Prepare and provide a report regarding the findings of the analysis
28 conducted under subparagraph (1) to the joint standing committees of the
29 Legislature having jurisdiction over judiciary matters and criminal justice and
30 public safety matters; and
- 31 (b) Make the report available to the public, including posting on the publicly
32 accessible websites of the Office of the Attorney General, the Department of
33 Public Safety and the Maine Human Rights Commission; and
- 34 H. Protect the privacy of individuals whose data is collected by:
- 35 (1) Limiting the use of the data collected under this chapter to the purposes set
36 forth in this chapter;
- 37 (2) Except as otherwise provided in this chapter, limiting access to the data
38 collected under this chapter to those employees or agents of the State or of local

1 governments or of governments of Indian tribes who require access in order to
2 fulfill the purposes set forth in this chapter;

3 (3) Requiring contractors or other nongovernmental agents who are permitted
4 access to the data collected under this chapter to sign use agreements limiting use
5 of the data to purposes set forth in this chapter; and

6 (4) Requiring the maintenance of adequate security measures to prevent
7 unauthorized access to the data collected under this chapter.

8 **§4807. Publication of data**

9 The Office of the Attorney General shall provide to the joint standing committees of
10 the Legislature having jurisdiction over judiciary matters and criminal justice and public
11 safety matters and make available to the public, together with each annual report
12 described in section 4806, the data collected pursuant to this chapter. Data reported may
13 not include personally identifiable information.

14 **§4808. Limitations on publication of data**

15 The name or identifying information of a law enforcement officer, complainant or
16 any other individual involved in any activity for which data is collected and compiled
17 under this chapter is confidential and may not be released to the public or disclosed to any
18 person, except as necessary to comply with this chapter or, if it is information regarding a
19 particular person, to that person.

20 **§4809. Reporting by the Attorney General**

21 **1. Reports.** By October 15, 2021, and annually thereafter, the Attorney General
22 shall provide to the committees of the Legislature having jurisdiction over judiciary
23 matters and criminal justice and public safety matters a report on profiling by law
24 enforcement agencies.

25 **2. Scope of reports.** Each report pursuant to subsection 1 must include:

26 A. A summary of data collected under section 4806 and from any other reliable
27 source of information regarding profiling in the State;

28 B. A discussion of the findings in the most recent report prepared by the Office of
29 the Attorney General under section 4806;

30 C. The status of the adoption and implementation of policies and procedures by law
31 enforcement agencies as required by section 4806; and

32 D. Any recommendations for other policies and procedures that the Attorney General
33 determines would facilitate the elimination of profiling.

34 **Sec. 2. 25 MRSA §2803-B, sub-§1, ¶L,** as amended by PL 2013, c. 147, §19, is
35 further amended to read:

36 L. Mental illness and the process for involuntary commitment; and

