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SPEAKER OF THE HOUSE

Wednesday, April 26th, 2023

*Testimony of Speaker Rachel Talbot Ross presenting
**LD 1613 An Act to Prohibit Profiling and
to Strengthen Civil Rights in Maine**
Before the Joint Select Committee on the Judiciary*

Senator Carney, Representative Moonen and esteemed members of the Joint Standing Committee on Judiciary, I am Rachel Talbot Ross I represent House District 118 which is the Portland peninsula I also have the distinct honor of serving as the Maine Speaker of the House I am here today to present LD 1613, An Act to Prohibit Profiling and to Strengthen Civil Rights in Maine

This bill takes needed steps to assess, quantify, and reduce the occurrence of profiling by law enforcement agencies It continues and advances the work that Maine began in the 124th Legislature The bill requires law enforcement agencies to select, assign and train Civil Rights Officers and to keep the Attorney General informed of their identity Designating and training Civil Rights Officers has proven to be an effective way to combat, address, and reduce the number of violations of the Maine Civil Rights Act If enacted, Maine will have at least one designated Civil Rights Officer in every law enforcement agency in the state, This will help keep Mainers free from behaviors that violate their civil rights and hold persons who violate the civil rights of others accountable for their actions It requires law enforcement agencies to make contact information for designated Civil Rights Officers publicly available so that members of the public know where to turn if they feel their civil rights might have been violated

The bill also adds a definition of profiling and prohibits profiling by a law enforcement officer or agency based on race, gender, ethnicity, religion, socioeconomic status, ancestry, sexual orientation, gender identity, color, physical or mental disability or national origin Today, I am presenting an amendment to change that definition in response to concerns raised by the Office of the Attorney General and the Maine State Police

District 118: Portland neighborhoods of Parkside, Bayside, East Bayside, Oakdale and the University of Southern Maine Campus

LD 1613 also extends from January 1, 2023 to January 1, 2024 the date by which the Attorney General must adopt rules for the recording, retention and reporting of information regarding traffic infractions and from January 15, 2024 to January 15, 2025 the date by which the Attorney General must begin submitting that information regarding records related to profiling to the joint standing committees of the Legislature having jurisdiction over judiciary matters and criminal justice and public safety matters

To put this measure in context, I want to share with you a passage from the American Sociological Association's report, Race, Ethnicity and the Criminal Justice System

“For much of the twentieth century, crime and punishment have provided some of the most powerful symbols of the racial divide in America. In the early decades, lynching’s, chain-gang style penal practices, and prosecutorial and judicial bigotry were common, particularly in the southern criminal justice systems. Throughout the United States, racial minorities were generally tried by all white juries in all white courtrooms, as was the case, for example, in the 1931-32 Scottsboro rape trial. In 1910, African Americans, who were about 11 percent of the U.S. populations, were 31 percent of the prison population. African Americans accounted for 405 of the 455 of executions for rape between 1930 and 1972. Sentencing laws were discriminatory, with the harshest sanctions given to blacks who victimized whites. The police were also instrumental in racial violence, by actively participating in, encouraging or failing to restrain mobs. Over much of the last century, police instigated or participated in race riots in cities nation-wide, and police behavior encouraged hostility toward and violence in minority communities.

“Over the past fifty years, however, U.S. Supreme Court cases and legislation inspired and led by the civil rights movement, ‘due process,’ and other reform movements have made discrimination on the basis of race unconstitutional. Minority defendants are no longer routinely denied bail, charged indiscriminately, without legal representation, or punished disproportionately. Law enforcement policies and practices place far greater emphasis on professionalism and accountability, although incidents involving police violence still occur and tensions between minority communities and police persists.

“Although overt discrimination has diminished in the criminal justice system over recent decades, at the beginning of the twenty-first century, we continue to grapple with the perceptions of and the reality of unfairness in our justice system. Racial and ethnic disparities persist in crime and criminal justice in the United States. Minorities remain overrepresented in delinquency, offending, victimization, and at all stages of the criminal justice process from arrest to pretrial detention, sentencing (including capital punishment), and confinement. Since the trailblazing work of W E B DuBois on race and criminality more than a century ago, researchers have made significant efforts to examine the causes and consequences of racial/ethnic disparities in criminal justice processing, the extent to which these differences are attributable to discrimination or to differential rates of offending, and whether these patterns of overrepresentation have changed over time. Substantial emphasis has also been placed on studying patterns of victimization and offending and the social factors (such as poverty, segregation, unemployment) that underlie and explain race/ethnic differences in data on serious violent crime.”

The report also concluded that. “although ‘racial profiling’ is now widely associated with police using race as a key factor in deciding whether to make a traffic or street stop and interrogate a member of the public, it is not a new phenomenon.”

Here in Maine, more than a decade ago, on behalf of the NAACP, I was fortunate to participate in a broad-based coalition that attempted to address racial disparities in our criminal justice system with an emphasis on profiling. We successfully helped to put forth LD 1442, An Act to Ban Racial Profiling, in the 124th Legislature. As a result of that legislation, Maine established a three-year commission on bias-based profiling. The Commission included members of law enforcement, civil rights organizations, stakeholders, and members of those communities most impacted by profiling. The Commission looked at all forms of profiling and was not limited to race based profiling. In fact, the Commission used a working definition of bias-based profiling that is very similar to the one contained in the amendment I discussed earlier. At the conclusion of its work, the Commission issued a report to the Criminal Justice and Public Safety Committee in February, 2012. That report is attached to my testimony.

The report recommended mandatory policies and training at the Maine Criminal Justice Academy. The Commission also held a public forum to not only engage the public, but gather personal stories regarding profiling as well. We

included and consulted with national experts on profiling to ensure the work we did was consistent with best practice standards. We did as much work on this issue as possible at that time. However, our report also pointed out that there are considerable challenges in addressing profiling in Maine. We realized that not only are we not collecting data but that the limited statistics that we had could not be shared between law enforcement agencies. We had not established safe mechanisms for reporting profiling. It is now time to take these next steps with this bill, including its provision mandating data collection so we can fully realize all the ways to eliminate bias-based profiling.

In both the 129th and 130th Legislatures, we continued to move this work forward. However, a lack of funding prevented us from finishing our tasks of collecting, assessing, and quantifying instances of bias-based profiling. LD 1613 will allow Maine to finish that work so that subsequent Legislatures can consider legislation to put an end to bias-based profiling for good. This is a worthy and necessary goal and represents a continuation of the longstanding efforts that many interested parties, including law enforcement, have undertaken over the last 14 years. Please honor those efforts by acting favorably on LD 1613.

I thank you for your time and attention this morning and am happy to answer any questions you might have.

An Act to Prohibit Profiling and to Strengthen Civil Rights in Maine

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

PART A

Sec A-1. 5 MRSA §4684-C is enacted to read

§4684-C. Civil rights officers

1. Definitions For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings

A "Civil rights officer" means a law enforcement officer who has received special training approved by the Attorney General in identifying and investigating civil rights violations

B "Law enforcement agency" means an agency in the State charged with enforcement of state, county, municipal or federal laws or laws of a federally recognized Indian tribe, with the prevention, detection or investigation of criminal, immigration or customs laws or with managing custody of detained persons in the State and includes, but is not limited to, a municipal police department, a sheriff's department, the State Police, a university or college police department and the Department of Public Safety

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

2 Required civil rights officer. A law enforcement agency shall select, assign and secure training for a civil rights officer, notify the Attorney General of the name and contact information for the civil rights officer and notify the Attorney General of any change in assignment of the civil rights officer as soon as practicable after the change is made. The law enforcement agency shall make the contact information for the civil rights officer publicly available.

PART B

Sec. B-1. 5 MRSA c. 337-D, headnote is amended to read

CHAPTER 337-D

PROFILING AND DATA COLLECTION

Sec. B-2. 5 MRSA §4751, sub-§3 is enacted to read

3. Profiling "Profiling" means relying, to any degree, on actual or perceived race, gender, ethnicity, religion, socioeconomic status, ancestry, sexual orientation, gender identity, color, physical or mental disability or national origin in targeting an individual for routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except in the event the officer or agency is relying on trustworthy relevant information that in the totality of the circumstances that is relevant to the locality and time frame and that links a person with a particular characteristic described in this section to a specific criminal incident or scheme.

Sec. B-3. 5 MRSA §4755 is enacted to read

§4755 Profiling prohibited

131st Maine Legislature
An Act to Prohibit Profiling and to Strengthen Civil Rights in Maine
L D

In enforcing the laws of this State, a law enforcement officer or law enforcement agency may not engage in profiling

PART C

Sec C-1 5 MRSA § 4752, sub-§1, as enacted by PL 2021, c 460, § 1, is amended to read

1 Information collected Beginning July 1, 2023~~2024~~, a law enforcement agency shall record and retain the following information regarding traffic infractions occurring in this State

A The number of persons stopped for traffic infractions,

B Characteristics of race, color, ethnicity, gender and age of each person described in paragraph A The identification of such characteristics must be based on the observation and perception of the law enforcement officer responsible for reporting the stop The person stopped may not be required to provide the information,

C The nature of each alleged traffic infraction that resulted in a stop,

D Whether a warning or citation was issued, an arrest was made or a search was conducted as a result of each stop for a traffic infraction, and

E Any additional information the law enforcement agency determines appropriate The additional information may not include any other personally identifiable information about a person stopped for a traffic infraction such as the person's driver's license number, name or address

Sec. C-1. 5 MRSA §4753, sub-§1, as enacted by PL 2021, c 460, §1, is amended to read

1. Adoption of rules By January 1, 2023 ~~2024~~, the Attorney General shall adopt rules for the recording, retention and reporting of information pursuant to section 4752 pertaining to persons stopped for traffic infractions The information must include the characteristics of race, color, ethnicity, gender and age of the persons stopped, based on the observation and perception of the law enforcement officer making the stop Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2□A

Sec. C-2. 5 MRSA §4754, as enacted by PL 2021, c 460, §1, is amended to read

§4754. Report, publication of data

Beginning January 15, 2024 ~~2025~~ and annually thereafter, the Attorney General shall provide to the joint standing committees of the Legislature having jurisdiction over judiciary matters and criminal justice and public safety matters and make available to the public a report of the information collected pursuant to this chapter The report must include an analysis of the information and may include recommendations for changes in laws, rules and practices Information reported may not include personally identifiable information

Sec. C-3. Retroactivity. This Part applies retroactively to December 31, 2023

SUMMARY

In Part A, this bill requires law enforcement agencies to select, assign and train civil rights officers and to keep the Attorney General informed of the identity of the civil rights officer It requires law enforcement

131st Maine Legislature
An Act to Prohibit Profiling and to Strengthen Civil Rights in Maine

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agencies to make contact information for their civil rights officers publicly available In Part B, the bill prohibits profiling by a law enforcement officer or agency based on race, gender, ethnicity, religion, socioeconomic status, ancestry, sexual orientation, gender identity, color, physical or mental disability or national origin In Part C, the bill changes from July 1, 2023 to July 1, 2024 the date by which a law enforcement agency shall record and retain information regarding traffic infractions in this State, from January 1, 2023 to January 1, 2024 the date by which the Attorney General must adopt rules for the recording, retention and reporting of information regarding traffic infractions and from January 15, 2024 to January 15, 2025 the date by which the Attorney General must begin submitting the information to the joint standing committees of the Legislature having jurisdiction over judiciary matters and criminal justice and public safety matters It also makes the changes in Part C retroactive to December 31, 2023

LD 16B
Speaker
Talbot Ross

**Report of the Advisory Committee
on Bias-Based Profiling
by Law Enforcement Officers
and Law Enforcement Agencies**

**Presented to the
Joint Standing Committee on
Criminal Justice and Public Safety
on
February 2, 2012**

EXECUTIVE SUMMARY

In 2009, the Maine Legislature enacted 25 M R S Chapter 355. That law established an *Advisory Committee on Bias-Based Profiling by Law Enforcement Officers and Law Enforcement Agencies*. The Legislature instructed the Advisory Committee to

- A Work with the Maine Criminal Justice Academy on the issue of bias-based profiling,
- B Work with law enforcement agencies to determine if bias-based profiling occurs and offer proposals to address the matter,
- C Make recommendations to the Maine Criminal Justice Academy on curricula regarding bias-based profiling,
- D Conduct outreach and a public awareness campaign to educate the public about modern law enforcement practices, and
- E Advise the Legislature on matters involving bias-based profiling.

The Legislature's charge to the Advisory Committee was formidable and was to be accomplished with essentially no funding and no staff. The legislation establishing the Advisory Committee is repealed effective November 12, 2012.

The Advisory Committee brought together people from different backgrounds and with varied experiences regarding the issue of bias-based profiling. The Committee included members of law enforcement organizations and representatives of civil rights organizations and minority communities. The Committee eventually agreed on a working definition of bias-based profiling:

Bias-based profiling occurs when stops, detentions, searches, or asset seizures and forfeiture efforts are based on race, ethnicity, gender, sexual orientation, religion, economic status, age or cultural group rather than solely on an individual's conduct and behavior or specific suspect information.

The Committee recognized that even the perception that law enforcement agencies or individual members of those agencies engage in bias-based profiling can be problematic. The Advisory Committee agreed that if any segment of the public, for whatever reason, believes that bias-based profiling occurs, public safety is endangered. It is law enforcement's goal to secure the safety of the entire public and all members of the larger community desire meaningful public safety as well.

The Advisory Committee worked closely with Jack McDevitt, a nationally recognized expert on issues related to bias-based profiling. Mr. McDevitt is an Associate Dean in the College of Criminal Justice at Northeastern University. Based on Mr. McDevitt's advice, the

Committee attempted to structure a three-step process to address the issue of bias-based profiling in Maine. Those three steps include:

- 1 Data collection,
- 2 Addressing any identified problem by establishing policies and working with law enforcement to develop basic and continuing training to redress any identified problems, and
- 3 Fostering a meaningful dialogue between members of the public and representatives of law enforcement regarding bias-based profiling and perceptions about that practice.

Unfortunately, due to the practical problem that law enforcement agencies in Maine use different data collection systems and the Committee's lack of funding, meaningful data collection and analysis were not possible. The Advisory Committee was however successful in developing policies and establishing training curricula regarding bias-based profiling. Those policies became effective on December 31, 2011 and training for all law enforcement personnel in the State of Maine will occur in 2013. The Committee's plans to hold a statewide public forum regarding bias-based profiling and to create an ongoing dialogue between members of the public and law enforcement have not been successful to date. However, the Advisory Committee recently secured a grant from the Broad Reach Fund and intends to use those funds to hold a statewide forum in 2012.

The Advisory Committee has reached the point where it works very well together on issues that can sometimes be quite divisive and volatile. All members of the Committee take the Legislature's charge to examine issues surrounding bias-based profiling and perceptions about that practice very seriously. The Committee hopes to continue to work on these issues, conduct a forum and report back to this Legislative Committee before November 12, 2012.

I. INTRODUCTION AND BACKGROUND

In 2009, the Maine Legislature enacted 25 M.R.S Chapter 355 *Attachment 1*. That law established an *Advisory Committee on Bias-Based Profiling by Law Enforcement Officers and Law Enforcement Agencies* 25 M.R.S § 3001(1) That section also set out the membership qualifications for the Advisory Committee. The Legislature required the Advisory Committee to consist of members of law enforcement agencies, associations and labor organizations, representatives of civil rights organizations in Maine and a member of a federally recognized Indian Tribe. Specifically, the Legislature established a Committee with the following members

- 1 The Commissioner of Public Safety or the Commissioner's designee,
2. One representative of a statewide association of chiefs of police;
- 3 One representative of a statewide association of sheriffs,
- 4 One representative of police labor organizations in the State,
5. One at-large active line officer who is a member of a police labor organization in this State,
6. One at-large representative who is a current or former officer of the Maine State Police,
7. The Attorney General or the Attorney General's designee,
8. One representative appointed by the Board of Trustees of the Maine Criminal Justice Academy,
9. Seven representatives from different civil rights organizations in the State; and
- 10 One representative from a federally recognized Indian Tribe in Maine.

See generally 25 M.R.S § 3001(3) The Legislature also directed that the Advisory Committee be co-chaired by the Commissioner of Public Safety and a representative of the National Association for the Advancement of Colored People ("NAACP") *Id*

In February 2010, then Commissioner of Public Safety Anne Jordan published a list of the original roster of the Advisory Committee *Attachment 2*. Due to scheduling conflicts, job changes and other factors, the roster of the Advisory Committee has changed over time. The current membership can be found in *Attachment 3*¹ The Committee is co-chaired by John

¹ The composition of the Advisory Committee is different than it was when it was originally established. Due to changes in administrations, a new Commissioner of Public Safety was appointed and consequently Commissioner John Morris replaced Commissioner Anne Jordan. Similarly, Advisory Committee member Beth Stickney left the Immigration Legal Advocacy Project ("ILAP") and was replaced by ILAP employee Andi Summers. In addition, three original members of the Committee became unable to serve. Marvin Glazier representing the Jewish community resigned and was replaced by Rabbi Darah Lerner Qamar Bashir, who was appointed as an advocate for refugee/immigrant communities, was unable to serve due to her work schedule and an inability to attend Advisory Committee meetings. Ben Chin, of the Maine People's Alliance, has replaced Ms. Bashir on the Advisory Committee. George Tomer, a Penobscot Tribal Elder, representing a federally recognized Indian Tribe attended some meetings in 2010 but became unable to continue to serve. At this time, the Committee does not have a member from a federally recognized Indian Tribe. The Committee is working to insure that members of federally recognized Indian Tribes participate in the planning of the public forum to be held in 2012 and participate in that forum itself.

Morris, Commissioner of Public Safety, and Rachel Talbot Ross of the Portland NAACP

The Legislature charged the Advisory Committee with specific duties

The committee shall

- A Work with the Board of Trustees of the Maine Criminal Justice Academy to develop a model policy on bias-based profiling,
- B Work with law enforcement across the State on a voluntary basis to assess whether or not bias-based profiling occurs in this State and, if it does, to what extent and to offer proposals and make recommendations to address the matter,
- C Make recommendations to the Board of Trustees of the Maine Criminal Justice Academy on curricula for basic and in-service law enforcement training on the subject of bias-based profiling,
- D Establish a mechanism for outreach and public awareness campaigns to educate advocacy organizations and the general public about modern law enforcement practices and procedures, and
- E Advise the Legislature on matters involving bias-based profiling on its own initiative or when requested

25 M R S § 3001(7)(A)-(E) The Legislature also directed the Advisory Committee to file a report with the Legislature annually by February 15 No report was filed by February 15, 2011 in part as a result of the transition of administrations and the appointment of a new Commissioner of the Department of Public Safety, John Morris However, Commissioner Morris quickly came up to speed with the workings of the Advisory Committee and has become an active and integral member of that Committee

The Legislature's charge to the Advisory Committee was formidable The charge was very broad and was to be accomplished with essentially no funding and no staff The lack of funding and staff has hampered the Advisory Committee in meeting the charge it was given by the Legislature Since its outset, the Advisory Committee has been mindful that the legislation that established it is repealed effective November 12, 2012

With that date in mind, the Advisory Committee undertook an aggressive meeting schedule. The Advisory Committee held full meetings on.

March 5, 2010,
April 9, 2010,
May 14, 2010,
June 18, 2010,

July 9, 2010,
August 5, 2010,
August 13, 2010,
September 14, 2010,
October 21, 2010,
November 30, 2010,
January 28, 2011,
February 18, 2011,
March 25, 2011,
May 2, 2011,
June 20, 2011,
July 8, 2011,
August 18, 2011,
September 27, 2011,
October 11, 2011, and
January 20, 2012

The Advisory Committee also formed multiple subcommittees. Those subcommittees met as follows:

Public Engagement Subcommittee

October 20, 2010, and
November 4, 2010

Agenda Subcommittee

May 9, 2011, and
July 18, 2011

Outreach Subcommittee

May 16, 2011,
June 13, 2011,
July 18, 2011, and
October 7, 2011

II. WORK OF THE ADVISORY COMMITTEE

The Advisory Committee brought together people from very different backgrounds and with varied experiences when it came to the issue of bias-based profiling. While it would be easy to look at the Advisory Committee and assume that it has been divided simply along the lines of law enforcement personnel and non-law enforcement personnel, that simplistic approach would not reveal an accurate picture. There were differences of opinion expressed by members of the law enforcement community as well as by members representing civil rights organizations. The Advisory Committee's early meetings often reflected those different viewpoints. It took the

Advisory Committee some time to begin to agree on the nature of bias-based profiling, perceptions held by members of various communities about bias-based profiling and the possible problems that those views and perceptions have on the general issue of public safety. To the Advisory Committee's credit, it realized early on that it needed to put individual differences and experiences to the side so that it could begin to grapple with the larger issues presented to it by the Legislature.

Having done this, the Advisory Committee reached consensus of very important and fundamental issues. While agreeing to disagree about the existence or extent of bias-based profiling in Maine, the Advisory Committee agreed to a general definition of that practice:

Bias-based profiling occurs when stops, detentions, searches, or asset seizures and forfeiture efforts are based on race, ethnicity, gender, sexual orientation, religion, economic status, age or cultural group rather than solely on an individual's conduct and behavior or specific suspect information.

In addition, members of the Advisory Committee agreed that the term public safety could be rendered meaningless, or at least seriously diluted, if any segments of the public, for whatever reason, do not feel that they are treated fairly by law enforcement agencies. Thus, the mere fact that members of the public, particularly members of minority communities identified in the definition of bias-based profiling, hold the perception that they are treated differently because of their personal and sometimes immutable characteristics is itself a significant problem. Advisory Committee members representing law enforcement readily acknowledged that if members of the public are afraid to engage or rely upon law enforcement agencies, those agencies cannot be fully effective in advancing public safety. Similarly, members of civil rights organizations on the Committee recognized that if their constituents are not likely to call on law enforcement agencies when their safety is in jeopardy, those individuals will never feel entirely safe or feel part of the larger community. The Committee recognized that although it may be easy to agree upon these basic principles, the path to finding common ground is less well defined.

One of the first actions taken by the Advisory Committee was to invite Jack McDevitt, Associate Dean for Research and Graduate Studies in the College of Criminal Justice at Northeastern University, to address the Committee. Mr. McDevitt is a nationally known expert in bias-based profiling and has worked on this topic with law enforcement agencies and communities throughout the United States. He has been a valuable resource to the Advisory Committee and continues to work with us as we attempt to meet our legislatively mandated responsibilities. Mr. McDevitt informed the Committee that there are three critical areas to explore when addressing bias-based profiling by law enforcement or the perception of bias-based profiling held by community members, particularly members of minority communities in terms of race, color, ethnicity, religion, gender, sexual orientation, economic status and other personal characteristics. Mr. McDevitt described a three-step process that includes

1. Data collection to determine if a bias-based profiling problem exists,

2 Addressing the problem if it exists by establishing policies and working with law enforcement personnel in both basic training and through continuing in-service trainings to address any identified problems, and

3. Fostering an ongoing dialogue by creating opportunities that allow members of the public to share their experiences with and perceptions about the practices of law enforcement, and coupling that with educating the public about the procedures used by law enforcement and the public safety reasons behind the use of those procedures. This also presents an opportunity for law enforcement to communicate that bias-based profiling is not an acceptable law enforcement practice

Mr. McDevitt was candid and told the Advisory Committee that this type of process is not easy. He came with an understanding of the inherent tensions that can manifest themselves when people confront or discuss an issue as volatile as bias-based profiling. He informed the Committee that this can be a deeply personal and emotional time for any person involved in the discussion. He expressed how important it was for members of law enforcement agencies to avoid becoming defensive when members of a community discuss what they perceived as examples of unjust treatment by law enforcement. He also said that it was important for members of the community who might be sharing these deeply personal narratives to accept that it is often impossible to remedy actions that have already taken place. The ultimate goal of this process is to create conversation and to take advantage of opportunities to find common ground as well as an understanding of techniques used by law enforcement.

With that backdrop, the Advisory Committee first addressed the issue of data collection. The general consensus was that concrete data regarding stops, searches and seizures and the race, ethnicity and other personal characteristics of the subjects on those encounters, though not without its own limitations, is necessary to determine if bias-based profiling occurs and if it does occur to then determine if it is a statewide problem, limited to identifiable law enforcement agencies or confined to identifiable law enforcement officers. Law enforcement members of the Advisory Committee, in particular, expressed a concern that anecdotal information about profiling and perceptions of profiling can be unreliable and create false impressions of the behavior of law enforcement agencies. The misconduct of some can be viewed as the conduct of all. Some members of civil rights organizations observed that in the absence of the collection and analysis of concrete data, anecdotal data is all that we have. They spoke of power of hearing first-hand from people who believe that they have been subject to profiling and the impact that those experiences had on their lives. All members of the Committee recognized that the vast majority of law enforcement officers do not intend to or in fact engage in bias-based profiling.

The Advisory Committee contacted law enforcement agencies around the State to determine if there were departments that would agree to participate in a voluntary data collection project. Although many departments expressed an interest, including the cities of Auburn, Lewiston and South Portland, as well as Cumberland County, the lack of financial resources to analyze any data collected made this type of undertaking impossible. Though relevant data is being collected in some fashion by some departments, it is not clear if and when funds will become available to work with and analyze that data in a meaningful way. The entire Advisory Committee viewed this as a significant problem.

Another problem with data collection is that not all law enforcement agencies use the same data collection system. There are multiple records management system vendors in Maine that provide services to local and state police departments. The list below provides an example of the number of the different vendors and the number of agencies that use their system.

Vendor	Number of Agencies
Crime Star	Four Agencies
Crime Tracker	Seven Agencies
Crsnet/Motorola	Two Agencies
CSH	Two Agencies
End2End	One Agency
HTE	Three Agencies
IMC	60 Agencies
Rem Tech	One Agency
Report Exec	Three Agencies
Spillman	37 Agencies
Windsor Group	Eight Agencies
Xpediter Patrol C/S	One Agency
In-house programs (no vendor)	Four Agencies

The Advisory Committee recognized that even an issue that seems on the surface to be a simple one, data collection, presents many obstacles. There is nothing approaching uniformity in the types of data collected or the data collection systems used by law enforcement agencies in Maine and, at this time, there are no funds available to begin the process of collating, analyzing and comparing data collected by multiple law enforcement agencies.

The Advisory Committee then turned to Step 2 of Mr. McDevitt's three-step process. This second step called for the Committee to address the overall issue of bias-based profiling and the perception among some members of the public that it exists, by working with the Maine Criminal Justice Academy (MCJA) to create a model policy tackling the issue head-on, and to mandate training for all law enforcement officers. The Advisory Committee has had concrete success in these areas. At its May 2, 2011 meeting, a policy explicitly prohibiting bias-based profiling was proposed and approved by the Advisory Committee. Committee member John Rogers worked with the Board of Trustees of the MCJA and the Maine Chiefs of Police to shepherd policies that prohibit bias-based profiling through those entities. As a result, on September 9, 2011 the Board of Trustees of the MCJA adopted a minimum standard requiring every law enforcement agency in Maine to have a formal policy that prohibits bias-based profiling. *Attachment 4*. Thereafter, on September 15, 2011 the Maine Chiefs of Police Association created and adopted a model policy to accomplish the goal of clearly prohibiting bias-based profiling. *Attachment 5*. That model policy is a template that can be adopted as is or adapted by law enforcement agencies throughout Maine. These actions became effective on December 31, 2011. In addition, to make certain that every law enforcement officer is aware of and trained about the prohibition against bias-based profiling, the Board of Trustees of the MCJA mandated training for all officers in "Cultural Diversity and Bias-Based Policing" in 2013. *Attachment 6*

The third and in many ways most complicated task suggested to the Advisory Committee by Mr. McDevitt was Step 3. That step calls for an ongoing dialogue that engages both the public and members of the law enforcement community in conversations around issues of bias in general, and bias-based profiling and policing in particular. When the Advisory Committee first discussed this issue, it consulted with Mr. McDevitt as to the preferred format for this type of community engagement. The Advisory Committee learned that to maximize effectiveness, community meetings should be held in multiple locations throughout Maine. In addition, if possible, three separate meetings should be held at each location. This would allow for a meeting where members of the public could share their stories, a second meeting focused on community education about policing techniques led by representatives of law enforcement and a third meeting to establish a sustainable two-way dialogue. As a result, the Advisory Committee considered an ambitious plan to partner with local community groups to conduct multi-session public meetings in eight locations throughout the State of Maine. However, as the Advisory Committee and its Public Engagement Subcommittee attempted to solidify this long-term vision and schedule those meetings, it became clear, again due to financial and personnel limitations, that a plan to hold multi-session meetings in all geographic areas of the State of Maine was not achievable. It was simply not feasible to rely on donated meeting space, facilitators and translators for those meetings. There were also no funds available for the logistics of having members of the Advisory Committee attend those meetings.

The Advisory Committee then explored paring down its plan for three session meetings at multiple locations. After input from the Outreach and Agenda Subcommittees, and discussion with representatives of various law enforcement agencies, religious and community stakeholder groups, the Advisory Committee determined that a better and more attainable approach was to conduct a single half-day statewide public forum in the fall of 2011. A similar approach had been used in the State of Vermont with some success. Again, as the Advisory Committee developed a budget for this event, it became clear that it lacked capacity to hold it. Therefore, the Advisory Committee postponed the 2011 event and decided to seek funding from private sources with the goal of holding this event in the spring of 2012.

In the late summer of 2011, through the diligent efforts of Andi Summers and other members of the Advisory Committee, the Broad Reach Fund awarded a grant of \$8,000.00 to further the work of the Advisory Committee and to fund a public forum to address these important issues. Though the precise agenda for that public forum has not been fully developed, it will include a period of time for members of the public to address the Advisory Committee, including the opportunity to share personal stories about their encounters with law enforcement. This will be followed by representatives of law enforcement explaining the nuts and bolts mechanics of stops, searches and seizures. Law enforcement will also be able to use part of this time to invite and answer questions from the public and to communicate to the public that bias-based profiling is not an acceptable law enforcement practice. Ideally, the session will also include a round-table discussion in which members of the public can pose questions to members of law enforcement agencies about how and why their agencies do what they do. The Agenda Subcommittee will be responsible for creating a more formal agenda for the public forum. The Outreach Subcommittee will establish a process to ensure that representatives of multiple law enforcement agencies and as many different communities and populations from all parts of

Maine are able to attend the event. This outreach is necessary to ensure that the public forum is truly a meaningful statewide event.

III. CONCLUSION

The Advisory Committee has moved from a group of members who at times seemed to be talking at one another to a group that works well together in an atmosphere where differing opinions are welcome and respected. The different backgrounds and experiences that members brought to the Committee have become a source of its strength. The Committee's development in this manner has yielded clear benefits. The Advisory Committee has met two parts of the four-part charge that required action by the Committee and has partially met a third charge. The Advisory Committee has met its charge to

[w]ork with the Board of Trustees of the Maine Criminal Justice Academy to develop a model policy on bias-based profiling; and

[make] recommendations to the Board of Trustees of the Maine Criminal Justice Academy on curricula for basic and in-service law enforcement training on the subject of bias-based profiling

See generally 25 M.R.S. § 3001(7)(A)&(C)

In addition, the Advisory Committee has partially met its charge to

[w]ork with law enforcement across the State on a voluntary basis to assess whether or not bias-based profiling occurs in this State and, if it does, to what extent and to offer proposals and make recommendations to address the matter

See generally 25 M.R.S. § 3001(7)(B). While the Advisory Committee has secured the cooperation of multiple law enforcement agencies to engage in a data collection project, it has not completed that task due to a lack of funding. If and when funding becomes available, the Advisory Committee would be in a position to advance this project. Finally, the Advisory Committee has been unable to

[e]stablish a mechanism for outreach and public awareness campaigns to educate advocacy organizations and the general public about modern law enforcement practices and procedures

See generally 25 M.R.S. § 3001(7)(D). However, with the assistance of the grant from the Broad Reach Fund it is continuing with plans to achieve this goal. The Advisory Committee has received overwhelming support from state and local law enforcement agencies who have indicated a strong willingness to participate in this event. It is an issue that the law enforcement community takes seriously.

The Advisory Committee is excited about the possibility of holding a statewide symposium to gather public input and to create dialogue between law enforcement and members of the general public. The Advisory Committee feels that this is the most effective and practical way to generate meaningful discussion and conversation about bias-based profiling and perceptions about profiling. This statewide event will also provide an opportunity for law enforcement to educate participants about modern law enforcement techniques. The Advisory Committee hopes that this forum will serve as a template for communities throughout Maine to use to create dialogue at the local level. Individual communities are in the best position to shape that template to conform to local concerns and issues. The Advisory Committee is on schedule to hold that event in the spring of 2012. We welcome this Committee's participation in that symposium. The Advisory Committee will be extending invitations to this public forum to the three branches of Maine's government in advance of the event.

PLEASE NOTE Legislative Information *cannot* perform research, provide legal advice, or interpret Maine law For legal assistance, please contact a qualified attorney.

**An Act To Create the Advisory Committee on Bias-based Profiling
by Law Enforcement Officers and Law Enforcement Agencies**

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

Sec. 1. 5 MRSA §12004-I, sub-§74-F is enacted to read.

74-F.

Public Safety

Not Authorized

25 MRSA §3001

Advisory Committee
on Bias-based
Profiling by Law
Enforcement Officers
and Law Enforcement
Agencies

Sec. 2. 25 MRSA c. 355 is enacted to read

CHAPTER 355

**ADVISORY COMMITTEE ON BIAS-BASED PROFILING BY LAW
ENFORCEMENT OFFICERS AND LAW ENFORCEMENT AGENCIES**

**§ 3001. Advisory Committee on Bias-based Profiling by Law Enforcement Officers
and Law Enforcement Agencies**

1. Committee established. The Advisory Committee on Bias-based Profiling by Law Enforcement Officers and Law Enforcement Agencies, referred to in this chapter as "the committee," is established by Title 5, section 12004-I, subsection 74-F to study the issue of bias-based profiling.

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

A. "Bias-based profiling" means the use by a law enforcement officer or law enforcement agency of race, ethnicity, religion or national origin, in the absence of a specific report or other identifying information, as a factor in determining the existence of probable cause or reasonable suspicion for an arrest, investigative detention, field identification or traffic stop.

B. "Commissioner" means the Commissioner of Public Safety.

3. Membership. The committee consists of the following members.

PUBLIC Law, Chapter 353 LD 1442, item 1, 124th Maine State Legislature
An Act To Create the Advisory Committee on Bias-based Profiling
by Law Enforcement Officers and Law Enforcement Agencies

A The commissioner or the commissioner's designee, who shall act as cochair;

B One representative from each of the following law enforcement organizations, appointed by the commissioner from a list submitted by the organization to the commissioner:

(1) One representative of a statewide association of chiefs of police,

(2) One representative of a statewide association of sheriffs,

(3) One representative of police labor organizations in this State, and

(4) One at-large active line officer who is a member of a police labor organization in this State,

C. One at-large representative who is a current or former officer of the Maine State Police, appointed by the commissioner,

D The Attorney General or the Attorney General's designee,

E One representative appointed by the Board of Trustees of the Maine Criminal Justice Academy,

F Seven representatives from different civil rights organizations in the State, each appointed by the commissioner and selected from a list submitted by civil rights organizations to the commissioner. Of the 7, at least one representative must be selected from the list submitted by chapters of the National Association for the Advancement of Colored People within the State, and that member shall act as cochair, and

G. One representative appointed by the commissioner and selected from lists submitted by federally recognized Indian tribes in this State

4. Terms. Members shall serve for 3-year terms. When a vacancy occurs, the original appointing authority shall appoint a new member to serve for the remainder of the term.

5. Meetings. The committee may meet as often as necessary

6. Compensation. Members of the committee are not entitled to compensation according to the provisions in Title 5, section 12004-I, subsection 74-F

7. Duties. The committee shall

A Work with the Board of Trustees of the Maine Criminal Justice Academy to develop a model policy on bias-based profiling;

B. Work with law enforcement across the State on a voluntary basis to assess whether or not bias-based profiling occurs in this State and, if it does, to what extent and to offer proposals and make recommendations to address the matter,

PUBLIC Law, Chapter 353 LD 1442, item 1, 124th Maine State Legislature
An Act To Create the Advisory Committee on Bias-based Profiling
by Law Enforcement Officers and Law Enforcement Agencies

C Make recommendations to the Board of Trustees of the Maine Criminal Justice Academy on curricula for basic and in-service law enforcement training on the subject of bias-based profiling:

D Establish a mechanism for outreach and public awareness campaigns to educate advocacy organizations and the general public about modern law enforcement practices and procedures, and

E Advise the Legislature on matters involving bias-based profiling on its own initiative or when requested

8. Annual report. Beginning in 2010, the committee shall report annually by February 15th and as requested to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and to the Board of Trustees of the Maine Criminal Justice Academy. The report may serve as a guide for the joint standing committee concerning the need for legislation on the issue of bias-based profiling. The joint standing committee is authorized to report out relevant legislation after receiving the committee's annual report.

§ 3002. Advisory Committee on Bias-based Profiling by Law Enforcement Officers and Law Enforcement Agencies Fund

1. Fund established. The Advisory Committee on Bias-based Profiling by Law Enforcement Officers and Law Enforcement Agencies Fund, referred to in this section as "the fund," is established as an Other Special Revenue Funds account and is nonlapsing. The commissioner may use the fund only to support the costs associated with committee administration and educational and training materials regarding bias-based profiling.

2. Revenue sources. The commissioner may accept private and public contributions intended to be used for the purposes of the fund.

3. Budget. The commissioner shall submit a budget for the fund for each biennium pursuant to Title 5, sections 1663 and 1666.

§ 3003. Repeal

This chapter is repealed November 1, 2012.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made

PUBLIC SAFETY, DEPARTMENT OF

Criminal Justice Academy 0290

Initiative: Establishes the Advisory Committee on Bias-based Profiling by Law Enforcement Officers and Law Enforcement Agencies Fund with a base allocation of \$500

OTHER SPECIAL REVENUE FUNDS

2009-10

2010-11

PUBLIC Law, Chapter 353 LD 1442, item 1, 124th Maine State Legislature
An Act To Create the Advisory Committee on Bias-based Profiling
by Law Enforcement Officers and Law Enforcement Agencies

All Other	\$500	\$500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$500	\$500

Effective September 12, 2009