

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 Ban Racial Profiling

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

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

§ 4552. Policy

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

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

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

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

SUBCHAPTER 5-C

RACIAL PROFILING

§ 4605. Right to freedom from racial profiling

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

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

§ 4606. Racial profiling unlawful

It is unlawful discrimination for a law enforcement officer to use racial profiling by relying on race, ethnicity, national origin or religion in selecting which individuals are subject to an investigatory activity as defined by Title 25, section 3841, subsection 3 unless there are other identifying factors when the law enforcement officer is seeking to apprehend a specific subject whose race, ethnicity or national origin is part of the description of the suspect.

§ 4607. Complaint period

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

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

§ 4684-C. Racial profiling

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

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

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

74-F.

Public Safety

Not Authorized

25 MRSA §3843

Advisory Committee
on Racial Profiling

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

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

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

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

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

L. Racial profiling.

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

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

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

3. Agency compliance. The chief administrative officer of each law enforcement agency shall certify to the board no later than January 1, 1996 that the agency has adopted written policies consistent with the minimum standards established by the board pursuant to subsection 2, except that certification to the board for expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) to (3) must be made to the board no later than June 1, 2003; certification to the board for adoption of a death investigation policy under subsection 1, paragraph I must be made to the board no later than June 1, 2004; certification to the board for adoption of a public notification policy under subsection 1, paragraph J must be made to the board no later than June 1, 2006; ~~and~~ certification to the board for adoption of a policy for the recording and preservation of interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than June 1, 2005; and certification to the board for adoption of a policy regarding racial profiling under subsection 1, paragraph L must be made to the board no later than June 1, 2010. The certification must be accompanied by copies of the agency policies. The chief administrative officer of each agency shall certify to the board no later than June 1, 1996 that the agency has provided orientation and training for its members with respect to the policies, except that certification for orientation and training with respect to expanded policies for domestic violence under subsection 1, paragraph D, subparagraphs (1) and (3) must be made to the board no later than January 1, 2004; certification for orientation and training with respect to policies regarding death investigations under subsection 1, paragraph I must be made to the board no later than January 1, 2005; certification for orientation and training with respect to policies regarding public notification under subsection 1, paragraph J must be made to the board no later than January 1, 2007; ~~and~~ certification for orientation and training with respect to policies regarding the recording and preservation of ~~interview~~interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than January 1, 2006; and certification with respect to policies regarding racial profiling under subsection 1, paragraph L must be made to the board no later than January 1, 2011.

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

2-D. Training regarding racial profiling. Beginning January 1, 2010, the Maine Criminal Justice Academy shall provide training for municipal, county and state law enforcement officers regarding racial profiling pursuant to section 2803-B, subsection 1, paragraph L. Such training must include education concerning the prohibition of racial profiling, procedures to implement the prohibition, scenario-based sessions and respectful methods of carrying out law enforcement in environments that are diverse with respect to race, ethnicity, national origin or religion.

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

CHAPTER 409

PROHIBITION ON RACIAL PROFILING

§ 3841. Definitions

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

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

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

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

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

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

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

§ 3842. Prohibition against racial profiling

A law enforcement officer may not engage in racial profiling.

§ 3843. Advisory Committee on Racial Profiling

1. Establishment. The Advisory Committee on Racial Profiling, established in Title 5, section 12004-I, subsection 74-F, is created to provide advice to the commissioner on issues related to racial profiling and efforts to increase understanding and respect for racial, ethnic, national, religious and cultural differences.

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

- A. The commissioner or the commissioner's designee, who shall act as chair;
- B. At least one and no more than 3 representatives of the Office of the Attorney General;
- C. Two representatives that are law enforcement officers, appointed by the Governor;
- D. One representative of the Maine Criminal Justice Academy who oversees training, reporting and certification of law enforcement officers in the State, appointed by the Governor;
- E. Three representatives of civil rights organizations in the State, appointed by the Governor;
- F. Two representatives of organizations working with minorities in the State, appointed by the Governor; and
- G. At least one and no more than 2 representatives from federally recognized Indian tribes in this State, appointed by the Governor.

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

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

5. Duties. The advisory committee shall:

- A. Assist the commissioner in developing forms for use by persons wishing to file complaints of racial profiling with law enforcement agencies;
- B. Advise the commissioner regarding data collection and analysis;
- C. Advise the commissioner and the Maine Criminal Justice Academy regarding the development of criteria pursuant to section 2803-B, subsection 1, paragraph L and section 2804-C, subsection 2-D;
- D. Collect research and trend data related to racial profiling or law enforcement in diverse communities and keep the commissioner informed of this research;
- E. Provide guidance for outreach and public awareness campaigns to educate the public that racial profiling by law enforcement officers is prohibited; and

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

6. Annual report. The advisory committee shall report by January 15th of each year 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 include recommendations for changes to laws regarding racial profiling. After receipt and review of the annual report required under this subsection, the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters may submit legislation relating to racial profiling. By January 15, 2011, the advisory committee report must include recommendations on the need for, and methods of, collecting data relating to racial profiling.

Sec. 13. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 25, section 3843, subsection 3, the Governor shall appoint one representative of a civil rights organization and one representative of law enforcement officers to initial one-year terms, and one representative of organizations working with minorities, one representative of law enforcement officers and the representative of a federally recognized Indian tribe in the State to initial 2-year terms. The remaining representatives appointed by the Governor must be appointed to initial 3-year terms.

SUMMARY

This bill prohibits law enforcement officers from using racial profiling. This bill also adds a prohibition on racial profiling by law enforcement officers to the Maine Civil Rights Act and the Maine Human Rights Act.

It requires the Board of Trustees of the Maine Criminal Justice Academy to develop mandatory law enforcement agency minimum policy standards regarding racial profiling, and all law enforcement agencies to adopt policies and provide all officers with training regarding racial profiling. It also establishes the Advisory Committee on Racial Profiling to provide research and advice to the Commissioner of Public Safety and report annually to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding racial profiling.