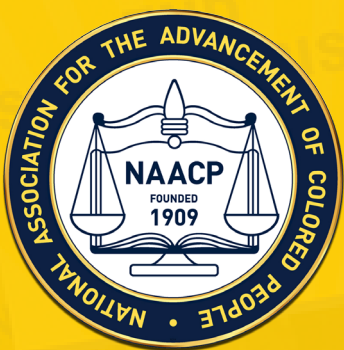


September 2014

BORN SUSPECT

Stop-and-Frisk Abuses & the Continued
Fight to End Racial Profiling in America



www.naacp.org

NAACP's groundbreaking report opens a renewed dialogue about racial profiling by law enforcement in America. This conversation includes a call to action for NAACP members to work toward ending this ineffective policing practice across the country.

Appendix III: Anti-Racial Profiling Model Bill

A Law to Prohibit Profiling/Discriminatory Policing Practices by Law Enforcement Officers.

Be it enacted by the [Name of Government Body] as follows:

Section 1. Declaration of Legislative Intent and Findings.

- (a) The [Name of Government Body] finds that profiling/discriminatory policing practices endangers the long tradition of law enforcement officers serving the [Applicable State or Locality] community in order to cultivate a welcoming place for people of all backgrounds. The [Legislative Assembly/Local Council] further finds that the people of [Applicable State or Locality] are in great debt to the hard work and dedication of police officers in their daily duties. The name and reputation of these officers should not be tarnished by the actions of those who would commit discriminatory practices.
- (b) Profiling/discriminatory policing practices by the police alienates communities from law enforcement, violates rights and freedoms, and is a danger to public safety. By passing this legislation, it is the intent of the [Name of Government Body] to prohibit profiling/discriminatory policing practices and to create a safer state/city/community for all.

Section 2. Profiling/Discriminatory Policing Practices Prohibited.

- (a) Definitions. As used in this section, the following terms have the following meanings:
 1. “Law enforcement officer” means
 - (A) a peace officer or police officer as defined in the law who is employed by the [State/ Locality]; or
 - (B) a special patrol officer appointed by the police commissioner/chief to carry out law enforcement duties.
 2. “Law enforcement action” means any action carried out by law enforcement agencies and officers that involve apprehending people who break the law.
 3. “Specific suspect description-based notification” means reasonably detailed physical descriptions of the personal identifying characteristics of potential suspects (including age, sex, ethnicity or race) by law enforcement officers instead of law enforcement officers acting based on a generalized assumption about persons of different races. Description-based notification is not a violation of the prohibition on profiling/discriminatory policing practices when it includes race, ethnic appearance, etc.
 4. “Profiling/discriminatory policing practices” means any law enforcement action against an individual by a law enforcement officer that relies, to any degree, on actual or perceived race, color, ethnicity, religion, national origin, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation, or socioeconomic status in initiating law enforcement action against an individual, rather than any law enforcement action that relies on a specific suspect description-based notification, an individual’s behavior or other trustworthy information or circumstances, relevant to the locality and timeframe, that links a person or persons to suspected unlawful activity.
 5. A “pretextual” stop involves a police officer stopping a pedestrian for a violation of the [State/ Locality] Penal Law or a driver of a motor vehicle for a traffic violation, minor or otherwise, to allow the officer to then investigate a separate and unrelated, suspected criminal offense.
 6. “Housing status” means the character of an individual’s residence or lack thereof, whether publicly or privately owned, whether on a temporary or permanent basis, and shall include but



not be limited to:

- (A) an individual's ownership status with regard to the individual's residence;
- (B) the status of having or not having a fixed residence;
- (C) an individual's use of publicly assisted housing;
- (D) an individual's use of the shelter system; and
- (E) an individual's actual or perceived homelessness.

(b) Prohibition.

1. Every member of the law enforcement agency (including other law enforcement officers, civilian employees, and parties contracted by the law enforcement agency) shall be prohibited from engaging in profiling/unlawful discriminatory practices as defined in Section (c)(3).

(c) Enforcement.

1. An individual subject to profiling/discriminatory policing practices or an organization whose interests are germane to the purpose of this section, may enforce this section in a civil action for any or all of the following remedies: compensatory and punitive damages; injunctive and declaratory relief; and such other relief as a court deems appropriate.
2. In an action brought under this section, relief may be obtained against:
 - (A) any governmental body that employed any law enforcement officer who engaged in profiling/unlawful discriminatory policing practices;
 - (B) any law enforcement officer who engaged in profiling/unlawful discriminatory policing practices and any person with supervisory authority over such law enforcement officer;
 - (C) any civilian employee who is employed with a law enforcement agency who engaged in profiling/unlawful discriminatory policing practices and any person with supervisory authority over such law such civilian employee; and
 - (D) any party contracted by the law enforcement agency who engaged in profiling/unlawful discriminatory policing practices.
3. An unlawful discriminatory practice is established under this section when:
 - (A) an individual or organization brings an action demonstrating that a law enforcement officer has, or law enforcement officers have, intentionally engaged in unlawful profiling of one or more individuals; and
 - (B) the governmental body, law enforcement officer, or supervisor against whom such action is brought fails to prove that:
 - i. such profiling or discriminatory policing practice is necessary to achieve a compelling governmental interest, and
 - ii. the practice was narrowly tailored to achieve that compelling governmental interest, and
 - iii. the least restrictive means were used to achieve the compelling governmental interest; or
 - (C) an individual or organization brings an action demonstrating that the activities of law enforcement officers have had a disparate impact on individuals based on actual or perceived

race, color, ethnicity, religion, national origin, age, sex, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation, or socioeconomic status; and

(D) the governmental body, law enforcement officer, or supervisor against whom such action is brought fails to prove a substantial justification for such activities; or

(E) the governmental body, law enforcement officer, or supervisor does prove a substantial justification for such activities; and

(F) the individual or organization demonstrates a comparably effective alternative policy or practice which results in less of a disparate impact.

4. In any action or proceeding to enforce this section against any governmental body, the court shall allow a prevailing plaintiff reasonable attorney's fees as part of the costs, and may include expert fees as part of the attorney's fees.

Section 3. Data Collection.

(a) Not later than 6 months after the date of enactment of this Act, the [State/Locality] Attorney General/district attorney, in consultation with stakeholders, including Federal, State, and local law enforcement agencies and community, professional, research, and civil rights organizations, shall issue regulations for the collection of data. The [State/Locality] Attorney General's/district attorney's office shall collect this data. The regulations issued under this section shall:

1. Provide for the collection of data on all routine or spontaneous investigatory activities.

(b) The information to be collected shall include:

1. Pedestrian and vehicular stops;
2. The identifying characteristics of the operator stopped, including perceived race, ethnicity, English language proficiency, gender, and age;
3. The location and duration of the stop;
4. The traffic violation or violations alleged to have been committed that led to the stop;
5. Whether or not a warning or citation was issued as a result of the stop and if so, the specific violation, if any, charged or warning given;
6. Whether a search was performed as a result of the stop;
7. If a search was performed, whether the person consented to the search, the probable cause or reasonable suspicion for the search, whether the person was searched, whether the person's property was searched and the duration of the search;
8. If a search was of a passenger in the motor vehicle, the perceived age, gender, race, ethnicity, and English language proficiency of the passenger;
9. Whether any contraband was discovered or seized in the course of the search, including money, and the type of any contraband discovered or seized;
10. Whether any physical force was used by and against the law enforcement officer or officers, and if so, to what extent; and
11. Whether the search involved canine units or advanced technology; and any additional information which the law-enforcement agency considers appropriate.

(c) Provide that law enforcement agencies shall compile data on the standardized form and submit the



form to the [State/Locality] Attorney General's/district attorney's office;

- (d) Provide that law enforcement agencies shall conspicuously publicize the compiled data on the respective law enforcement agency's website on a monthly or quarterly basis;
- (e) Provide that law enforcement agencies shall maintain all data collected under this Act for not less than 4 years;
- (f) Include guidelines for setting comparative benchmarks, consistent with best practices, against which collected data shall be measured; and
- (g) Provide for the protection of the privacy of individuals whose data is collected by:
 1. not providing individual names and identifying information regarding the particular law enforcement officers who made the stops and the pedestrians and drivers who were stopped;
 2. limiting the use and disclosure of the data collected under this Act to the purposes set forth in this Act;
 3. except as otherwise provided in this Act, limiting access to the data collected under this Act to those Federal, State, local, or tribal employees or agents who require such access in order to fulfill the purposes for the data set forth in this Act;
 4. requiring contractors or other non-governmental agents who are permitted access to the data collected under this Act to sign use agreements incorporating the use and disclosure restrictions set forth in subparagraph 1; and
 5. requiring contractors or other non-governmental agents who are permitted access to the data collected under this Act to sign use agreements requiring the maintenance of adequate security measures to prevent unauthorized access to the data collected under this Act.

Section 4. Data Analysis.

- (a) The [State/Locality] Attorney General/district attorney may collect reports from individual law enforcement officers regarding pedestrian and traffic stops made by other law enforcement officers.
 1. Any such report may be submitted anonymously, and must be kept confidential.
- (b) On or before [Designated Date], the [State/Locality] Attorney General/district attorney shall compile the results of the information collected pursuant to Section 3 of this Act and provide the compiled data to independent experts to be analyzed.
- (c) The independent experts shall then provide the data analysis to the [State/Locality] Attorney General/district attorney office in statistical form.
- (d) The [State/Locality] Attorney General/district attorney office shall report the data analysis in statistical form to the public conspicuously on the respective law enforcement agency's website on a monthly or quarterly basis without revealing personally identifiable information.

Section 5. Independent Commission.

- (a) An independent [State/Locality] Commission (The Commission) shall be created to establish procedures for filing profiling/unlawful discriminatory policing practices complaints.
- (b) The [State/Locality] Commission shall promulgate rules establishing procedures for filing a profiling/unlawful discriminatory policing practices complaint with the [State/Locality] Commission. The [State/Locality] Commission, in consultation with the Secretary of State's office, shall promulgate forms for complaints of profiling/unlawful discriminatory policing practices.
- (c) A notice must be given to the person stopped by a law enforcement officer as to allow he or she to file

a complaint with the [State/Locality] Commission if that person believes that he or she was stopped, detained, or subject to a search in violation of Section 1 of this Act.

- (d) The [State/Locality] Commission shall then review and investigate the complaint.
 - 1. The [State/Locality] Commission shall possess independent subpoena and disciplinary authority in order to investigate complaints of profiling/discriminatory policing practices.
- (e) Upon completion of the investigation, the [State/Locality] Commission shall determine if the stop or arrest was in violation of Section 1 of this Act.
- (f) If the stop or arrest was in violation of Section 1 of this Act, then the [State/Locality] Commission shall assess disciplinary measures on the law enforcement officer or officers involved in the complaint.
 - 1. Disciplinary measures assessed by the [State/Locality] Commission are enforceable in court.
- (g) The [State/Locality] Commission shall forward copies of the complaint, materials related to the investigation, and the determination with the assessed disciplinary measures to the arresting law enforcement officer's employer and the [State/Locality] Attorney General's or district attorney's office for review.
- (h) The [State/Locality] Commission shall then communicate the results of the investigation in writing to the person who filed the complaint.
 - 1. The person who filed the complaint can use the results of the investigation to file a civil claim against the involved officer/s and the employing law enforcement agency in the [State/Locality] Court for civil liability remedies. [As stated in Sections 2(c)1, 2(c)2, and 2(c)4].
- (i) The [State/Locality] Commission shall compile an annual report of all complaints received and investigated for profiling/unlawful discriminatory policing practices and submit the report on or before January 31 of each year to the Governor or the executive equivalent of a locality, the President Pro Tempore of the [State] Senate, and the Speaker of the [State] House of Representatives or the [State/Locality] legislative equivalent.
- (j) The Commission shall consist of members within the following ranks:
 - 1. A representative from the Governor's Office.
 - 2. Representatives from Advocacy Groups that support communities of color, the LGBTQ community, undocumented people, women, the Islamic community, homeless people, and people with disabilities.
 - 3. A representative of the Police Officers Association of [State/Locality].
 - 4. A representative of the applicable labor union.
 - 5. A representative of the [State] Bar Association appointed by the Governor from a list of attorneys submitted by the executive council of the [State] Bar Association.

Section 6. Training.

- (a) This Act shall require that all law enforcement agencies be trained on issues related to the prohibition on profiling/unlawful discriminatory policing practices and on data collection and reporting methods.
- (b) The [State/Locality] Commission on Peace Officers Standards and Training (CPOST) or its equivalent shall develop and disseminate guidelines and training for all law enforcement officers.
 - 1. All law enforcement officers must adhere to the standards approved by the [State/Locality] CPOST or its equivalent on the racial and cultural differences among the persons within [State/Locality].



2. The course or courses of instruction and the guidelines must stress understanding and respect for diverse communities and development of effective, non-combative methods of carrying out law enforcement duties in a diverse environment.
- (c) The course of basic training for law enforcement officers must include adequate instruction on diverse communities in order to foster mutual respect and cooperation between law enforcement and members of all diverse communities.
 1. In developing the training, the [State/Locality] CPOST or its equivalent shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.
- (d) Every law enforcement officer in the [State/Locality] must participate in expanded training as prescribed and certified by the [State/Locality] CPOST or its equivalent.
- (e) The curriculum shall utilize the Tools for Tolerance for Law Enforcement Professionals framework or its equivalent and shall include and examine the patterns, practices, and protocols that make up racial and other forms of profiling and unlawful discriminatory policing:
 1. This training shall prescribe patterns, practices, and protocols that prevent unlawful profiling.
 2. In developing the training, the [State or Locality] CPOST or its equivalent shall consult with appropriate groups and individuals having an interest and expertise in the field of racial profiling.
 3. The course of instruction must include, but not be limited to, adequate consideration of each of the following subjects:
 - (A) identification of key indices and perspectives that make up differences among residents in a local community;
 - (B) negative impact of biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police/community relations;
 - (C) the history and the role of the civil rights movement and struggles and their impact on law enforcement;
 - (D) specific obligations of officers in preventing, reporting, and responding to discriminatory or biased practices by fellow officers; and
 - (E) perspectives of diverse, local constituency groups and experts on particular cultural and police-community relations issues in a local area.
- (f) Once the initial basic training is completed, each law enforcement officer in [State/Locality], who adheres to the standards approved by the [State/Locality] CPOST or its equivalent shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing demographic trends.

Section 7. In-Car And Body-Worn Camera Program.

- (a) Each law enforcement agency in this state may utilize federal funds from community-oriented policing services grants or any other federal source to equip each vehicle used for traffic stops with a video camera and voice-activated microphone.
- (b) [State/Local] Law Enforcement Agency must:
 1. Implement a course of instruction, which incorporates pertinent laws, Federal Rules of Evidence, departmental policies and procedures, and use and operation of the audio and video equipment;

2. Implement an introductory in-car and body-worn camera course designed specifically for new recruits; and
3. Implement a refresher course for advanced officer training:
 - (A) Minor infractions (not criminal in nature) by law enforcement officers discovered during routine review of the recorded material should be viewed as training opportunities and not as routine disciplinary actions.
 - (B) Should the behavior or action be repetitive after being informally addressed the appropriate disciplinary or corrective action shall be pursued.
 - (C) Major infractions (criminal in nature) by law enforcement officers discovered during routine review of the recorded material is subject routine disciplinary actions and criminal charges.
- (c) A chief law enforcement officer shall provide a copy of a videotape or disk that recorded a traffic stop to the driver of the stopped vehicle upon the driver's request if the tape or disk has not yet been discarded.
- (d) On the commencement of an investigation by a law enforcement agency of an unlawful discriminatory profiling complaint in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the law enforcement officer who is the subject of the complaint on written request by the officer.
- (e) The police chief of the involved law enforcement officer's law enforcement agency, the Commission (as described in Section 5), and the [State/Locality] Attorney General or district attorney are the only parties authorized to access the retained video and audio.
- (f) A video camera installed pursuant to a grant under this section must:
 1. be automatically activated during every traffic stop;
 2. contain an audio feature; and
 3. be designed and installed so as to record the stop in its entirety.
- (g) Cameras must not be equipped with manual shutoff switches and must be activated for the entirety of a traffic stop.
- (h) Chief law enforcement officers of agencies receiving grants under this section for video cameras in police vehicles shall ensure that the videotape or disk from the camera be stored for a minimum of 90 days after use:
 1. Tapes and disks must be stored and maintained under this subdivision in an accessible manner.
 2. The tapes and disks must be clearly labelled and ordered.
- (i) If the chief law enforcement officer has not been instructed by the Commission or the [Applicable State/Locality] Attorney General or district attorney to maintain the tape or disk beyond 90 days, the chief law enforcement officer may discard it.
- (j) Recording applies to:
 1. uniformed officers;
 2. marked vehicles;
 3. SWAT raids; and
 4. similar planned uses of force when they involve non- uniformed officers.
- (k) Officers are required, wherever practicable, to notify people that they are being recorded such as



officers wearing an easily visible pin or sticker saying 'lapel camera in operation' or words to that effect.

Section 8. Severability.

- (a) If any provision of this bill or any other provision of this law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

Section 9. Enactment.

- (a) This law shall take effect (90) ninety days after it is enacted.

*A special thanks to Udi Ofer, Executive Director of the ACLU of New Jersey for providing expertise in crafting this model bill.