



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0229

by Rep. André Thapedi

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 140/7.5

Creates the Eliminate Racial Profiling Act. Prohibits a State or local law enforcement agent or law enforcement agency from engaging in racial profiling. Allows the State or an individual injured by racial profiling to enforce the racial profiling provision in a civil action for declaratory or injunctive relief. Requires law enforcement agencies to maintain policies and procedures, designed to eliminate racial profiling, and to certify that in applications for certain federal grant programs. Requires the Attorney General to adopt rules for administrative complaint procedures and independent audit programs applicable to law enforcement agencies. Allows the Attorney General to make grants to law enforcement agencies to develop and implement best practices to eliminate racial profiling. Allows the Attorney General to order the withholding of certain federal grants for law enforcement agencies that are not in compliance with the Act. Grants rulemaking authority to the Attorney General to implement the Act. Contains report and publication requirements, with some limitations to protect personal identifying information. Amends the Freedom of Information Act to exempt disclosure of the name and identifying information of a law enforcement officer, complainant, or other person in any activity for which data is collected and compiled under the Eliminate Racial Profiling Act, except for disclosure of information to that person.

LRB100 04257 SLF 14263 b

1 AN ACT concerning racial profiling.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Eliminate Racial Profiling Act.

6 Section 5. Definitions. As used in this Act:

7 "Covered program" means any program or activity funded in
8 whole or in part with funds made available under:

9 (1) the Edward Byrne Memorial Justice Assistance Grant
10 Program under part E of title I of the federal Omnibus
11 Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750
12 et seq.); and

13 (2) the "Cops on the Beat" program under part Q of
14 title I of the federal Omnibus Crime Control and Safe
15 Streets Act of 1968 (42 U.S.C. 3796dd et seq.), except that
16 no program, project, or other activity specified in Section
17 1701(b)(13) of that part shall be a covered program under
18 this paragraph.

19 "Governmental body" means any department, agency, special
20 purpose district, or other instrumentality of State or local
21 government.

22 "Hit rate" means the percentage of stops and searches in
23 which a law enforcement officer finds drugs, a gun, or other

1 contraband that leads to an arrest. The hit rate is calculated
2 by dividing the total number of searches by the number of
3 searches that yield contraband. The hit rate is complementary
4 to the rate of false stops.

5 "Law enforcement agency" means any State or local public
6 agency engaged in the prevention, detection, or investigation
7 of violations of criminal laws.

8 "Law enforcement agent" means any State or local official
9 responsible for enforcing criminal laws, including police
10 officers and other agents of a law enforcement agency.

11 "Racial profiling" means the practice of a law enforcement
12 agent or agency relying, to any degree, on actual or perceived
13 race, ethnicity, national origin, religion, gender, gender
14 identity, or sexual orientation in selecting which individual
15 to subject to routine or spontaneous investigatory activities
16 or in deciding upon the scope and substance of law enforcement
17 activity following the initial investigatory procedure, except
18 when there is trustworthy information, relevant to the locality
19 and time frame, that links a person with a particular
20 characteristic described in this paragraph to an identified
21 criminal incident or scheme.

22 "Routine or spontaneous investigatory activities" means
23 the following activities by a law enforcement agent:

- 24 (1) interviews;
25 (2) traffic stops;
26 (3) pedestrian stops;

1 (4) frisks and other types of body searches;

2 (5) consensual or nonconsensual searches of the
3 persons, property, or possessions including vehicles, of
4 individuals using any form of public or private
5 transportation, including motorists and pedestrians;

6 (6) data collection and analysis, assessments, and
7 predicated investigations; or

8 (7) any other types of law enforcement encounters
9 compiled for or by the Department of State Police and the
10 Racial Profiling Prevention and Data Oversight Board under
11 the Racial Profiling Prevention and Data Oversight Act.

12 "Reasonable request" means all requests for information,
13 except for those that:

14 (1) are immaterial to the investigation;

15 (2) would result in the unnecessary disclosure of
16 personal information; or

17 (3) would place a severe burden on the resources of the
18 law enforcement agency given its size.

19 "Unit of local government" means:

20 (1) any municipal, county, township, town, village, or
21 other general purpose political subdivision of this State;

22 (2) any law enforcement district or jurisdiction that:

23 (A) is established under applicable State law; and

24 (B) has the authority to, in a manner independent
25 of other State entities, establish a budget and impose
26 taxes.

1 Section 10. Racial profiling prohibition. No law
2 enforcement agent or law enforcement agency shall engage in
3 racial profiling.

4 Section 15. Enforcement.

5 (a) The State or an individual injured by racial profiling,
6 may enforce Section 10 of this Act in a civil action for
7 declaratory or injunctive relief, filed in a State court of
8 competent jurisdiction.

9 (b) In any action brought under this Act, relief may be
10 obtained against:

11 (1) any governmental body that employed any law
12 enforcement agent who engaged in racial profiling;

13 (2) any agent of a governmental body who engaged in
14 racial profiling; and

15 (3) any person with supervisory authority over any law
16 enforcement agent who engaged in racial profiling.

17 (c) Proof that the routine or spontaneous investigatory
18 activities of law enforcement agents in a jurisdiction have had
19 a disparate impact on individuals with a particular racial
20 profiling characteristic shall constitute prima facie evidence
21 of a violation of this Act.

22 (d) In any action or proceeding to enforce this Act against
23 any governmental body, the court may allow a prevailing
24 plaintiff reasonable attorney's fees as part of the costs, and

1 may include expert fees as part of the attorney's fee.

2 Section 20. Policies to eliminate racial profiling.

3 (a) Law enforcement agencies shall:

4 (1) maintain adequate policies and procedures designed
5 to eliminate racial profiling; and

6 (2) cease existing practices that permit racial
7 profiling.

8 (b) The policies and procedures described in paragraph (1)
9 of subsection (a) shall include:

10 (1) a prohibition on racial profiling;

11 (2) training on racial profiling issues as part of law
12 enforcement training;

13 (3) the collection of data under rules adopted under
14 Section 45 of this Act;

15 (4) procedures for receiving, investigating, and
16 responding meaningfully to complaints alleging racial
17 profiling by law enforcement agents; and

18 (5) any other policies and procedures the Attorney
19 General determines to be necessary to eliminate racial
20 profiling by law enforcement agencies.

21 Section 25. Policies required for grants.

22 (a) An application by a unit of local government or a law
23 enforcement agency for funding under a covered program shall
24 include a certification that the unit of local government or

1 law enforcement agency, and any law enforcement agency to which
2 it will distribute funds:

3 (1) maintains adequate policies and procedures
4 designed to eliminate racial profiling; and

5 (2) has eliminated any existing practices that permit
6 or encourage racial profiling.

7 (b) The policies and procedures described in paragraph (1)
8 of subsection (a) shall include:

9 (1) a prohibition on racial profiling;

10 (2) training on racial profiling issues as part of law
11 enforcement training;

12 (3) the collection of data under the rules adopted by
13 the Attorney General under Section 45 of this Act; and

14 (4) participation in an administrative complaint
15 procedure or independent audit program that meets the
16 requirements of Section 30 of this Act.

17 Section 30. Attorney General.

18 (a) Not later than 6 months after the effective date of
19 this Act and in consultation with stakeholders, including law
20 enforcement agencies and community, professional, research,
21 and civil rights organizations, the Attorney General shall
22 adopt rules for the operation of administrative complaint
23 procedures and independent audit programs to ensure that the
24 programs and procedures provide an appropriate response to
25 allegations of racial profiling by law enforcement agents or

1 agencies. The rules shall contain guidelines that ensure the
2 fairness, effectiveness, and independence of the
3 administrative complaint procedures and independent auditor
4 programs.

5 (b) If the Attorney General determines that the recipient
6 of a grant from any covered program is not in compliance with
7 the requirements of Section 20 of this Act or any rule adopted
8 under subsection (a) of this Section, the Attorney General
9 shall order the distributing agency to withhold, in whole or in
10 part, at the discretion of the Attorney General, funds for one
11 or more grants to the recipient under the covered program,
12 until the recipient establishes compliance.

13 (c) The Attorney General shall provide notice and an
14 opportunity for private parties to present evidence to the
15 Attorney General that a recipient of a grant from any covered
16 program is not in compliance with the requirements of this Act.

17 Section 35. Data collection.

18 (a) The Attorney General may, through competitive grants or
19 contracts, carry out a 2-year demonstration project for the
20 purpose of developing and implementing data collection
21 programs on the hit rates for stops and searches by law
22 enforcement agencies. The data collected shall be
23 disaggregated by race, ethnicity, national origin, gender, and
24 religion.

25 (1) The Attorney General shall provide not more than 10

1 grants or contracts under this Section.

2 (2) Grants or contracts under this Section shall be
3 awarded to law enforcement agencies that serve communities
4 in which there is a significant concentration of racial or
5 ethnic minorities and that are not already collecting data
6 voluntarily beyond that which is required under the Traffic
7 Stop Statistical Study Act.

8 (b) Activities carried out with a grant under this Section
9 shall include:

10 (1) developing a data collection tool and reporting the
11 compiled data to the Attorney General; and

12 (2) training of law enforcement personnel on data
13 collection, particularly for data collection on hit rates
14 for stops and searches.

15 (c) Not later than 3 years after the effective date of this
16 Act, the Attorney General shall enter into a contract with a
17 State institution of higher education to analyze the data
18 collected by each of the grantees funded under this Section.

19 Section 40. Best practices development grants.

20 (a) The Attorney General may make grants to law enforcement
21 agencies and units of local government to develop and implement
22 best practice devices and systems to eliminate racial
23 profiling.

24 (b) The funds provided under subsection (a) of this Section
25 shall be used for programs that include the following purposes:

1 (1) The development and implementation of training to
2 prevent racial profiling and to encourage more respectful
3 interaction with the public.

4 (2) The acquisition and use of technology to facilitate
5 the accurate collection and analysis of data.

6 (3) The development and acquisition of feedback
7 systems and technologies that identify officers or units of
8 officers engaged in, or at risk of engaging in, racial
9 profiling or other misconduct.

10 (4) The establishment and maintenance of an
11 administrative complaint procedure or independent auditor
12 program.

13 (c) The Attorney General shall ensure that grants under
14 this Section are awarded in a manner that reserves an equitable
15 share of funding for small and rural law enforcement agencies.

16 (d) Each law enforcement agency or unit of local government
17 desiring a grant under this Section shall submit an application
18 to the Attorney General at the time, in the manner, and
19 accompanied by the information as the Attorney General may
20 reasonably require.

21 Section 45. Rulemaking.

22 (a) Not later than 6 months after the effective date of
23 this Act, the Attorney General, in consultation with
24 stakeholders, including State and local law enforcement
25 agencies and community, professional, research, and civil

1 rights organizations, shall adopt rules for the collection and
2 compilation of data under Sections 15 and 20 of this Act.

3 (b) The rules adopted under subsection (a) shall:

4 (1) provide for the collection of data on all routine
5 or spontaneous investigatory activities;

6 (2) provide that the data collected shall:

7 (A) be collected by race, ethnicity, national
8 origin, gender, and religion, as perceived by the law
9 enforcement officer;

10 (B) include the date, time, and location of the
11 investigatory activities;

12 (C) include detail sufficient to permit an
13 analysis of whether a law enforcement agency is
14 engaging in racial profiling; and

15 (D) not include personally identifiable
16 information

17 (3) provide that a standardized form shall be made
18 available to law enforcement agencies for the submission of
19 collected data to the Attorney General;

20 (4) provide that law enforcement agencies shall
21 compile data on the standardized form made available under
22 paragraph (3) of this subsection (b), and submit the form
23 to the Attorney General;

24 (5) provide that law enforcement agencies shall
25 maintain all data collected under this Act for not less
26 than 4 years;

1 (6) include guidelines for setting comparative
2 benchmarks, consistent with best practices, against which
3 collected data shall be measured;

4 (7) provide that the Attorney General shall:

5 (A) analyze the data for any statistically
6 significant disparities, including:

7 (i) disparities in the percentage of drivers
8 or pedestrians stopped relative to the proportion
9 of the population passing through the
10 neighborhood;

11 (ii) disparities in the hit rate; and

12 (iii) disparities in the frequency of searches
13 performed on racial or ethnic minority drivers and
14 the frequency of searches performed on
15 non-minority drivers; and

16 (B) not later than 3 years after the effective date
17 of this Act, and annually thereafter:

18 (i) prepare a report regarding the findings of
19 the analysis conducted under subparagraph (A) of
20 this paragraph (7);

21 (ii) provide the report to the General
22 Assembly; and

23 (iii) make the report available to the public,
24 including on the Attorney General's website; and

25 (8) protect the privacy of individuals whose data is
26 collected by:

1 (A) limiting the use of the data collected under
2 this Act to the purposes under this Act;

3 (B) except as otherwise provided in this Act,
4 limiting access to the data collected under this Act to
5 those State or local employees or agents who require
6 this access in order to fulfill the purposes for the
7 data under this Act;

8 (C) requiring contractors or other
9 non-governmental agents who are permitted access to
10 the data collected under this Act to sign use
11 agreements incorporating the use and disclosure
12 restrictions set forth in subparagraph (A) of this
13 paragraph (8); and

14 (D) requiring the maintenance of adequate security
15 measures to prevent unauthorized access to the data
16 collected under this Act.

17 (c) In addition to the rules under subsections (a) and (b)
18 of this Section, the Attorney General may adopt any other rules
19 he or she determines are necessary to implement this Act.

20 Section 50. Publication of data. The Attorney General shall
21 provide to the General Assembly and make available to the
22 public, together with each annual report described in Section
23 25, the data collected under this Act, excluding any personally
24 identifiable information described in Section 55.

1 Section 55. Limitations on publication of data. The name or
2 identifying information of a law enforcement officer,
3 complainant, or any other individual involved in any activity
4 for which data is collected and compiled under this Act shall
5 not be:

6 (1) released to the public;

7 (2) disclosed to any person, except for:

8 (A) the disclosures as are necessary to comply with
9 this Act;

10 (B) disclosures of information regarding a particular
11 person to that person; or

12 (C) disclosures pursuant to litigation; or

13 (3) subject to disclosure under the Freedom of Information
14 Act, except for disclosures of information regarding a
15 particular person to that person.

16 Section 60. Reports. Not later than 2 years after the
17 effective date of this Act, and annually thereafter, the
18 Attorney General shall submit to the General Assembly a report
19 on racial profiling by law enforcement agencies. Each report
20 submitted shall include:

21 (1) a summary of data collected under paragraph (3) of
22 subsection (b) of Section 15 and paragraph (3) of subsection
23 (b) of Section 20 of this Act and from any other reliable
24 source of information regarding racial profiling in the State;

25 (2) a discussion of the findings in the most recent report

1 prepared by the Attorney General under paragraph (7) of
2 subsection (b) of Section 45 of this Act;

3 (3) the status of the adoption and implementation of
4 policies and procedures by law enforcement agencies under this
5 Act; and

6 (4) a description of any other policies and procedures that
7 the Attorney General believes would facilitate the elimination
8 of racial profiling.

9 Section 105. The Freedom of Information Act is amended by
10 changing Section 7.5 as follows:

11 (5 ILCS 140/7.5)

12 Sec. 7.5. Statutory exemptions. To the extent provided for
13 by the statutes referenced below, the following shall be exempt
14 from inspection and copying:

15 (a) All information determined to be confidential
16 under Section 4002 of the Technology Advancement and
17 Development Act.

18 (b) Library circulation and order records identifying
19 library users with specific materials under the Library
20 Records Confidentiality Act.

21 (c) Applications, related documents, and medical
22 records received by the Experimental Organ Transplantation
23 Procedures Board and any and all documents or other records
24 prepared by the Experimental Organ Transplantation

1 Procedures Board or its staff relating to applications it
2 has received.

3 (d) Information and records held by the Department of
4 Public Health and its authorized representatives relating
5 to known or suspected cases of sexually transmissible
6 disease or any information the disclosure of which is
7 restricted under the Illinois Sexually Transmissible
8 Disease Control Act.

9 (e) Information the disclosure of which is exempted
10 under Section 30 of the Radon Industry Licensing Act.

11 (f) Firm performance evaluations under Section 55 of
12 the Architectural, Engineering, and Land Surveying
13 Qualifications Based Selection Act.

14 (g) Information the disclosure of which is restricted
15 and exempted under Section 50 of the Illinois Prepaid
16 Tuition Act.

17 (h) Information the disclosure of which is exempted
18 under the State Officials and Employees Ethics Act, and
19 records of any lawfully created State or local inspector
20 general's office that would be exempt if created or
21 obtained by an Executive Inspector General's office under
22 that Act.

23 (i) Information contained in a local emergency energy
24 plan submitted to a municipality in accordance with a local
25 emergency energy plan ordinance that is adopted under
26 Section 11-21.5-5 of the Illinois Municipal Code.

1 (j) Information and data concerning the distribution
2 of surcharge moneys collected and remitted by wireless
3 carriers under the Wireless Emergency Telephone Safety
4 Act.

5 (k) Law enforcement officer identification information
6 or driver identification information compiled by a law
7 enforcement agency or the Department of Transportation
8 under Section 11-212 of the Illinois Vehicle Code.

9 (l) Records and information provided to a residential
10 health care facility resident sexual assault and death
11 review team or the Executive Council under the Abuse
12 Prevention Review Team Act.

13 (m) Information provided to the predatory lending
14 database created pursuant to Article 3 of the Residential
15 Real Property Disclosure Act, except to the extent
16 authorized under that Article.

17 (n) Defense budgets and petitions for certification of
18 compensation and expenses for court appointed trial
19 counsel as provided under Sections 10 and 15 of the Capital
20 Crimes Litigation Act. This subsection (n) shall apply
21 until the conclusion of the trial of the case, even if the
22 prosecution chooses not to pursue the death penalty prior
23 to trial or sentencing.

24 (o) Information that is prohibited from being
25 disclosed under Section 4 of the Illinois Health and
26 Hazardous Substances Registry Act.

1 (p) Security portions of system safety program plans,
2 investigation reports, surveys, schedules, lists, data, or
3 information compiled, collected, or prepared by or for the
4 Regional Transportation Authority under Section 2.11 of
5 the Regional Transportation Authority Act or the St. Clair
6 County Transit District under the Bi-State Transit Safety
7 Act.

8 (q) Information prohibited from being disclosed by the
9 Personnel Records Review Act.

10 (r) Information prohibited from being disclosed by the
11 Illinois School Student Records Act.

12 (s) Information the disclosure of which is restricted
13 under Section 5-108 of the Public Utilities Act.

14 (t) All identified or deidentified health information
15 in the form of health data or medical records contained in,
16 stored in, submitted to, transferred by, or released from
17 the Illinois Health Information Exchange, and identified
18 or deidentified health information in the form of health
19 data and medical records of the Illinois Health Information
20 Exchange in the possession of the Illinois Health
21 Information Exchange Authority due to its administration
22 of the Illinois Health Information Exchange. The terms
23 "identified" and "deidentified" shall be given the same
24 meaning as in the Health Insurance Portability and
25 Accountability Act of 1996, Public Law 104-191, or any
26 subsequent amendments thereto, and any regulations

1 promulgated thereunder.

2 (u) Records and information provided to an independent
3 team of experts under Brian's Law.

4 (v) Names and information of people who have applied
5 for or received Firearm Owner's Identification Cards under
6 the Firearm Owners Identification Card Act or applied for
7 or received a concealed carry license under the Firearm
8 Concealed Carry Act, unless otherwise authorized by the
9 Firearm Concealed Carry Act; and databases under the
10 Firearm Concealed Carry Act, records of the Concealed Carry
11 Licensing Review Board under the Firearm Concealed Carry
12 Act, and law enforcement agency objections under the
13 Firearm Concealed Carry Act.

14 (w) Personally identifiable information which is
15 exempted from disclosure under subsection (g) of Section
16 19.1 of the Toll Highway Act.

17 (x) Information which is exempted from disclosure
18 under Section 5-1014.3 of the Counties Code or Section
19 8-11-21 of the Illinois Municipal Code.

20 (y) Confidential information under the Adult
21 Protective Services Act and its predecessor enabling
22 statute, the Elder Abuse and Neglect Act, including
23 information about the identity and administrative finding
24 against any caregiver of a verified and substantiated
25 decision of abuse, neglect, or financial exploitation of an
26 eligible adult maintained in the Registry established

1 under Section 7.5 of the Adult Protective Services Act.

2 (z) Records and information provided to a fatality
3 review team or the Illinois Fatality Review Team Advisory
4 Council under Section 15 of the Adult Protective Services
5 Act.

6 (aa) Information which is exempted from disclosure
7 under Section 2.37 of the Wildlife Code.

8 (bb) Information which is or was prohibited from
9 disclosure by the Juvenile Court Act of 1987.

10 (cc) Recordings made under the Law Enforcement
11 Officer-Worn Body Camera Act, except to the extent
12 authorized under that Act.

13 (dd) Information that is prohibited from being
14 disclosed under Section 45 of the Condominium and Common
15 Interest Community Ombudsperson Act.

16 (ee) ~~(dd)~~ Information that is exempted from disclosure
17 under Section 30.1 of the Pharmacy Practice Act.

18 (ff) The name and identifying information of a law
19 enforcement officer, complainant, or other person involved
20 in any activity for which data is collected and compiled
21 under the Eliminate Racial Profiling Act, except for
22 information regarding a particular person to that person.

23 (Source: P.A. 98-49, eff. 7-1-13; 98-63, eff. 7-9-13; 98-756,
24 eff. 7-16-14; 98-1039, eff. 8-25-14; 98-1045, eff. 8-25-14;
25 99-78, eff. 7-20-15; 99-298, eff. 8-6-15; 99-352, eff. 1-1-16;
26 99-642, eff. 7-28-16; 99-776, eff. 8-12-16; 99-863, eff.

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1 8-19-16; revised 9-1-16.)