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HOUSE BILL 428

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Nathan P. Cote

AN ACT

RELATING TO LAW ENFORCEMENT; PROHIBITING BIAS-BASED PROFILING;
REQUIRING POLICIES AND PROCEDURES TO ELIMINATE PROFILING;
PROVIDING FOR THE ATTORNEY GENERAL TO RESPOND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Prohibition of Profiling Practices Act".

Section 2. DEFINITIONS.--As used in the Prohibition of
Profiling Practices Act, "profiling" means the practice of
relying, to any degree, on race, ethnicity, color, national
origin, nationality, language, sex, gender identity, sexual
orientation, political affiliation, religion, socioeconomic
status or disability in:

A. selecting a person to subject to routine or
spontaneous investigatory activities, including interviews,

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1 detentions, traffic stops, pedestrian stops, frisks and other
2 types of bodily searches or searches of personal or real
3 property; or

4 B. determining the scope, substance or duration of
5 investigation or law enforcement activity to which a person
6 will be subjected.

7 Section 3. PROFILING PRACTICES PROHIBITED.--

8 A. A law enforcement officer or law enforcement
9 agency shall not engage in profiling.

10 B. Except where reasonable and articulable
11 suspicion exists, a law enforcement officer shall not:

12 (1) keep a person detained beyond the time
13 necessary to issue a citation, enforce a court order or address
14 a violation of criminal law;

15 (2) ask questions of a person detained beyond
16 the scope necessary to issue a citation, enforce a court order
17 or address a violation of criminal law; or

18 (3) seek the consent of a person to conduct a
19 search of the person or the person's personal or real property.

20 C. Nothing in Subsection A or B of this section
21 shall be interpreted to prohibit a law enforcement officer or
22 law enforcement agency from relying on physical descriptions,
23 including sex, race, ethnicity and color, to select a person to
24 subject to investigatory activity or determine the scope,
25 substance or duration of investigation when:

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1 (1) seeking to apprehend a specific suspect;
2 and

3 (2) there exists trustworthy and reliable
4 information, relevant to the locality and time frame, that
5 links that person to an identified criminal incident or scheme.

6 D. Evidence obtained in violation of Subsection A
7 or B of this section shall be excluded from judicial
8 proceedings.

9 E. Nothing in this section shall be interpreted to
10 expand the jurisdiction or authority of a law enforcement
11 officer or law enforcement agency.

12 Section 4. POLICIES AND PROCEDURES.--A law enforcement
13 agency shall:

14 A. eliminate all practices that allow profiling by
15 its law enforcement officers;

16 B. maintain written policies and procedures
17 designed to eliminate profiling by its law enforcement
18 officers; and

19 C. maintain an administrative complaint procedure
20 that, at a minimum, requires the law enforcement agency to:

21 (1) investigate complaints of profiling by its
22 law enforcement officers and, when warranted, take appropriate
23 measures to discipline a law enforcement officer for engaging
24 in profiling or facilitate mediation or other restorative
25 justice measures;

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1 (2) provide appropriate forms for submitting
2 complaints of profiling by its law enforcement officers;

3 (3) publish the policies and procedures
4 designed to eliminate profiling and the forms for submitting
5 complaints of profiling on the law enforcement agency's web
6 site, if any;

7 (4) allow complaints alleging profiling by its
8 law enforcement officers to be made:

9 (a) in writing or orally;

10 (b) in person or by mail, telephone,
11 facsimile or electronic mail;

12 (c) anonymously or through a third
13 party; and

14 (d) within three hundred days after the
15 alleged profiling was committed; and

16 (5) submit a copy of a complaint and a summary
17 of remedial action taken to the attorney general.

18 Section 5. INDEPENDENT OVERSIGHT.--The attorney general
19 shall establish independent procedures for receiving,
20 investigating and responding to complaints alleging profiling
21 by a law enforcement officer or agency. The attorney general
22 may publish a report or finding regarding complaints received
23 alleging profiling as the attorney general deems appropriate.

24 Section 6. RIGHT OF ACTION.--A violation of the
25 provisions of Section 3 of the Prohibition of Profiling

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1 Practices Act shall create a cause of action in a court of
2 competent jurisdiction. A prevailing plaintiff may be awarded
3 reasonable attorney fees and costs.

4 Section 7. EFFECTIVE DATE.--The effective date of the
5 provisions of Sections 4 and 5 of this act is December 31,
6 2009.