

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 428

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

AN ACT

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

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. PROFILING PRACTICES PROHIBITED.--

A. In conducting a routine or spontaneous
investigatory activity, including an interview, a detention, a
traffic stop, a pedestrian stop, a frisk or other type of
bodily search or a search of personal or real property, or in
determining the scope, substance or duration of the routine or
spontaneous investigatory activity, a law enforcement agency or
a law enforcement officer shall not rely on race, ethnicity,

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underscored material = new
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1 color, national origin, language, gender, gender identity,
2 sexual orientation, political affiliation, religion, physical
3 or mental disability or serious medical condition, except in a
4 specific suspect description related to a criminal incident or
5 suspected criminal activity, to select a person for or subject
6 a person to the routine or spontaneous investigatory activity.

7 B. In conducting an investigatory activity in
8 connection with an investigation, a law enforcement agency or a
9 law enforcement officer shall not rely on race, ethnicity,
10 color, national origin, language, gender, gender identity,
11 sexual orientation, political affiliation, religion, physical
12 or mental disability or serious medical condition, except to
13 the extent that credible information, relevant to the locality
14 or time frame, links a person with those identifying
15 characteristics to an identified criminal incident or criminal
16 activity.

17 Section 3. POLICIES AND PROCEDURES--REQUIRED.--

18 A. A law enforcement agency shall:

19 (1) maintain written policies and procedures
20 designed to eliminate practices by its law enforcement officers
21 that violate the provisions of Section 2 of the Prohibition of
22 Profiling Practices Act; and

23 (2) provide training to its law enforcement
24 officers, during orientation and at least once every two years,
25 that the law enforcement agency determines will assist its law

1 enforcement officers in adhering to the applicable provisions
2 of the Prohibition of Profiling Practices Act and to the law
3 enforcement agency's policies and procedures.

4 B. As part of a law enforcement agency's
5 administrative complaint procedures, the law enforcement agency
6 shall, at a minimum:

7 (1) investigate a complaint alleging its law
8 enforcement officer violated the provisions of Section 2 of the
9 Prohibition of Profiling Practices Act;

10 (2) take appropriate measures to discipline a
11 law enforcement officer, including facilitating mediation or
12 other restorative justice measures, when it is determined that
13 the law enforcement officer violated the provisions of Section
14 2 of the Prohibition of Profiling Practices Act;

15 (3) provide appropriate forms for submitting
16 the complaint against its law enforcement officer;

17 (4) publish the policies and procedures
18 designed to eliminate practices that violate the provisions of
19 Section 2 of the Prohibition of Profiling Practices Act; and

20 (5) submit a redacted copy of the complaint
21 and the disposition to the attorney general, which shall
22 disclose the nature and disposition of the complaint but shall
23 not disclose personal identifying information of a law
24 enforcement officer or complainant.

25 C. A law enforcement agency shall establish a time

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1 frame within which a complaint alleging a violation of the
2 provisions of Section 2 of the Prohibition of Profiling
3 Practices Act may be made; provided that in no event shall the
4 time frame be less than ninety days or exceed one hundred
5 eighty days after the commission of the alleged violation of
6 the provisions of Section 2 of the Prohibition of Profiling
7 Practices Act. A law enforcement agency shall allow a
8 complaint alleging a violation of the provisions of Section 2
9 of the Prohibition of Profiling Practices Act by its law
10 enforcement officer to be made:

11 (1) in person or in writing sent by mail,
12 facsimile or electronic mail and signed by the complainant; or

13 (2) by telephone, anonymously or by a third
14 party; provided that the law enforcement agency shall determine
15 the complaint to be valid before taking appropriate measures
16 pursuant to Paragraph (2) of Subsection B of this section and
17 shall comply with the provisions of Section 29-14-4 NMSA 1978.

18 Section 4. INDEPENDENT OVERSIGHT--COMPLAINTS--
19 CONFIDENTIALITY.--The attorney general shall establish
20 independent procedures for receiving, and for maintaining a
21 record of, complaints alleging profiling by a law enforcement
22 officer or agency. The attorney general may initiate an
23 investigation of a complaint alleging a violation, or a
24 systematic pattern of violations, of the provisions of Section
25 2 of the Prohibition of Profiling Practices Act and take

1 necessary actions as the attorney general deems appropriate.
2 The attorney general may publish a report or summary of the
3 attorney general's findings regarding violations of the
4 provisions of the Prohibition of Profiling Practices Act;
5 provided that personal and identifying information shall not be
6 published or released to the public.

7 Section 5. EFFECTIVE DATE.--The effective date of the
8 provisions of Sections 3 and 4 of this act is December 31,
9 2009.