

Senate Bill 213

By: Senators Hamrick of the 30th and Reed of the 35th

A BILL TO BE ENTITLED
AN ACT

1 To provide a short title; to state public policy regarding racial profiling by law enforcement
2 officers and agencies; to amend Chapter 1 of Title 35 of the Official Code of Georgia
3 Annotated, relating to general provisions relative to law enforcement officers and agencies,
4 so as to provide definitions relative to racial profiling; to prohibit racial and ethnic profiling
5 by law enforcement officers and agencies; to provide procedures for the investigation of
6 allegations of racial and ethnic profiling; to provide for sanctions for violations; to amend
7 Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to employment and
8 training of peace officers, so as to provide mandatory training for peace officers on the
9 improper use of racial or ethnic profiling in law enforcement; to provide for related matters;
10 to provide for an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 This Act shall be known and may be cited as the "Racial and Ethnic Justice Act of 2005."

14 style="text-align:center">**SECTION 2.**

15 It is the public policy of the State of Georgia that no person shall be subjected to law
16 enforcement activity based upon the person's race or ethnicity; that the practice of racial or
17 ethnic profiling by law enforcement officers is strictly prohibited; that all officers shall
18 exercise their law enforcement powers in a manner that does not unlawfully discriminate
19 against individuals based on race or ethnicity; and that no officer shall endorse nor act upon
20 stereotypes, attitudes, or beliefs that a person's race or ethnicity increases the probability that
21 the person will act or has acted unlawfully. This law is enacted to enforce the public policy
22 of the State of Georgia and does not create any private cause of action.

SECTION 3.

Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general provisions relative to law enforcement officers and agencies, is amended by inserting immediately following Code Section 35-1-14 a new Code Section 35-1-15 to read as follows:

"35-1-15.

(a) As used in this Code section, the term:

(1) 'Law enforcement-initiated action' means an action by a law enforcement officer that results in an individual being stopped or detained.

(2) 'Law enforcement officer' or 'officer' means a sworn peace officer who is involved in enforcement activity.

(3) 'Pattern or practice' means a series of similar behavior or a systemic practice of racial or ethnic profiling which results in repeated violations of individuals' constitutional rights based upon their race or ethnicity, or repeated failure by an agency to take effective corrective action when racial or ethnic profiling has occurred.

(4) 'Racial or ethnic profiling' means any law enforcement-initiated action where the officer relies upon the race or ethnicity of an individual, rather than the behavior of that individual. Racial or ethnic profiling does not include circumstances where the officer has information that includes a racial or ethnic descriptor concerning a suspect for a specific crime where the officer has a good faith belief that the information is reliable and is likely to lead to the discovery of that individual, nor does it include an officer's mere observation of an individual or an officer's consensual encounter with an individual.

(b) All law enforcement agencies of this state, of the political subdivisions of this state, or of the authorities of this state or any and all law enforcement officers employed by any such entities are prohibited from engaging in racial or ethnic profiling. Such activity is declared to be contrary to the public policy of the State of Georgia and subject to penalty as set forth in this Code section.

(c) Each law enforcement agency shall, at a minimum, conduct periodic performance reviews of officer conduct to ensure compliance with the policy established pursuant to the public policy of this state. The first such performance review shall take place not more than 12 months following each officer's completion of the training prescribed by Code Section 35-8-26. The performance review shall include inspection of a random sample of incident reports and, if available, videotaped encounters for possible racial or ethnic profiling.

(d) Complaints or allegations of racial or ethnic profiling by individual officers may be reported to the officer's employing agency for investigation, and the agency is required to maintain a written record of all such allegations for a period of at least five years. Complaints or allegations of a pattern or practice of racial or ethnic profiling by a law

1 enforcement agency may be reported to the Attorney General of the State of Georgia for
2 investigation.

3 (e) The Attorney General of the State of Georgia shall review allegations of a pattern or
4 practice of racial or ethnic profiling against a law enforcement agency and shall determine
5 whether a law enforcement agency is engaging in a pattern or practice of racial or ethnic
6 profiling. In making such a determination, the Attorney General may consider whether and
7 to what extent the agency has trained its officers regarding the public policy of this state
8 prohibiting racial and ethnic profiling, and whether the agency has a general record of
9 effective enforcement through investigation of allegations and discipline where warranted
10 by the facts.

11 (f) The Attorney General is authorized to enter into an agreement with the agency to
12 correct violations. If the agency does not agree to take action to correct such pattern or
13 practice found by the Attorney General, the Attorney General shall have the authority to
14 take such action as he or she deems appropriate to ensure the correction of the violation and
15 compliance with this law. Such action may include but is not limited to requiring such
16 agency to:

17 (1) Collect and maintain, for a period of not less than two years, records which document
18 each incident in which an officer employed by or under the operational control of such
19 agency stops a motor vehicle or detains a pedestrian. The records shall contain the
20 following information:

21 (A) The gender, race, and ethnicity of the person stopped;

22 (B) The location, time, and date of the stop;

23 (C) The alleged violation that led to the stop;

24 (D) When the stop involves a motor vehicle, whether the vehicle, personal effects,
25 driver, or any passenger was searched and, if any passenger or his or her effects were
26 searched, the passenger's gender, race, and ethnicity, and the basis for any search;

27 (E) When the stop involves a pedestrian, whether the pedestrian was searched and the
28 basis for any search;

29 (F) If a reasonable suspicion stop or frisk was conducted, the basis for the stop or frisk
30 and the approximate duration of the stop;

31 (G) Whether contraband was found, the type and approximate amount of contraband,
32 and whether the contraband was seized;

33 (H) Whether any arrest, citation, or any oral or written warning was issued as a result
34 of the stop;

35 (I) Whether the officer making the stop encountered any physical resistance, whether
36 the officer engaged in the use of force, and whether injuries resulted; and

1 (J) Whether the circumstances surrounding the stop were the subject of any
2 investigation and the results of that investigation; and

3 (2) Make a quarterly report to the Attorney General summarizing the data required by
4 paragraph (1) of this subsection and describing the actions that such agency has taken to
5 correct any violations of the policy against racial or ethnic profiling.

6 (g) If an agency fails to comply with any requirement imposed by the Attorney General
7 under the provisions of this Code section, the Attorney General may bring an action in
8 superior court to compel such agency to comply with the requirements of the Attorney
9 General. If the court finds, by a preponderance of the evidence, that the agency engaged
10 in a pattern or practice of racial or ethnic profiling and that the action or actions as ordered
11 by the Attorney General are reasonable, the court shall order the agency to comply with the
12 requirements imposed by the Attorney General. The court may impose such additional
13 sanctions as the court deems appropriate. Such sanctions may include, but are not limited
14 to:

15 (1) Appointing a special master to oversee the operations of such law enforcement
16 agency;

17 (2) Requiring the agency to surrender its permit to operate speed detection devices; and

18 (3) Barring such law enforcement agency from receiving or using, directly or indirectly,
19 property or proceeds of property seized by such law enforcement agency or any of its
20 officers, employees, or agents pursuant to Code Section 16-12-32 or 16-13-49 or any
21 other law of this state or the United States that authorizes the seizure and forfeiture of
22 property for violation of the laws of this state or the United States."

23 SECTION 4.

24 Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to employment and
25 training of peace officers, is amended by inserting immediately following Code Section
26 35-8-21 a new Code section 35-8-21.1 to read as follows:

27 "35-8-21.1.

28 (a) The Georgia Peace Officer Standards and Training Council and the Georgia Public
29 Safety Training Center shall, by January 1, 2006, establish a training program on
30 prevention of racial or ethnic profiling, as defined in Code Section 35-1-15, which shall
31 include:

32 (1) An explanation of the behavior or actions that do and do not constitute racial or
33 ethnic profiling;

34 (2) The detrimental effects of racial or ethnic profiling on law enforcement and the
35 administration of justice, such as erosion of public confidence, injury to individual
36 citizens, and the possibility of civil and criminal liability;

- 1 (3) Ethical issues involved in racial or ethnic profiling avoidance; and
2 (4) How to create favorable perceptions regarding law enforcement practices.
3 (b) All peace officers employed by any law enforcement agency on or after December 31,
4 2005, shall successfully complete the training prescribed in this Code section within one
5 year of his or her employment unless such officer is granted an extension by the Georgia
6 Peace Officer Standards and Training Council, provided that no such extension shall
7 exceed one year. Any peace officer who fails to meet the training requirements as
8 prescribed in this Code section shall lose his or her power of arrest."

9 **SECTION 5.**

10 This Act shall become effective on July 1, 2005.

11 **SECTION 6.**

12 All laws and parts of laws in conflict with this Act are repealed.