

AMENDMENT TO H.R. 1148**OFFERED BY M^S. Chiu**

Insert the following after section 102 (and redesignate provisions accordingly):

1 SEC. 103. RACIAL PROFILING.

2 (a) DEFINITIONS.—In this section:

3 (1) COVERED PROGRAM.—The term “covered
4 program” means any program or activity funded in
5 whole or in part with funds made available under—

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

11 (B) the “Cops on the Beat” program
12 under part Q of title I of the Omnibus Crime
13 Control and Safe Streets Act of 1968 (42
14 U.S.C. 3796dd et seq.), except that no pro-
15 gram, project, or other activity specified in sec-
16 tion 1701(b)(13) of such part shall be a covered
17 program under this paragraph.

18 (2) GOVERNMENTAL BODY.—The term “govern-
19 mental body” means any department, agency, special

1 purpose district, or other instrumentality of Federal,
2 State, local, or Indian tribal government.

3 (3) HIT RATE.—The term “hit rate” means the
4 percentage of stops and searches in which a law en-
5 forcement officer finds drugs, a gun, or something
6 else that leads to an arrest. The hit rate is cal-
7 culated by dividing the total number of searches by
8 the number of searches that yield contraband. The
9 hit rate is complementary to the rate of false stops.

10 (4) INDIAN TRIBE.—The term “Indian tribe”
11 has the meaning given the term in section 102 of the
12 Federally Recognized Indian Tribe List Act of 1994
13 (25 U.S.C. 479a)).

14 (5) LAW ENFORCEMENT AGENCY.—The term
15 “law enforcement agency” means any Federal,
16 State, local, or Indian tribal public agency engaged
17 in the prevention, detection, or investigation of viola-
18 tions of criminal, immigration, or customs laws.

19 (6) LAW ENFORCEMENT AGENT.—The term
20 “law enforcement agent” means any Federal, State,
21 local, or Indian tribal official responsible for enforce-
22 ing criminal, immigration, or customs laws, includ-
23 ing police officers and other agents of a law enforce-
24 ment agency.

25 (7) RACIAL PROFILING.—

1 (A) DEFINITION.—The term “racial
2 profiling” means the practice of a law enforce-
3 ment agent or agency relying, to any degree, on
4 race, ethnicity, national origin, gender, or reli-
5 gion—

6 (i) in selecting which individual to
7 subject to routine or spontaneous inves-
8 tigatory activities; or

9 (ii) in deciding upon the scope and
10 substance of law enforcement activity fol-
11 lowing the initial investigatory activity.

12 (B) EXCEPTION.—The term “racial
13 profiling” does not include a practice of a law
14 enforcement agent or agency that relies on race,
15 ethnicity, national origin, sexual orientation,
16 gender, or religion when there is trustworthy in-
17 formation, relevant to the locality and time-
18 frame, that links a person of a particular race,
19 ethnicity, national origin, sexual orientation,
20 gender, gender identity, or religion to an identi-
21 fied criminal incident or scheme.

22 (8) ROUTINE OR SPONTANEOUS INVESTIGATORY
23 ACTIVITIES.—The term “routine or spontaneous in-
24 vestigatory activities” means the following activities
25 by a law enforcement agent:

1 (A) Interviews.

2 (B) Traffic stops.

3 (C) Pedestrian stops.

4 (D) Frisks and other types of body
5 searches.

6 (E) Consensual or nonconsensual searches
7 of the persons, property, or possessions (includ-
8 ing vehicles) of individuals using any form of
9 public or private transportation, including mo-
10 torists and pedestrians.

11 (F) Data collection and analysis, assess-
12 ments, and predicated investigations.

13 (G) Inspections and interviews of entrants
14 into the United States that are more extensive
15 than those customarily carried out.

16 (H) Immigration-related workplace inves-
17 tigation.

18 (I) Such other types of law enforcement
19 encounters about which statistical information
20 is compiled for or by the Federal Bureau of In-
21 vestigation or the Department of Justice Bu-
22 reau of Justice Statistics.

23 (9) REASONABLE REQUEST.—The term “rea-
24 sonable request” means all requests for information,
25 except for those that—

1 (A) are immaterial to the investigation;

2 (B) would result in the unnecessary disclo-
3 sure of personal information; or

4 (C) would place a severe burden on the re-
5 sources of the law enforcement agency given its
6 size.

7 (10) STATE.—The term “State” means each of
8 the 50 States, the District of Columbia, the Com-
9 monwealth of Puerto Rico, and any other territory
10 or possession of the United States.

11 (11) UNIT OF LOCAL GOVERNMENT.—The term
12 “unit of local government” means—

13 (A) any city, county, township, town, bor-
14 ough, parish, village, or other general purpose
15 political subdivision of a State;

16 (B) any law enforcement district or judicial
17 enforcement district that—

18 (i) is established under applicable
19 State law; and

20 (ii) has the authority to, in a manner
21 independent of other State entities, estab-
22 lish a budget and impose taxes; or

23 (C) any Indian tribe that performs law en-
24 forcement functions, as determined by the Sec-
25 retary of the Interior.

1 (b) PROHIBITION.—No law enforcement agent or law
2 enforcement agency shall engage in racial profiling.

3 (c) ENFORCEMENT.—

4 (1) REMEDY.—The United States, or an indi-
5 vidual injured by racial profiling, may enforce this
6 section in a civil action for declaratory or injunctive
7 relief, filed either in a State court of general juris-
8 diction or in a district court of the United States.

9 (2) PARTIES.—In any action brought under this
10 section, relief may be obtained against—

11 (A) any governmental body that employed
12 any law enforcement agent who engaged in ra-
13 cial profiling;

14 (B) any agent of such governmental body
15 who engaged in racial profiling; and

16 (C) any person with supervisory authority
17 over such agent.

18 (3) NATURE OF PROOF.—Proof that the routine
19 or spontaneous investigatory activities of law en-
20 forcement agents in a jurisdiction have had a dis-
21 parate impact on racial, ethnic, or religious minori-
22 ties shall constitute prima facie evidence of a viola-
23 tion of this title.

24 (4) ATTORNEY'S FEES.—In any action or pro-
25 ceeding to enforce this section against any govern-

1 mental body, the court may allow a prevailing plain-
2 tiff, other than the United States, reasonable attor-
3 ney's fees as part of the costs, and may include ex-
4 pert fees as part of the attorney's fee.

5 (d) POLICIES TO ELIMINATE RACIAL PROFILING.—

6 (1) IN GENERAL.—Law enforcement agencies
7 shall—

8 (A) maintain adequate policies and proce-
9 dures designed to eliminate racial profiling; and

10 (B) cease existing practices that permit ra-
11 cial profiling.

12 (2) POLICIES.—The policies and procedures de-
13 scribed in paragraph (1)(A) shall include—

14 (A) a prohibition on racial profiling;

15 (B) training on racial profiling issues as
16 part of law enforcement training;

17 (C) the collection of data in accordance
18 with the regulations issued by the Attorney
19 General under subsection (g);

20 (D) procedures for receiving, investigating,
21 and responding meaningfully to complaints al-
22 leging racial profiling by law enforcement
23 agents; and

24 (E) any other policies and procedures the
25 Attorney General determines to be necessary to

1 eliminate racial profiling by Federal law en-
2 forcement agencies.

3 (e) INVOLVEMENT OF ATTORNEY GENERAL.—

4 (1) REGULATIONS.—

5 (A) IN GENERAL.—Not later than 6
6 months after the date of enactment of this Act
7 and in consultation with stakeholders, including
8 law enforcement agencies and community, pro-
9 fessional, research, and civil rights organiza-
10 tions, the Attorney General shall issue regula-
11 tions for the operation of administrative com-
12 plaint procedures and independent audit pro-
13 grams to ensure that such procedures and pro-
14 grams provide an appropriate response to alle-
15 gations of racial profiling by law enforcement
16 agents or agencies.

17 (B) GUIDELINES.—The regulations issued
18 under subparagraph (A) shall contain guidelines
19 that ensure the fairness, effectiveness, and inde-
20 pendence of the administrative complaint proce-
21 dures and independent auditor programs.

22 (2) NONCOMPLIANCE.—If the Attorney General
23 determines that the recipient of a grant from any
24 covered program is not in compliance with the regu-
25 lations issued under paragraph (1), the Attorney

1 General shall withhold, in whole or in part (at the
2 discretion of the Attorney General), funds for 1 or
3 more grants to the recipient under the covered pro-
4 gram, until the recipient establishes compliance.

5 (3) PRIVATE PARTIES.—The Attorney General
6 shall provide notice and an opportunity for private
7 parties to present evidence to the Attorney General
8 that a recipient of a grant from any covered pro-
9 gram is not in compliance with the requirements of
10 this title.

11 (f) DATA COLLECTION DEMONSTRATION
12 PROJECT.—

13 (1) COMPETITIVE AWARDS.—

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

22 (B) NUMBER OF GRANTS.—The Attorney
23 General shall provide not more than 5 grants or
24 contracts under this subsection.

1 (C) ELIGIBLE GRANTEES.—Grants or con-
2 tracts under this subsection shall be awarded to
3 law enforcement agencies that serve commu-
4 nities where there is a significant concentration
5 of racial or ethnic minorities and that are not
6 already collecting data voluntarily.

7 (2) REQUIRED ACTIVITIES.—Activities carried
8 out with a grant or contract under this subsection
9 shall include—

10 (A) developing a data collection tool, com-
11 piling data related to hit rates, and reporting
12 the compiled data to the Attorney General; and

13 (B) training of law enforcement personnel
14 on data collection, particularly for data collec-
15 tion on hit rates for stops and searches.

16 (3) EVALUATION.—Not later than 3 years after
17 the date of enactment of this Act, the Attorney Gen-
18 eral shall enter into a contract with an institution of
19 higher education (as defined in section 101 of the
20 Higher Education Act of 1965 (20 U.S.C. 1001)) to
21 analyze the data collected by each of the law en-
22 forcement agencies funded under this subsection.

23 (4) AUTHORIZATION OF APPROPRIATIONS.—
24 There are authorized to be appropriated to carry out
25 activities under this subsection—

1 (A) \$5,000,000, over a 2-year period, to
2 carry out the demonstration program under
3 paragraph (1); and

4 (B) \$500,000 to carry out the evaluation
5 under paragraph (3).

6 (g) DATA COLLECTION REGULATIONS.—

7 (1) REGULATIONS.—Not later than 6 months
8 after the date of enactment of this Act, the Attorney
9 General, in consultation with stakeholders, including
10 law enforcement agencies and community, profes-
11 sional, research, and civil rights organizations, shall
12 issue regulations for the collection and compilation
13 of data under subsection (d).

14 (2) REQUIREMENTS.—The regulations issued
15 under paragraph (1) shall—

16 (A) provide for the collection of data on all
17 routine or spontaneous investigatory activities;

18 (B) provide that the data collected shall—

19 (i) be collected by race, ethnicity, na-
20 tional origin, gender, and religion, as per-
21 ceived by the law enforcement officer;

22 (ii) include the date, time, and loca-
23 tion of such investigatory activities; and

1 (iii) include detail sufficient to permit
2 an analysis of whether a law enforcement
3 agency is engaging in racial profiling;

4 (C) provide that a standardized form shall
5 be made available to law enforcement agencies
6 for the submission of collected data to the De-
7 partment of Justice;

8 (D) provide that law enforcement agencies
9 shall compile data on the standardized form
10 made available under subparagraph (C), and
11 submit the form to the Civil Rights Division
12 and the Department of Justice Bureau of Jus-
13 tice Statistics;

14 (E) provide that law enforcement agencies
15 shall maintain all data collected under this sec-
16 tion for not less than 4 years;

17 (F) include guidelines for setting compara-
18 tive benchmarks, consistent with best practices,
19 against which collected data shall be measured;
20 and

21 (G) provide for the protection of the pri-
22 vacy of individuals whose data is collected by—

23 (i) limiting the use and disclosure of
24 the data collected under this section to the
25 purposes set forth in this section;

1 (ii) except as otherwise provided in
2 this Act, limiting access to the data col-
3 lected under this section to those Federal,
4 State, local, or tribal employees or agents
5 who require such access in order to fulfill
6 the purposes for the data set forth in this
7 section;

8 (iii) requiring contractors or other
9 non-governmental agents who are per-
10 mitted access to the data collected under
11 this section to sign use agreements incor-
12 porating the use and disclosure restrictions
13 set forth in clause (i); and

14 (iv) requiring the maintenance of ade-
15 quate security measures to prevent unau-
16 thorized access to the data collected under
17 this section.

18 (h) DUTIES OF THE BUREAU OF JUSTICE STATIS-
19 TICS.—

20 (1) ANALYSIS AND REPORTS.—The Department
21 of Justice Bureau of Justice Statistics shall—

22 (A) analyze the data collected under sub-
23 section (d) for any statistically significant dis-
24 parities, including—

1 (i) disparities in the percentage of
2 drivers or pedestrians stopped relative to
3 the proportion of the population passing
4 through the neighborhood;

5 (ii) disparities in the hit rate; and

6 (iii) disparities in the frequency of
7 searches performed on minority drivers
8 and the frequency of searches performed
9 on non-minority drivers; and

10 (B) not later than 3 years after the date
11 of enactment of this section, and annually
12 thereafter—

13 (i) prepare a report regarding the
14 findings of the analysis conducted under
15 subparagraph (A);

16 (ii) provide such report to the Con-
17 gress and the Attorney General; and

18 (iii) make such report available to the
19 public, including on a Web site of the De-
20 partment of Justice.

21 (2) PUBLICATION OF DATA.—The Department
22 of Justice Bureau of Justice Statistics shall provide
23 to the Congress and make available to the public, to-
24 gether with each annual report described in para-

1 graph (1)(B), the data collected pursuant to this
2 section.

3 (i) DEPARTMENT OF JUSTICE REGULATIONS AND
4 REPORTS ON RACIAL PROFILING IN THE UNITED
5 STATES.—

6 (1) REGULATIONS.—In addition to the regula-
7 tions required under subsections (e) and (g), the At-
8 torney General shall issue such other regulations as
9 the Attorney General determines are necessary to
10 implement this section.

11 (2) REPORTS.—

12 (A) IN GENERAL.—Not later than 2 years
13 after the date of enactment of this Act, and an-
14 nually thereafter, the Attorney General shall
15 submit to Congress a report on racial profiling
16 by law enforcement agencies.

17 (B) SCOPE.—Each report submitted under
18 subparagraph (A) shall include—

19 (i) a summary of data collected under
20 subsection (d)(2)(C) and from any other
21 reliable source of information regarding ra-
22 cial profiling in the United States;

23 (ii) a discussion of the findings in the
24 most recent report prepared by the De-

1 partment of Justice Bureau of Justice Sta-
2 tistics under subsection (g)(2)(G);
3 (iii) the status of the adoption and
4 implementation of policies and procedures
5 by law enforcement agencies under sub-
6 section (d); and
7 (iv) a description of any other policies
8 and procedures that the Attorney General
9 believes would facilitate the elimination of
10 racial profiling.

Amend section 112 to read as follows:

11 **SEC. 112. ELIMINATION OF SECTION 287(g) PROGRAM.**

12 Section 287 of the Immigration and Nationality Act
13 (8 U.S.C. 1357) is amended—

14 (1) by striking subsection (g); and

15 (2) by redesignating subsection (h) as sub-
16 section (g).

