

House Bill 1207

By: Representatives Scott of the 76th, Hutchinson of the 107th, Beverly of the 143rd, Smyre of the 135th, Hugley of the 136th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 35 and Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia
2 Annotated, relating to law enforcement officers and agencies and state tort claims,
3 respectively, so as to specifically prohibit racial profiling by law enforcement officers and
4 law enforcement agencies; to provide a short title; to provide for definitions; to require
5 certain policies and procedures by law enforcement agencies; to provide for data collection;
6 to provide for regulations by the Attorney General; to provide for an annual report; to
7 provide for a right of action for enforcement; to revise the state waiver of sovereign
8 immunity; to provide for waiver of sovereign immunity under certain circumstances; to
9 provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
13 agencies, is amended by adding a new chapter to read as follows:

14 "CHAPTER 11

15 35-11-1.

16 This chapter shall be known and may be cited as the 'End Racial Profiling Act.'

17 35-11-2.

18 As used in this chapter, the term:

19 (1) 'Hit rate' means the percentage of stops and searches in which a law enforcement
20 officer finds drugs, a firearm, or other contraband that leads to an arrest. Such percentage
21 shall be calculated by dividing the total number of searches by the number of searches
22 that lead to arrests.

23 (2) 'Law enforcement agency' means any agency, organ, or department of this state, or
 24 a subdivision or municipality thereof, whose primary functions include the enforcement
 25 of criminal or traffic laws; the preservation of public order; the protection of life and
 26 property; or the prevention, detection, or investigation of crime, including, but not limited
 27 to, any department or unit organized by a college or university for purposes of Chapter 8
 28 of Title 20.

29 (3) 'Law enforcement officer' means any agent or officer of this state, a political
 30 subdivision or municipality of this state, an authority of this state, or a college or
 31 university who, as a full-time or part-time employee, is vested either expressly by law or
 32 by virtue of public employment or service with authority to enforce the criminal or traffic
 33 laws through the power of arrest and whose duties include the preservation of public
 34 order, the protection of life and property, or the prevention, detection, or investigation of
 35 crime.

36 (4) 'Racial profiling' means the practice of a law enforcement agency or law enforcement
 37 officer relying, to any degree, on actual or perceived race, ethnicity, national origin,
 38 religion, gender, gender identity, or sexual orientation in selecting which individual to
 39 subject to routine or spontaneous investigatory activities or in deciding upon the scope
 40 and substance of law enforcement activity following the initial investigatory procedure.

41 (5) 'Routine or spontaneous investigatory activities' means the following activities by a
 42 law enforcement officer:

43 (A) Interviews;

44 (B) Traffic stops;

45 (C) Pedestrian stops;

46 (D) Frisks and other types of body searches;

47 (E) Consensual or nonconsensual searches of the persons, property, vehicles, or
 48 possessions of individuals, including, but not limited to, motorists and pedestrians,
 49 using any form of public or private transportation; or

50 (F) Data collection and analysis, assessments, and predicated investigations.

51 35-11-3.

52 No law enforcement officer or law enforcement agency shall engage in racial profiling.

53 35-11-4.

54 (a) All law enforcement agencies shall:

55 (1) Maintain adequate policies and procedures designed to eliminate racial profiling; and

56 (2) Cease any existing practices that permit racial profiling.

57 (b) The policies and procedures provided for under paragraph (1) of subsection (a) of this
 58 Code section shall include:

59 (1) A prohibition on racial profiling;

60 (2) Training on racial profiling issues;

61 (3) The collection of data in accordance with regulations issued by the Attorney General;
 62 and

63 (4) Procedures for receiving, investigating, and responding meaningfully to complaints
 64 alleging racial profiling by law enforcement officers.

65 (c) Beginning on July 1, 2022, and on July 1 of each year thereafter, the Attorney General
 66 shall issue a public report based upon the data the Attorney General collected under this
 67 Code section for the prior calendar year. Such report shall detail for each law enforcement
 68 agency the number of routine or spontaneous investigatory activities and the hit rates. Such
 69 report shall disaggregate such data by race, ethnicity, and national origin.

70 35-11-5.

71 (a) The Attorney General or any individual injured by racial profiling may enforce this
 72 chapter in a civil action for declaratory or injunctive relief filed in the superior court.

73 (b) In any action brought under this Code section, relief may be obtained against any:

74 (1) Agency, organ, or department of this state, or a subdivision or municipality thereof,
 75 or a college or university that employed any law enforcement officer who engaged in
 76 racial profiling;

77 (2) Law enforcement officer who engaged in racial profiling; or

78 (3) Any individual with supervisory authority over such law enforcement officer.

79 (c) Proof that the routine or spontaneous investigatory activities of law enforcement
 80 officers in a jurisdiction have had a disparate impact on individuals because of such
 81 individual's actual or perceived race, ethnicity, national origin, religion, gender, gender
 82 identity, or sexual orientation shall constitute prima-facie evidence of a violation of this
 83 chapter.

84 (d) In any action or proceeding to enforce this chapter against any agency, organ, or
 85 department of this state, or a subdivision or municipality thereof, or a college or university,
 86 the court may allow a prevailing plaintiff, other than the Attorney General, reasonable
 87 attorney's fees as part of the costs and may include expert fees as part of the attorney's fee."

88 **SECTION 2.**

89 Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to
 90 state tort claims, is amended by adding a new Code section to read as follows:

91 "50-21-38.
92 The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim,
93 or third-party claim brought in the courts of this state by an aggrieved person seeking a
94 declaratory judgment, injunctive relief, or reasonable attorney fees against the state or any
95 political subdivision thereof under Chapter 11 of Title 35; provided, however, that
96 sovereign immunity is not waived as to any claim for monetary damages that are included
97 in or related to such claim, counterclaim, cross-claim, or third-party claim. This Code
98 section shall not be construed to alter or amend any other waiver of sovereign immunity
99 provided by law."

100 **SECTION 3.**

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