

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/09

SPONSOR HJC LAST UPDATED _____ HB 428/HJCS

SHORT TITLE Prohibition of Profiling Practices Act SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

No Responses Received From

Administrative Office of the District Attorneys (AODA)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute to House Bill 428 prohibits profiling practices during routine or spontaneous investigatory activities and in the conduct of investigatory activities in connection with an investigation. Profiling by race, ethnicity, color, national origin, language, gender, gender identify, sexual orientation, political affiliation, religion, physical or mental disability or serious medial condition is prohibited except in the following circumstances:

During routine or spontaneous investigatory activities in a specific suspect description related to a criminal incident or suspected criminal activity;

During the conduct of an investigation to the extent that credible information, relevant to locality or time frame links a person with those identifying characteristics to an identified criminal incident or criminal activity.

HB 428 also required that law enforcement agencies shall:

1. Maintain related written policies and procedures; provide training to its officers at least once every two years
2. Maintain complaint procedures that provide for complaint investigation, disciplinary measures as appropriate; forms for submitting complaints; complaints submitted in person, by US mail, fax or e-mail, by phone and anonymously or by a third party
3. Publish Profiling Prohibition policies and procedures
4. Provide redacted copies of complaints to the Attorney General

HB 428 grants independent oversight to the Attorney General and requires the development by the Attorney General of procedures for receiving complaints and maintaining records of complaints. The Attorney General may initiate investigation of a complaint alleging violation of the Prohibition of Profiling Act and take actions as deemed appropriate, as well as publish a report or summary of findings regarding such violations, while withholding personal and identifying information.

FISCAL IMPLICATIONS

The AGO explains that the duties placed on it are discretionary, not mandatory, and the fiscal impact can only be gauged after implementation if this measure is enacted.

SIGNIFICANT ISSUES

According to AOC, HB428 reaffirms what the US Constitution and Federal case law have already established: equal protection under the law and equitable justice for all (Fourth Amendment protecting against unreasonable search and seizure).

“Municipal, county, and state governments across the country are enacting legislation, issuing public policy statements prohibiting bias-based policing as well as, in many instances, collecting data on traffic stops and other citizen-police encounters. A number of municipal law enforcement agencies have issued their own policy statements prohibiting racial profiling and initiating data collection and analysis. A commitment to community-oriented policing goes hand-in-hand with a commitment to address bias-based policing. Those cities that have established community oriented policing programs are addressing issues of bias-based policing to include voluntary tracking and data collection of traffic stops and/or other police-citizen encounters. (Albuquerque Human Rights Office – Biased-Based Policing – A Working Document for the Mayor’s Racial Profiling Task Force - September 2003)

The National Association of Black Law Enforcement Executives provides the following guidance for legislation related to racial profiling, a subset House Bill 428:

Racial profiling legislation must:

- Prescribe criminal, civil and/or administrative sanctions against violators.
- Mandate policies prohibiting racial profiling by law enforcement agencies.
- Mandate data collection and analysis reporting for agencies receiving federal funding.
- Mandate racial profiling training for all law enforcement officers and ongoing refresher training.

HB 428 grants independent oversight to the Attorney General and requires the development by the Attorney General of procedures for receiving complaints and maintaining records of complaints. The Attorney General may initiate investigation of a complaint alleging violation of the Prohibition of Profiling Act and take actions as deemed appropriate, as well as publish a report or summary of findings regarding such violations, while withholding personal and identifying information.

EO/svb