

**Report of the Advisory Committee
on Bias-Based Profiling
by Law Enforcement Officers
and Law Enforcement Agencies**

**Presented to the
Joint Standing Committee on
Criminal Justice and Public Safety
on
February 2, 2012**

EXECUTIVE SUMMARY

In 2009, the Maine Legislature enacted 25 M.R.S. Chapter 355. That law established an *Advisory Committee on Bias-Based Profiling by Law Enforcement Officers and Law Enforcement Agencies*. The Legislature instructed the Advisory Committee to:

- A. Work with the Maine Criminal Justice Academy on the issue of bias-based profiling;
- B. Work with law enforcement agencies to determine if bias-based profiling occurs and offer proposals to address the matter;
- C. Make recommendations to the Maine Criminal Justice Academy on curricula regarding bias-based profiling;
- D. Conduct outreach and a public awareness campaign to educate the public about modern law enforcement practices; and
- E. Advise the Legislature on matters involving bias-based profiling.

The Legislature's charge to the Advisory Committee was formidable and was to be accomplished with essentially no funding and no staff. The legislation establishing the Advisory Committee is repealed effective November 12, 2012.

The Advisory Committee brought together people from different backgrounds and with varied experiences regarding the issue of bias-based profiling. The Committee included members of law enforcement organizations and representatives of civil rights organizations and minority communities. The Committee eventually agreed on a working definition of bias-based profiling.

Bias-based profiling occurs when stops, detentions, searches, or asset seizures and forfeiture efforts are based on race, ethnicity, gender, sexual orientation, religion, economic status, age or cultural group rather than solely on an individual's conduct and behavior or specific suspect information.

The Committee recognized that even the perception that law enforcement agencies or individual members of those agencies engage in bias-based profiling can be problematic. The Advisory Committee agreed that if any segment of the public, for whatever reason, believes that bias-based profiling occurs, public safety is endangered. It is law enforcement's goal to secure the safety of the entire public and all members of the larger community desire meaningful public safety as well.

The Advisory Committee worked closely with Jack McDevitt, a nationally recognized expert on issues related to bias-based profiling. Mr. McDevitt is an Associate Dean in the College of Criminal Justice at Northeastern University. Based on Mr. McDevitt's advice, the

Committee attempted to structure a three-step process to address the issue of bias-based profiling in Maine. Those three steps include:

1. Data collection;
2. Addressing any identified problem by establishing policies and working with law enforcement to develop basic and continuing training to redress any identified problems; and
3. Fostering a meaningful dialogue between members of the public and representatives of law enforcement regarding bias-based profiling and perceptions about that practice.

Unfortunately, due to the practical problem that law enforcement agencies in Maine use different data collection systems and the Committee's lack of funding, meaningful data collection and analysis were not possible. The Advisory Committee was however successful in developing policies and establishing training curricula regarding bias-based profiling. Those policies became effective on December 31, 2011 and training for all law enforcement personnel in the State of Maine will occur in 2013. The Committee's plans to hold a statewide public forum regarding bias-based profiling and to create an ongoing dialogue between members of the public and law enforcement have not been successful to date. However, the Advisory Committee recently secured a grant from the Broad Reach Fund and intends to use those funds to hold a statewide forum in 2012.

The Advisory Committee has reached the point where it works very well together on issues that can sometimes be quite divisive and volatile. All members of the Committee take the Legislature's charge to examine issues surrounding bias-based profiling and perceptions about that practice very seriously. The Committee hopes to continue to work on these issues, conduct a forum and report back to this Legislative Committee before November 12, 2012.

I. INTRODUCTION AND BACKGROUND

In 2009, the Maine Legislature enacted 25 M.R.S. Chapter 355. *Attachment 1*. That law established an *Advisory Committee on Bias-Based Profiling by Law Enforcement Officers and Law Enforcement Agencies*. 25 M.R.S. § 3001(1). That section also set out the membership qualifications for the Advisory Committee. The Legislature required the Advisory Committee to consist of members of law enforcement agencies, associations and labor organizations, representatives of civil rights organizations in Maine and a member of a federally recognized Indian Tribe. Specifically, the Legislature established a Committee with the following members:

1. The Commissioner of Public Safety or the Commissioner's designee;
2. One representative of a statewide association of chiefs of police;
3. One representative of a statewide association of sheriffs;
4. One representative of police labor organizations in the State;
5. One at-large active line officer who is a member of a police labor organization in this State;
6. One at-large representative who is a current or former officer of the Maine State Police;
7. The Attorney General or the Attorney General's designee;
8. One representative appointed by the Board of Trustees of the Maine Criminal Justice Academy;
9. Seven representatives from different civil rights organizations in the State; and
10. One representative from a federally recognized Indian Tribe in Maine.

See generally 25 M.R.S. § 3001(3). The Legislature also directed that the Advisory Committee be co-chaired by the Commissioner of Public Safety and a representative of the National Association for the Advancement of Colored People ("NAACP"). *Id.*

In February 2010, then Commissioner of Public Safety Anne Jordan published a list of the original roster of the Advisory Committee. *Attachment 2*. Due to scheduling conflicts, job changes and other factors, the roster of the Advisory Committee has changed over time. The current membership can be found in *Attachment 3*.¹ The Committee is co-chaired by John

¹ The composition of the Advisory Committee is different than it was when it was originally established. Due to changes in administrations, a new Commissioner of Public Safety was appointed and consequently Commissioner John Morris replaced Commissioner Anne Jordan. Similarly, Advisory Committee member Beth Stickney left the Immigration Legal Advocacy Project ("ILAP") and was replaced by ILAP employee Andi Summers. In addition, three original members of the Committee became unable to serve. Marvin Glazier representing the Jewish community resigned and was replaced by Rabbi Darah Lerner. Qamar Bashir, who was appointed as an advocate for refugee/immigrant communities, was unable to serve due to her work schedule and an inability to attend Advisory Committee meetings. Ben Chin, of the Maine People's Alliance, has replaced Ms. Bashir on the Advisory Committee. George Tomer, a Penobscot Tribal Elder, representing a federally recognized Indian Tribe attended some meetings in 2010 but became unable to continue to serve. At this time, the Committee does not have a member from a federally recognized Indian Tribe. The Committee is working to insure that members of federally recognized Indian Tribes participate in the planning of the public forum to be held in 2012 and participate in that forum itself.

Morris, Commissioner of Public Safety, and Rachel Talbot Ross of the Portland NAACP.

The Legislature charged the Advisory Committee with specific duties.

The committee shall:

- A. Work with the Board of Trustees of the Maine Criminal Justice Academy to develop a model policy on bias-based profiling;
- B. Work with law enforcement across the State on a voluntary basis to assess whether or not bias-based profiling occurs in this State and, if it does, to what extent and to offer proposals and make recommendations to address the matter;
- C. Make recommendations to the Board of Trustees of the Maine Criminal Justice Academy on curricula for basic and in-service law enforcement training on the subject of bias-based profiling;
- D. Establish a mechanism for outreach and public awareness campaigns to educate advocacy organizations and the general public about modern law enforcement practices and procedures; and
- E. Advise the Legislature on matters involving bias-based profiling on its own initiative or when requested.

25 M.R.S. § 3001(7)(A)-(E). The Legislature also directed the Advisory Committee to file a report with the Legislature annually by February 15. No report was filed by February 15, 2011 in part as a result of the transition of administrations and the appointment of a new Commissioner of the Department of Public Safety, John Morris. However, Commissioner Morris quickly came up to speed with the workings of the Advisory Committee and has become an active and integral member of that Committee.

The Legislature's charge to the Advisory Committee was formidable. The charge was very broad and was to be accomplished with essentially no funding and no staff. The lack of funding and staff has hampered the Advisory Committee in meeting the charge it was given by the Legislature. Since its outset, the Advisory Committee has been mindful that the legislation that established it is repealed effective November 12, 2012.

With that date in mind, the Advisory Committee undertook an aggressive meeting schedule. The Advisory Committee held full meetings on:

March 5, 2010;
April 9, 2010;
May 14, 2010;
June 18, 2010;

July 9, 2010;
August 5, 2010;
August 13, 2010;
September 14, 2010;
October 21, 2010;
November 30, 2010;
January 28, 2011;
February 18, 2011;
March 25, 2011;
May 2, 2011;
June 20, 2011;
July 8, 2011;
August 18, 2011;
September 27, 2011;
October 11, 2011; and
January 20, 2012.

The Advisory Committee also formed multiple subcommittees. Those subcommittees met as follows.

Public Engagement Subcommittee:

October 20, 2010; and
November 4, 2010.

Agenda Subcommittee:

May 9, 2011; and
July 18, 2011.

Outreach Subcommittee:

May 16, 2011;
June 13, 2011;
July 18, 2011; and
October 7, 2011.

II. WORK OF THE ADVISORY COMMITTEE

The Advisory Committee brought together people from very different backgrounds and with varied experiences when it came to the issue of bias-based profiling. While it would be easy to look at the Advisory Committee and assume that it has been divided simply along the lines of law enforcement personnel and non-law enforcement personnel, that simplistic approach would not reveal an accurate picture. There were differences of opinion expressed by members of the law enforcement community as well as by members representing civil rights organizations. The Advisory Committee's early meetings often reflected those different viewpoints. It took the

Advisory Committee some time to begin to agree on the nature of bias-based profiling, perceptions held by members of various communities about bias-based profiling and the possible problems that those views and perceptions have on the general issue of public safety. To the Advisory Committee's credit, it realized early on that it needed to put individual differences and experiences to the side so that it could begin to grapple with the larger issues presented to it by the Legislature.

Having done this, the Advisory Committee reached consensus of very important and fundamental issues. While agreeing to disagree about the existence or extent of bias-based profiling in Maine, the Advisory Committee agreed to a general definition of that practice.

Bias-based profiling occurs when stops, detentions, searches, or asset seizures and forfeiture efforts are based on race, ethnicity, gender, sexual orientation, religion, economic status, age or cultural group rather than solely on an individual's conduct and behavior or specific suspect information.

In addition, members of the Advisory Committee agreed that the term public safety could be rendered meaningless, or at least seriously diluted, if any segments of the public, for whatever reason, do not feel that they are treated fairly by law enforcement agencies. Thus, the mere fact that members of the public, particularly members of minority communities identified in the definition of bias-based profiling, hold the perception that they are treated differently because of their personal and sometimes immutable characteristics is itself a significant problem. Advisory Committee members representing law enforcement readily acknowledged that if members of the public are afraid to engage or rely upon law enforcement agencies, those agencies cannot be fully effective in advancing public safety. Similarly, members of civil rights organizations on the Committee recognized that if their constituents are not likely to call on law enforcement agencies when their safety is in jeopardy, those individuals will never feel entirely safe or feel part of the larger community. The Committee recognized that although it may be easy to agree upon these basic principles, the path to finding common ground is less well defined.

One of the first actions taken by the Advisory Committee was to invite Jack McDevitt, Associate Dean for Research and Graduate Studies in the College of Criminal Justice at Northeastern University, to address the Committee. Mr. McDevitt is a nationally known expert in bias-based profiling and has worked on this topic with law enforcement agencies and communities throughout the United States. He has been a valuable resource to the Advisory Committee and continues to work with us as we attempt to meet our legislatively mandated responsibilities. Mr. McDevitt informed the Committee that there are three critical areas to explore when addressing bias-based profiling by law enforcement or the perception of bias-based profiling held by community members, particularly members of minority communities in terms of race, color, ethnicity, religion, gender, sexual orientation, economic status and other personal characteristics. Mr. McDevitt described a three-step process that includes:

1. Data collection to determine if a bias-based profiling problem exists;

2. Addressing the problem if it exists by establishing policies and working with law enforcement personnel in both basic training and through continuing in-service trainings to address any identified problems; and

3. Fostering an ongoing dialogue by creating opportunities that allow members of the public to share their experiences with and perceptions about the practices of law enforcement, and coupling that with educating the public about the procedures used by law enforcement and the public safety reasons behind the use of those procedures. This also presents an opportunity for law enforcement to communicate that bias-based profiling is not an acceptable law enforcement practice.

Mr. McDevitt was candid and told the Advisory Committee that this type of process is not easy. He came with an understanding of the inherent tensions that can manifest themselves when people confront or discuss an issue as volatile as bias-based profiling. He informed the Committee that this can be a deeply personal and emotional time for any person involved in the discussion. He expressed how important it was for members of law enforcement agencies to avoid becoming defensive when members of a community discuss what they perceived as examples of unjust treatment by law enforcement. He also said that it was important for members of the community who might be sharing these deeply personal narratives to accept that it is often impossible to remedy actions that have already taken place. The ultimate goal of this process is to create conversation and to take advantage of opportunities to find common ground as well as an understanding of techniques used by law enforcement.

With that backdrop, the Advisory Committee first addressed the issue of data collection. The general consensus was that concrete data regarding stops, searches and seizures and the race, ethnicity and other personal characteristics of the subjects on those encounters, though not without its own limitations, is necessary to determine if bias-based profiling occurs and if it does occur to then determine if it is a statewide problem, limited to identifiable law enforcement agencies or confined to identifiable law enforcement officers. Law enforcement members of the Advisory Committee, in particular, expressed a concern that anecdotal information about profiling and perceptions of profiling can be unreliable and create false impressions of the behavior of law enforcement agencies. The misconduct of some can be viewed as the conduct of all. Some members of civil rights organizations observed that in the absence of the collection and analysis of concrete data, anecdotal data is all that we have. They spoke of power of hearing first-hand from people who believe that they have been subject to profiling and the impact that those experiences had on their lives. All members of the Committee recognized that the vast majority of law enforcement officers do not intend to or in fact engage in bias-based profiling.

The Advisory Committee contacted law enforcement agencies around the State to determine if there were departments that would agree to participate in a voluntary data collection project. Although many departments expressed an interest, including the cities of Auburn, Lewiston and South Portland, as well as Cumberland County, the lack of financial resources to analyze any data collected made this type of undertaking impossible. Though relevant data is being collected in some fashion by some departments, it is not clear if and when funds will become available to work with and analyze that data in a meaningful way. The entire Advisory Committee viewed this as a significant problem.

Another problem with data collection is that not all law enforcement agencies use the same data collection system. There are multiple records management system vendors in Maine that provide services to local and state police departments. The list below provides an example the number of the different vendors and the number of agencies that use their system:

Vendor	Number of Agencies
Crime Star	Four Agencies
Crime Tracker	Seven Agencies
Crisnet/Motorola	Two Agencies
CSH	Two Agencies
End2End	One Agency
HTE	Three Agencies
IMC	60 Agencies
Rem Tech	One Agency
Report Exec.	Three Agencies
Spillman	37 Agencies
Windsor Group	Eight Agencies
Xpediter Patrol C/S	One Agency
In-house programs (no vendor)	Four Agencies

The Advisory Committee recognized that even an issue that seems on the surface to be a simple one, data collection, presents many obstacles. There is nothing approaching uniformity in the types of data collected or the data collection systems used by law enforcement agencies in Maine and, at this time, there are no funds available to begin the process of collating, analyzing and comparing data collected by multiple law enforcement agencies.

The Advisory Committee then turned to Step 2 of Mr. McDevitt’s three-step process. This second step called for the Committee to address the overall issue of bias-based profiling and the perception among some members of the public that it exists, by working with the Maine Criminal Justice Academy (MCJA) to create a model policy tackling the issue head-on, and to mandate training for all law enforcement officers. The Advisory Committee has had concrete success in these areas. At its May 2, 2011 meeting, a policy explicitly prohibiting bias-based profiling was proposed and approved by the Advisory Committee. Committee member John Rogers worked with the Board of Trustees of the MCJA and the Maine Chiefs of Police to shepherd policies that prohibit bias-based profiling through those entities. As a result, on September 9, 2011 the Board of Trustees of the MCJA adopted a minimum standard requiring every law enforcement agency in Maine to have a formal policy that prohibits bias-based profiling. *Attachment 4*. Thereafter, on September 15, 2011 the Maine Chiefs of Police Association created and adopted a model policy to accomplish the goal of clearly prohibiting bias-based profiling. *Attachment 5*. That model policy is a template that can be adopted as is or adapted by law enforcement agencies throughout Maine. These actions became effective on December 31, 2011. In addition, to make certain that every law enforcement officer is aware of and trained about the prohibition against bias-based profiling, the Board of Trustees of the MCJA mandated training for all officers in “Cultural Diversity and Bias-Based Policing” in 2013. *Attachment 6*.

The third and in many ways most complicated task suggested to the Advisory Committee by Mr. McDevitt was Step 3. That step calls for an ongoing dialogue that engages both the public and members of the law enforcement community in conversations around issues of bias in general, and bias-based profiling and policing in particular. When the Advisory Committee first discussed this issue, it consulted with Mr. McDevitt as to the preferred format for this type of community engagement. The Advisory Committee learned that to maximize effectiveness, community meetings should be held in multiple locations throughout Maine. In addition, if possible, three separate meetings should be held at each location. This would allow for a meeting where members of the public could share their stories, a second meeting focused on community education about policing techniques led by representatives of law enforcement and a third meeting to establish a sustainable two-way dialogue. As a result, the Advisory Committee considered an ambitious plan to partner with local community groups to conduct multi-session public meetings in eight locations throughout the State of Maine. However, as the Advisory Committee and its Public Engagement Subcommittee attempted to solidify this long-term vision and schedule those meetings, it became clear, again due to financial and personnel limitations, that a plan to hold multi-session meetings in all geographic areas of the State of Maine was not achievable. It was simply not feasible to rely on donated meeting space, facilitators and translators for those meetings. There were also no funds available for the logistics of having members of the Advisory Committee attend those meetings.

The Advisory Committee then explored paring down its plan for three session meetings at multiple locations. After input from the Outreach and Agenda Subcommittees, and discussion with representatives of various law enforcement agencies, religious and community stakeholder groups, the Advisory Committee determined that a better and more attainable approach was to conduct a single half-day statewide public forum in the fall of 2011. A similar approach had been used in the State of Vermont with some success. Again, as the Advisory Committee developed a budget for this event, it became clear that it lacked capacity to hold it. Therefore, the Advisory Committee postponed the 2011 event and decided to seek funding from private sources with the goal of holding this event in the spring of 2012.

In the late summer of 2011, through the diligent efforts of Andi Summers and other members of the Advisory Committee, the Broad Reach Fund awarded a grant of \$8,000.00 to further the work of the Advisory Committee and to fund a public forum to address these important issues. Though the precise agenda for that public forum has not been fully developed, it will include a period of time for members of the public to address the Advisory Committee, including the opportunity to share personal stories about their encounters with law enforcement. This will be followed by representatives of law enforcement explaining the nuts and bolts mechanics of stops, searches and seizures. Law enforcement will also be able to use part of this time to invite and answer questions from the public and to communicate to the public that bias-based profiling is not an acceptable law enforcement practice. Ideally, the session will also include a round-table discussion in which members of the public can pose questions to members of law enforcement agencies about how and why their agencies do what they do. The Agenda Subcommittee will be responsible for creating a more formal agenda for the public forum. The Outreach Subcommittee will establish a process to ensure that representatives of multiple law enforcement agencies and as many different communities and populations from all parts of

Maine are able to attend the event. This outreach is necessary to ensure that the public forum is truly a meaningful statewide event.

III. CONCLUSION

The Advisory Committee has moved from a group of members who at times seemed to be talking at one another to a group that works well together in an atmosphere where differing opinions are welcome and respected. The different backgrounds and experiences that members brought to the Committee have become a source of its strength. The Committee's development in this manner has yielded clear benefits. The Advisory Committee has met two parts of the four-part charge that required action by the Committee and has partially met a third charge. The Advisory Committee has met its charge to:

[w]ork with the Board of Trustees of the Maine Criminal Justice Academy to develop a model policy on bias-based profiling; and

[make] recommendations to the Board of Trustees of the Maine Criminal Justice Academy on curricula for basic and in-service law enforcement training on the subject of bias-based profiling.

See generally 25 M.R.S. § 3001(7)(A)&(C).

In addition, the Advisory Committee has partially met its charge to:

[w]ork with law enforcement across the State on a voluntary basis to assess whether or not bias-based profiling occurs in this State and, if it does, to what extent and to offer proposals and make recommendations to address the matter.

See generally 25 M.R.S. § 3001(7)(B). While the Advisory Committee has secured the cooperation of multiple law enforcement agencies to engage in a data collection project, it has not completed that task due to a lack of funding. If and when funding becomes available, the Advisory Committee would be in a position to advance this project. Finally, the Advisory Committee has been unable to:

[e]stablish a mechanism for outreach and public awareness campaigns to educate advocacy organizations and the general public about modern law enforcement practices and procedures.

See generally 25 M.R.S. § 3001(7)(D). However, with the assistance of the grant from the Broad Reach Fund it is continuing with plans to achieve this goal. The Advisory Committee has received overwhelming support from state and local law enforcement agencies who have indicated a strong willingness to participate in this event. It is an issue that the law enforcement community takes seriously.

The Advisory Committee is excited about the possibility of holding a statewide symposium to gather public input and to create dialogue between law enforcement and members of the general public. The Advisory Committee feels that this is the most effective and practical way to generate meaningful discussion and conversation about bias-based profiling and perceptions about profiling. This statewide event will also provide an opportunity for law enforcement to educate participants about modern law enforcement techniques. The Advisory Committee hopes that this forum will serve as a template for communities throughout Maine to use to create dialogue at the local level. Individual communities are in the best position to shape that template to conform to local concerns and issues. The Advisory Committee is on schedule to hold that event in the spring of 2012. We welcome this Committee's participation in that symposium. The Advisory Committee will be extending invitations to this public forum to the three branches of Maine's government in advance of the event.