

# **The Administrative Code of the City of New York**

## **Bias-Based Profiling**

§ 14-151 Bias-based Profiling Prohibited. a. Definitions. As used in this section, the following terms have the following meanings:

1. "Bias-based profiling" means an act of a member of the force of the police department or other law enforcement officer that relies on actual or perceived race, national origin, color, creed, age, alienage or citizenship status, gender, sexual orientation, disability, or housing status as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons to suspected unlawful activity.

2. "Law enforcement officer" means (i) a peace officer or police officer as defined in the Criminal Procedure Law who is employed by the city of New York; or (ii) a special patrolman appointed by the police commissioner pursuant to section 14-106 of the administrative code.

3. The terms "national origin," "gender," "disability," "sexual orientation," and "alienage or citizenship status" shall have the same meaning as in section 8-102 of the administrative code.

4. "Housing status" means the character of an individual's residence or lack thereof, whether publicly or privately owned, whether on a temporary or permanent basis, and shall include but not be limited to:

(i) an individual's ownership status with regard to the individual's residence;

(ii) the status of having or not having a fixed residence;

(iii) an individual's use of publicly assisted housing;

(iv) an individual's use of the shelter system; and

(v) an individual's actual or perceived homelessness.

b. Prohibition.

1. Every member of the police department or other law enforcement officer shall be prohibited from engaging in bias-based profiling.

2. The department shall be prohibited from engaging in bias-based profiling.

c. Private Right of Action

1. A claim of bias-based profiling is established under this section when an individual brings an action demonstrating that:

(i) the governmental body has engaged in intentional bias-based profiling of one or more individuals and the governmental body fails to prove that such bias-based profiling (A) is necessary to achieve a compelling governmental interest and (B) was narrowly tailored to achieve that compelling governmental interest; or

(ii) one or more law enforcement officers have intentionally engaged in bias-based profiling of one or more individuals; and the law enforcement officer(s) against whom such action is brought fail(s) to prove that the law enforcement action at issue was justified by a factor(s) unrelated to unlawful discrimination.

2. A claim of bias-based profiling is also established under this section when:

(i) a policy or practice within the police department or a group of policies or practices within the police department regarding the initiation of law enforcement action has had a disparate impact on the subjects of law enforcement action on the basis of characteristics delineated in paragraph 1 of subdivision a of this section, such that the policy or practice on the subjects of law enforcement action has the effect of bias-based profiling; and

(ii) The police department fails to plead and prove as an affirmative defense that each such policy or practice bears a significant relationship to advancing a significant law enforcement objective or does not contribute to the disparate impact; provided, however, that if such person who may bring an action demonstrates that a group of policies or practices results in a disparate impact, such person shall not be required to demonstrate which specific policies or practices within the group results in such disparate impact; provided further, that a policy or practice or group of policies or practices demonstrated to result in a disparate impact shall be unlawful where such person who may bring an action produces substantial evidence that an alternative policy or practice with less disparate impact is available and the police department fails to prove that such alternative policy or practice would not serve the law enforcement objective as well.

(iii) For purposes of claims brought pursuant to this paragraph, the mere existence of a statistical imbalance between the demographic composition of the subjects of the challenged law enforcement action and the general population is not alone sufficient to establish a prima facie case of disparate impact violation unless the general population is shown to be the relevant pool for comparison, the imbalance is shown to be statistically significant and there is an identifiable policy or practice or group of policies or practices that allegedly causes the imbalance.

#### d. Enforcement

1. An individual subject to bias-based profiling as defined in paragraph 1 of subdivision a of this section may file a complaint with the New York City Commission on Human Rights, pursuant to Title 8 of the Administrative Code of the City of New York, or may bring a civil action against (i) any governmental body that employs any law enforcement officer who has engaged, is engaging, or continues to engage in bias-based profiling, (ii) any law enforcement

officer who has engaged, is engaging, or continues to engage in bias-based profiling, and (iii) the police department where it has engaged, is engaging, or continues to engage in bias-based profiling or policies or practices that have the effect of bias-based profiling.

2. The remedy in any civil action or administrative proceeding undertaken pursuant to this section shall be limited to injunctive and declaratory relief.

3. In any action or proceeding to enforce this section, the court may allow a prevailing plaintiff reasonable attorney's fees as part of the costs, and may include expert fees as part of the attorney's fees.

e. Preservation of rights. This section shall be in addition to all rights, procedures, and remedies available under the United States Constitution, Section 1983 of Title 42 of the United States Code, the Constitution of the State of New York and all other federal law, state law, law of the City of New York or the New York City Administrative Code, and all pre-existing civil remedies, including monetary damages, created by statute, ordinance, regulation or common law.