



PAUL DeWOLFE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: HB 0455 - State Personnel - Implicit Bias Awareness Training – Required

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 02/04/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 455.

The American Heritage Dictionary of the English Language defines “bias” in the following ways: “A preference or an inclination, especially one that inhibits impartial judgment”; “An unfair act or policy stemming from prejudice”; “To influence in a particular, typically unfair direction”; and “Prejudice.”¹

The same dictionary defines “partiality” as: “Favorable prejudice or bias”; “A special fondness”; or “A predilection.”²

Implicit biases are discriminatory biases based on implicit attitudes or stereotypes and are a direct effect of our internal, subconscious cognition.³ Although conversations surrounding implicit biases seem to have only recently become commonplace, implicit bias has been studied as an area of our cognition for decades.⁴

Research on implicit social recognition has demonstrated that much of a person’s mental processes happen in “the cognitive unconscious,” outside of a person’s intentional focus, meaning people do not often realize they have formed biased judgments of others.⁵ Implicit

¹ *Bias*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000).

² *Partiality*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000).

³ Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 947 (2006).

⁴ *Id.* at 951.

⁵ *Id.*

biases can be especially problematic because they can produce behavior that is different from a person’s consciously expressed or endorsed beliefs or principles.⁶ Implicit bias is not only pervasive,⁷ but particularly worrisome when persons are dealing with disadvantaged groups. There is evidence that implicit attitudes and biases produce (often unintentional) discriminatory behavior.⁸

The studies show, however, that we can – and will – do better. Implicit biases are learned sociological and neurological habits. Just like other habits, they may be broken with added awareness and specific strategic interventions.⁹ Breaking these habits is what House Bill 455 aims to do.

House Bill 455 aims to educate all state employees about their own internalized biases and aid them in understanding their implicit cognition. In turn, these educational practices will aid state employees in avoiding both intentional and unintentional discriminatory behavior.

Many states have started to recognize the importance of legislating implicit bias training. Below is a list of some of the other states that have enacted or introduced implicit bias training requirements:

A) Enacted Legislation Requiring Implicit Bias Training for Certain Employees

- California passed a bill in 2021 that adds the requirement of one hour of implicit bias training as a requirement for graduation from **nursing schools and programs**.
- Maine passed a bill in 2021 that requires **school resource officers** to receive diversity, equity and inclusion training *or* implicit bias training.
- Nebraska passed a bill in 2021 that requires—as a part of **entry-level law enforcement** certification—de-escalation training that includes training related to mental health behaviors, substance abuse, anti-bias, implicit bias, and communicating with a person in crisis.
- Nevada passed a bill in 2021 that requires any person who has **regular contact with**

⁶ *Id.*

⁷ *Id.* at note 84. Study revealed that “averaged across the dozen topics, 42% of respondents expressed exact or near-exact neutrality on explicit measures. On the IAT (Implicit Association Test) measures, however, only 18% of respondents demonstrated sufficiently small implicit bias to be judged implicitly neutral.”

⁸ Greenwald, Anthony G., and Linda Hamilton Krieger. “Implicit Bias: Scientific Foundations.” *California Law Review* 94.4 (2006): 945-67.

⁹ Elayne E. Greenberg, *Fitting the Forum to the Pernicious Fuss: A Dispute System Design to Address Implicit Bias and ‘Ism*s in the Workplace, 17 *CARDOZO J. CONFLICT RESOL.* 75, 89 (2015).

juveniles in the juvenile justice system to complete periodic training relating to implicit bias and cultural competency.

- New Jersey:
 - Passed a bill in 2021 that requires every **hospital with inpatient maternity services** and every **State-licensed birthing center** to implement an evidence-based explicit and implicit bias training program for 1) health professionals caring for pregnant persons and 2) all supportive services staff members who interact with pregnant persons.
 - Passed a bill in 2020 that requires State, county, municipal, and campus **law enforcement** agencies to provide implicit bias training.
- New York passed a bill in 2021 that requires **real estate brokers and salespersons**¹⁰ to receive implicit bias training as part of their license renewal process.

B) Proposed Legislation that would Require Implicit Bias Training for all State Employees

- New York introduced a bill in 2021 that would establish “a racial equity, social justice, and implicit bias training program for **all state government and private employees** in the state.” The proposed bill stipulates that all current State employees must receive training within one year of the bill's effect date; new State employees must complete the training within one month of being hired.
- North Carolina introduced a bill in 2021 that would establish an annual implicit bias training requirement for **state officials and employees**.
- Virginia introduced a bill in 2020 that would require training for **elected officials, staff members, and state employees** on how to recognize and combat implicit biases.

C) Legislation Requiring Certain State Employees to Receive Implicit Bias Training

- Nevada passed a bill in 2021 that requires existing employee training regulations to "include requirements for the training of **supervisors and managerial employees** concerning implicit bias."

Further examples of implicit bias training include the U.S. Department of Justice (“DOJ”), which announced a department-wide implicit bias training for its over 28,000 law

¹⁰ California also has a bill requiring real estate applicants and licensees to receive implicit bias training.

enforcement officers, prosecutors, and other personnel.¹¹ The DOJ stated that implicit bias “can affect interactions and decisions due to race, ethnicity, gender, sexual orientation, religion and socio-economic status” and that “social science has shown that all individuals experience some form of implicit bias but that the effects of those biases can be countered through training.”¹² In Missouri, the Columbia Police Department presented a training in 2016 with the purpose of combating the influence of bias in officer decisions.¹³ The program was successful and popular with officers, so beginning in January 2017, it became mandatory for the police force to train its officers for at least two hours a year.¹⁴ In 2015, the Fourth Judicial District Family Treatment Drug Court in Colorado determined, as part of its annual best practice goals, that cultural competency was necessary for the efficacy of their programs.¹⁵ The first step the Court identified as crucial in advancing cultural competency was individual awareness, and to this end, the state problem-solving court coordinator with Colorado's Office of the State Court Administrator presented a group training titled “Oops, Your Implicit Bias is Showing.”¹⁶

Maryland has the opportunity to educate, and improve the implicit cognition of, all its state employees. The Maryland Office of the Public Defender represents a wide variety of Marylanders. Often, our clients are the subject of both implicit and explicit discrimination. The training required by HB 0455 would benefit our clients throughout their lives. Moreover, it would improve the bias awareness and cultural competency of each employee of the Maryland Office of the Public Defender.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on HB 455.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

¹¹ *Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel*, The United States Department of Justice Office of Public Affairs (June 27, 2016), <https://www.justice.gov/opa/pr/department-justice-announces-new-department-wide-implicit-bias-training-personnel>.

¹² *Id.*

¹³ *Id.*

¹⁴ Shane Sanderson, *Implicit Bias Training will Continue for Columbia Police*, *Missourian* (Nov. 17, 2016), http://www.columbiamissourian.com/news/local/implicit-bias-training-will-continue-for-columbia-police/article_e7c2313c-acdf-11e6-90ac-7b6e3a3e594b.html.

¹⁵ Jami Vigil, *Building A Culturally Competent Problem-Solving Court*, *Colo. Law.*, April 2016, at 51

¹⁶ *Id.*