

2012 -- H 7256

=====
LC00603
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

—————
A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - COMPREHENSIVE RACIAL
PROFILING PREVENTION ACT OF 2012

Introduced By: Representatives Diaz, Ajello, Slater, Tanzi, and Williams

Date Introduced: January 26, 2012

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. The Title of Chapter 31-21.2 of the General Laws entitled "RACIAL
2 PROFILING PREVENTION ACT OF 2004" is hereby amended to read as follows:

3 ~~CHAPTER 31-21.2~~

4 ~~Racial Profiling Prevention Act of 2004~~

5 CHAPTER 31-21.2

6 COMPREHENSIVE RACIAL PROFILING PREVENTION ACT OF 2012

7 SECTION 2. Sections 31-21.2-5, 31-21.2-6, 31-21.2-7 and 31-21.2-8 of the General
8 Laws in Chapter 31-21.2 entitled "Racial Profiling Prevention Act of 2004" are hereby amended
9 to read as follows:

10 **31-21.2-5. Law enforcement practices.** -- (a) Unless there exists reasonable suspicion or
11 probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be
12 detained beyond the time needed to address the violation. Nothing contained herein shall prohibit
13 the detention of a motor vehicle for a reasonable period of time for the arrival of a canine unit or
14 subsequent criminal investigation, if there is reasonable suspicion or probable cause of criminal
15 activity.

16 (b) No operator or owner-passenger of a motor vehicle or pedestrian shall be requested
17 to consent to a search by a law enforcement officer of his or her motor vehicle or person ~~which is~~
18 ~~stopped solely for a traffic violation,~~ unless there exists reasonable suspicion or probable cause of

1 criminal activity. Commencing on January 1, 2013, the officer shall document in writing his or
2 her “reasonable suspicion” or “probable cause” grounds for conducting a search, and shall also,
3 where practicable, call in such information to a dispatcher or supervising officer prior to a search.
4 The written documentation shall also include the results of the search. The document shall be a
5 public record, exclusive of personally identifiable information and except to the extent where it
6 could reasonably be expected to interfere with an open investigation of criminal activity or
7 enforcement proceedings, to disclose the identity of a confidential source, or to endanger the life
8 or physical safety of any individual.

9 (c) No operator of a motor vehicle shall be requested to provide any documentation or
10 identification other than a driver’s license, motor vehicle registration, and/or proof of insurance
11 when the motor vehicle has been stopped solely for a traffic violation, unless there exists
12 reasonable suspicion or probable cause of criminal activity or the operator has failed to produce a
13 valid driver’s license.

14 (d) No passenger of a motor vehicle shall be requested to provide identification or any
15 other documentation by a law enforcement officer when the motor vehicle has been stopped
16 solely for a traffic violation, unless there exists reasonable suspicion or probable cause of
17 criminal activity. Nothing contained herein shall be construed to prohibit the officer from
18 requesting the name and date of birth of the passenger(s); provided, however, that failure to
19 respond to such a request shall not constitute reasonable suspicion or probable cause of criminal
20 activity.

21 (e) If a violation of the traffic laws in this title is used to stop a motor vehicle for non-
22 related investigatory reasons, the law enforcement officer shall document in writing the
23 investigatory basis for the stop. This documentation shall be assessed every six (6) months as to
24 whether the suspicion was justified and the data be made publicly available.

25 ~~(e)~~(f) Any evidence obtained as a result of a stop or a search prohibited by ~~subsection~~
26 subsections (a) ~~or (b)~~ through (e) shall be inadmissible in any judicial proceeding. Nothing
27 contained herein shall be construed to preclude any search otherwise based upon any legally
28 sufficient cause.

29 ~~(d)~~(g) Law enforcement agencies using video and/or audio surveillance cameras in their
30 vehicles shall adopt written policies and procedures regarding the use of such cameras, which
31 shall be public records: and which shall include, but not be limited to, the following standards:

32 (1) All motor vehicle stops conducted by police vehicles with such equipment shall be
33 recorded. The recording shall begin no later than when an officer first signals the vehicle to stop
34 or arrives at the scene of an ongoing motor vehicle stop begun by another law enforcement

1 officer; and the recording shall continue until the motor vehicle stop is completed and the stopped
2 vehicle departs, or until the officer's participation in the motor vehicle stop ends;

3 (2) The driver of a stopped car shall be advised by the officer that the encounter is being
4 recorded;

5 (3) A chain-of-custody record of the tapes shall be maintained;

6 (4) A driver or passenger of a motor vehicle that was recorded by a video/audio
7 surveillance camera, and/or his or her legal counsel, shall have the right to view the in-car
8 recording at the police station and to obtain, at his or her own expense, a copy of the recording
9 involving him or her within ten (10) business days of the request;

10 (5) The policy shall address the period of retention for such tapes, and procedures to be
11 used to ensure that the recording equipment is in proper working order, and shall bar the
12 destruction of any tape that records an incident that is the subject of a pending complaint,
13 misconduct investigation or civil or criminal proceeding. Such tapes shall be retained for a
14 minimum of ten (10) days after the final resolution of such investigation or proceeding, including
15 the time for any appeal;

16 (6) The policy shall explicitly prohibit any violation of these requirements, including any
17 attempts to disengage or tamper with the video/audio surveillance equipment or to otherwise fail
18 to record stops as specified herein;

19 (7) A court may impose any appropriate remedy, including the exclusion of evidence,
20 obtained in a search, in any civil or criminal proceeding where a knowing or willful violation of
21 these requirements is found to have been committed; and

22 (8) The tapes of video/audio surveillance cameras regulated by this section shall not be
23 deemed public records under the access to public records act, section 38-2-1, et seq.

24 (h) Law enforcement officers shall advise any motorist who is stopped, of the reason for
25 the stop.

26 (i) Law enforcement agencies with mobile display terminals in police vehicles shall adopt
27 policies and procedures governing their use, which shall include the criteria necessary to initiate a
28 record check on a motor vehicle license or registrant. All law enforcement agencies must comply
29 with state and federal guidelines related to the use and access of RILETS and NCIC.

30 ~~(e)~~(j) The policies and procedures established by this section shall be added to, and
31 prominently placed in, all relevant departmental policy and training manuals. Other appropriate
32 training about the requirements of this chapter shall also be provided to all officers.

33 **31-21.2-6. Continued data collection.** -- (a) The office of highway safety of the Rhode
34 Island ~~Justice Commission~~ department of transportation is authorized to and shall conduct a study

1 of routine traffic stops by the Rhode Island State Police and each municipal police department in
2 order to determine whether racial profiling is occurring, and to examine whether searches of
3 vehicles and motorists are being conducted in a disparate manner.

4 (b) The office of highway safety of the Rhode Island ~~Justice-Commission~~ department of
5 transportation shall, ~~not later than forty five (45) days after enactment of this act,~~ no later than
6 January 1, 2013, develop a form or electronic equivalent to be used by each police officer when
7 making a traffic stop to record the data required under this chapter, which form shall include for
8 each motor vehicle stop, the race and ethnicity of the driver and of any passengers based on the
9 officer's perception, and the information listed in section 31-21.1-4.

10 (c) The office of highway safety of the Rhode Island ~~Justice-Commission~~ department of
11 transportation shall advise the Rhode Island State Police and each municipal police department of
12 the date that data collection shall commence. Data collection shall begin not later than ~~October 1,~~
13 ~~2004~~ February 1, 2013, but may begin prior to that time upon notification to police departments
14 from the office of highway safety of the Rhode Island ~~Justice-Commission~~ department of
15 transportation.

16 (d) A traffic stop data collection card or electronic equivalent shall be completed for
17 each routine traffic stop by the Rhode Island State Police and municipal police department during
18 the term of this study.

19 (e) Upon commencement of data collection, and monthly thereafter, each municipal
20 police department and the Rhode Island State Police shall transmit to the office of highway safety
21 of the Rhode Island ~~Justice-Commission~~ department of transportation all forms or electronic data
22 collected to date of motorists who were stopped, and any other information the police department
23 or the Rhode Island State Police deem appropriate. Data collection shall continue for ~~twelve (12)~~
24 forty-eight (48) months following commencement of data collection.

25 (f) Appropriate funding shall be made available to implement the provision of this
26 chapter, and completion of this study shall be contingent upon such funding.

27 (g) The study shall include a multivariate analysis of the collected data in accordance
28 with general statistical standards, and shall be substantially similar to the study prepared pursuant
29 to chapter 21.1 of this title. The study shall be prepared by an organization, company, person or
30 other entity with sufficient expertise in the field of statistics and the study of traffic stop data
31 collection to assist with the implementation of this chapter, and chosen by the office of highway
32 safety of the Rhode Island ~~Justice-Commission~~ department of transportation. The study shall be
33 released on an annual basis, with the first released not later than eighteen (18) months after
34 commencement of data collection under this chapter. The report, findings and conclusions

1 submitted pursuant to this subsection shall be a public record.

2 (h) The [office of highway safety of the](#) Rhode Island ~~Justice-Commission~~ [department of](#)
3 [transportation](#) shall be exempt from the provisions of chapter 2 of title 37 in connection with its
4 procurement of equipment and services necessary to the implementation of this chapter.

5 (i) On a quarterly basis a summary report of the monthly data provided by each police
6 department and the state police for that quarterly period shall be issued. The report shall be a
7 public record. The summary report shall include a monthly breakdown by race, [age, gender and](#)
8 [outcome for operators and may be limited to race for passenger\(s\)](#) for each police department of
9 the number of traffic stops made and of searches conducted, and any other information deemed
10 appropriate by the [office of highway safety of the](#) Rhode Island ~~Justice-Commission~~ [department](#)
11 [of transportation](#). [For those police departments collecting data through the use of mobile display](#)
12 [terminals in police vehicles, the report shall also include a breakdown by race and outcome for](#)
13 [operators and may be limited to race for passenger\(s\)](#). The report shall be released not more than
14 ninety (90) days after the end of each quarterly period. No information revealing the identity of
15 any individual shall be contained in the report.

16 (j) Every law enforcement agency collecting data pursuant to this chapter shall ensure
17 that supervisory personnel review each officer's stop and search documentation and data results
18 on a ~~weekly~~ [monthly](#) basis to ensure compliance with all policies, prohibitions and documentation
19 requirements.

20 (k) The head of every law enforcement agency subject to this chapter, or his or her
21 designee, shall review the data on a regular basis in an effort to determine whether any racial
22 disparities in the agency's traffic stops enforcement exists, and to appropriately respond to any
23 such disparities. [It is understood that disparities may or may not equate to racial profiling.](#)

24 (l) An organization chartered for the purpose of combating discrimination, racism, or of
25 safeguarding civil liberties, or of promoting full, free, or equal employment opportunities, and/or
26 the [office of highway safety of the](#) Rhode Island ~~Justice-Commission~~ [department of transportation](#)
27 may seek appropriate relief in a civil action against any police department for failing to collect or
28 transmit the data required in this chapter, and may be awarded its costs, including attorneys' fees,
29 for bringing such an action. As a condition precedent to the filing of a civil action by an
30 organization under this section, the organization shall send a notice to the Rhode Island ~~Justice~~
31 ~~Commission~~ [department of transportation](#) identifying the police department which is failing to
32 collect or transmit the data and the organization shall then allow fifteen (15) days to elapse.

33 (m) The Rhode Island ~~Justice-Commission~~ [department of transportation](#) shall consult
34 with community, police and civil rights representatives, [as to the extent](#) the executive director

1 deems appropriate, in the development of the form required by subsection (b) and on at least a
2 quarterly basis shall consult on other issues that arise relating to the implementation and
3 enforcement of this chapter including the information generated by the issuance of the reports
4 required by subsection (i) herein.

5 **31-21.2-7. Data collection and use.** -- (a) ~~Data acquired under this chapter shall not be~~
6 ~~used in any legal proceeding to establish an inference of discrimination except by court order;~~
7 ~~provided, however, that use of the data for this purpose shall be allowed only upon completion of~~
8 ~~the study authorized by section 31-21.2-6.~~ Data acquired under this chapter shall not be used in
9 any civil proceeding to establish or rebut an inference of discrimination except by court order or
10 when otherwise admissible in accordance with rules and civil procedure. All data collected
11 pursuant to this chapter shall be public. For those motor vehicle stops where a citation was issued
12 or an arrest was made, the forms prepared pursuant to section 31-21.2-6(b) of this chapter shall
13 include a citation or arrest number for reference. The data collection form shall not include the
14 name or badge number of the officer completing the form. The report from the department of
15 transportation shall not be officer specific.

16 (b) Any police officer who in good faith records traffic stop information pursuant to the
17 requirements of this chapter shall not be held civilly liable for the act of recording the information
18 unless the officer's conduct was reckless.

19 (c) All police departments shall submit to the office of highway safety on an annual basis
20 beginning on January 15, 2013, and for four (4) years following the conclusion of data collection,
21 a report indicating what action, if any, has been taken, to address any racial disparities in traffic
22 stops and/or searches documented in the studies authorized by sections 31-21.1-4 and 31-21.2-6,
23 and to otherwise implement any recommendations of those studies, including, but not limited to,
24 any changes to agency policies; revisions to traffic enforcement practices; detailed analysis and
25 review of traffic stop data and the results of such review; or the initiation of any disciplinary
26 action. Any reference to disciplinary action shall not identify the officer. The office of highway
27 safety shall issue guidelines for police departments to follow in preparing these reports. The
28 reports shall be public records, and shall contain a certification that the department has complied
29 with subsections (j) and (k) of section 31-21.2-6.

30 (d) Every nine (9) months, each state and municipal law enforcement agency shall submit
31 to the office of highway safety of the Rhode Island department of transportation, on a brief form
32 prepared by that office, information summarizing what, if any, actions were taken by the agency
33 in response to racial disparities documented in the previous reports issued pursuant to subsection
34 31-21.2-6(i). The summary shall include, but not be limited to: any changes to agency policies;

1 [revisions to traffic enforcement practices; detailed analysis and review of traffic stop data, and the](#)
2 [results of such review; or the initiation of any disciplinary action. Any references to disciplinary](#)
3 [action shall not identify the officer. The forms shall be public records, and shall contain a](#)
4 [certification that the department has complied with subsections \(j\) and \(k\) of section 31-21.2-6.](#)

5 **31-21.2-8. Complaint procedures.** -- (a) Each state and municipal law enforcement
6 agency shall establish a procedure to investigate complaints of police misconduct by members of
7 the public against personnel of these agencies, and shall make a written description of the
8 procedure available to the public. Copies of any departmental complaint forms shall be available
9 in at least one governmental location other than the police department. The procedure and forms
10 shall also be made available on any website of a law enforcement agency.

11 (b) At a minimum, complaints shall be accepted in person by mail or by facsimile.

12 (c) Information on the complaints received by each law enforcement agency shall be
13 submitted on an annual basis under uniform criteria established by the ~~Select Commission on~~
14 ~~Race and Police-Community Relations~~ [Rhode Island justice commission](#). The information
15 provided by each department shall include the total number of complaints received, a breakdown
16 by category of the type of complaint and a further breakdown by category of the disposition of
17 the complaints. [The commission shall publish data regarding complaints of police misconduct](#)
18 [pursuant to this section.](#)

19 [\(d\) The state police and all municipal law enforcement agencies shall submit to the](#)
20 [commission:](#)

21 [\(1\) Copies of any formal or informal arrangements between the state police or a](#)
22 [municipal law enforcement agency and the bureau of immigration and customs enforcement](#)
23 [concerning the questioning, detention, investigation, arrest, apprehension, stopping, referral or](#)
24 [processing of individuals with the state of Rhode Island, including copies of any agreements](#)
25 [entered into pursuant to 8 U.S.C. section 1357\(g\); and](#)

26 [\(2\) Any policies or procedures governing the circumstances under which an inquiry to](#)
27 [federal authorities is made to determine a person's immigration status. The commission shall, on](#)
28 [an annual basis commencing on January 1, 2013, compile the arrangements and policies in a](#)
29 [public report to be submitted to the general assembly.](#)

30 [\(e\) The commission shall also compile into a public report the policies and procedures](#)
31 [adopted by police departments pursuant to section 31-21.2-5 of the general laws.](#)

32 SECTION 3. Section 42-137-5 of the General Laws in Chapter 42-137 entitled "The
33 Select Commission on Race and Police-Community Relations Act" is hereby amended to read as
34 follows:

1 **42-137-5. Duties.** -- The select commission shall:

2 (1) Analyze and recommend changes that will improve police-community relations in
3 Rhode Island.

4 (2) Study and recommend changes needed to statutes, ordinances, institutional policies,
5 procedures and practices deemed necessary to:

6 (i) Improve law enforcement work and accountability;

7 (ii) Reduce racism;

8 (iii) Enhance the administration of justice; and

9 (iv) Affect reconciliation between diverse segments of the statewide community.

10 (3) Study, recommend, promote and implement methods to achieve greater citizen
11 participation in law enforcement policy development, review of law enforcement practices, and
12 advocacy for the needs of law enforcement agencies, officers, and the public at large in the
13 prevention of crime, administration of justice and public safety.

14 (4) Study, recommend, promote and assist in the incorporation of evolving homeland
15 security needs with effective models of neighborhood-oriented community policing, crime
16 prevention and public safety.

17 (5) Promote greater understanding of the need to incorporate cultural diversity in
18 everyday as well as extraordinary activities involving law enforcement, public safety and the
19 administration of justice.

20 (6) Analyze, review, recommend, assist in and monitor changes to police policies,
21 procedures and practices related to:

22 (i) Recruitment, hiring, promotion and training of police officers;

23 (ii) The level and quality of diversity training, sensitivity awareness and cultural
24 competency;

25 (iii) The level and quality of efforts related to building and improving overall community
26 relations;

27 (iv) The use of firearms by on-duty and off-duty police officers;

28 (v) The use of force, the use of excessive force or the excessive use of force;

29 (vi) The use of racial profiling and other forms of bias based policing; and

30 (vii) Legislation reforming police policies, practices, or procedures involving community
31 relations.

32 ~~(7) To assist the select commission in its duties pursuant to subsection (6), all police~~
33 ~~departments shall submit to the select commission on an annual basis beginning on January 15,~~
34 ~~2004, and for six (6) years thereafter, a report indicating what action, if any, has been taken to~~

1 ~~address any racial disparities in traffic stops and/or searches documented in the study authorized~~
2 ~~by sections 31-21.1-4 and 31-21.2-6, and to otherwise implement any recommendations of that~~
3 ~~study. The reports shall be public records.~~

4 ~~(8) Collect and publish data regarding complaints of police misconduct pursuant to~~
5 ~~section 31-21.2-8.~~

6 SECTION 4. Chapter 14-1 of the General Laws entitled "Proceedings in Family Court" is
7 hereby amended by adding thereto the following section:

8 **14-1-25.1. Search of juveniles without warrant.** – In the absence of a warrant, no
9 juvenile shall be requested to consent to a search by a law enforcement officer unless there exists
10 reasonable suspicion or probable cause of criminal activity. In those instances where reasonable
11 suspicion or probable cause of criminal activity exists, but a warrant would otherwise be required,
12 a law enforcement officer must advise the juvenile that he or she may refuse to consent to, or
13 limit the scope of, any requested search. The determination of age of the individual shall be based
14 on the perception of the officer making a good faith effort in advance of requesting consent.
15 Nothing contained herein shall be construed to limit the restrictions contained in section 31-21.2-
16 5.

17 SECTION 5. This act shall take effect upon passage.

=====
LC00603
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - COMPREHENSIVE RACIAL
PROFILING PREVENTION ACT OF 2012

- 1 This act would enact the “Comprehensive Racial Profiling Prevention Act of 2012”.
- 2 This act would take effect upon passage.

=====
LC00603
=====