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LC00752

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - COMPREHENSIVE RACIAL
PROFILING PREVENTION ACT OF 2009

Introduced By: Senators Perry, Miller, Pichardo, Metts, and Sosnowski

Date Introduced: February 09, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

3 **14-1-25.1. Search of juveniles without warrant.** -- In the absence of a warrant, no
4 juvenile shall be requested to consent to a search by a law enforcement officer unless there exists
5 reasonable suspicion or probable cause of criminal activity. In those instances where reasonable
6 suspicion or probable cause of criminal activity exists but a warrant would otherwise be required,
7 a law enforcement officer shall advise the juvenile that he or she may refuse to consent to, or
8 limit the scope of, any requested search. Nothing contained herein shall be construed to limit the
9 restrictions contained in section 31-21.2-5.

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

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

1 (b) No operator or owner-passenger of a motor vehicle shall be requested to consent to a
2 search by a law enforcement officer of his or her motor vehicle which is stopped solely for a
3 traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity.
4 The officer shall document in writing his or her "reasonable suspicion" or "probable cause"
5 grounds for conducting a search, and shall also, where practicable, call in such information to a
6 dispatcher or supervising officer prior to a search. The written documentation shall also include
7 the results of the search. The document shall be a public record except to the extent where it
8 could reasonably be expected to interfere with an open investigation of criminal activity or
9 enforcement proceedings, to disclose the identity of a confidential source, or to endanger the life
10 or physical safety of any individual.

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

16 (d) No passenger of a motor vehicle shall be requested to provide identification or any
17 other documentation by a law enforcement officer when the motor vehicle has been stopped
18 solely for a traffic violation, unless there exists reasonable suspicion or probable cause of
19 criminal activity.

20 (e) No law enforcement officer shall use violations of the traffic laws in this title as a
21 pretext for stopping a motor vehicle for investigatory or other reasons unless there exists
22 reasonable suspicion or probable cause of criminal activity.

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

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

29 (1) All motor vehicle stops conducted by police vehicles with such equipment shall be
30 recorded. The recording shall begin no later than when an officer first signals the vehicle to stop
31 or arrives at the scene of an ongoing motor vehicle stop begun by another law enforcement officer
32 and the recording shall continue until the motor vehicle stop is completed and the stopped vehicle
33 departs, or until the officer's participation in the motor vehicle stop ends;

34 (2) The driver of a stopped car shall be advised by the officer that the encounter is being

1 recorded;

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

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

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

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

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

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

21 (h) Law enforcement officers shall advise any motorist who is stopped of the reason for
22 the stop.

23 (i) Law enforcement agencies with mobile display terminals in police vehicles shall adopt
24 policies and procedures governing their use, which shall include the criteria necessary to initiate a
25 record check on a motor vehicle license or registrant.

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

29 **31-21.2-6. Continued data collection.** -- (a) The office of highway safety of the Rhode
30 Island ~~Justice Commission~~ department of transportation is authorized to and shall conduct a study
31 of routine traffic stops by the Rhode Island State Police and each municipal police department in
32 order to determine whether racial profiling is occurring, and to examine whether searches of
33 vehicles and motorists are being conducted in a disparate manner.

34 (b) The office of highway safety of the Rhode Island ~~Justice Commission~~ department of

1 [transportation](#) shall, not later than forty-five (45) days after enactment of this act, develop a form
2 [or electronic equivalent](#) to be used by each police officer when making a traffic stop to record the
3 data required under this chapter, which form shall include [for each motor vehicle stop, the race](#)
4 [and ethnicity of the driver and of any passengers, and](#) the information listed in section 31-21.1-4.

5 (c) The [office of highway safety of the](#) Rhode Island ~~Justice-Commission~~ [department of](#)
6 [transportation](#) shall advise the Rhode Island State Police and each municipal police department of
7 the date that data collection shall commence. Data collection shall begin not later than October 1,
8 ~~2004~~ [2010](#), but may begin prior to that time upon notification to police departments from the
9 [office of highway safety of the](#) Rhode Island ~~Justice-Commission~~ [department of transportation](#).

10 (d) A traffic stop data collection card [or electronic equivalent](#) shall be completed for
11 each routine traffic stop by the Rhode Island State Police and municipal police department during
12 the term of this study.

13 (e) Upon commencement of data collection, and monthly thereafter, each municipal
14 police department and the Rhode Island State Police shall transmit to the [office of highway safety](#)
15 [of the](#) Rhode Island ~~Justice-Commission~~ [department of transportation](#) all forms [or electronic data](#)
16 collected to date of motorists who were stopped, and any other information the police department
17 or the Rhode Island State Police deem appropriate. Data collection shall continue for ~~twelve (12)~~
18 [forty-eight \(48\)](#) months following commencement of data collection.

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

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

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

33 (i) On a quarterly basis a summary report of the monthly data provided by each police
34 department and the state police for that quarterly period shall be issued. The report shall be a

1 public record. The summary report shall include a monthly breakdown by race, age, gender and
2 outcome for each police department of the number of traffic stops made and of searches
3 conducted, and any other information deemed appropriate by the office of highway safety of the
4 Rhode Island ~~Justice Commission~~ department of transportation. The report shall be released not
5 more than ninety (90) days after the end of each quarterly period. No information revealing the
6 identity of any individual shall be contained in the report.

7 (j) Every law enforcement agency collecting data pursuant to this chapter shall ensure
8 that supervisory personnel review each officer's stop and search documentation and data results
9 on a ~~weekly~~ monthly basis to ensure compliance with all policies, prohibitions and documentation
10 requirements.

11 (k) The head of every law enforcement agency subject to this chapter, or his or her
12 designee, shall review the data on a regular basis in an effort to determine whether any racial
13 disparities in the agency's traffic stops enforcement exists, and to appropriately respond to any
14 such disparities.

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

24 (m) The Rhode Island Justice Commission shall consult with community, police and
25 civil rights representatives, ~~as~~ to the extent the executive director deems appropriate, in the
26 development of the form required by subsection (b) and , on at least a quarterly basis shall consult
27 on other issues that arise relating to the implementation and enforcement of this chapter,
28 including the information generated by the issuance of the reports required by paragraph (i).

29 **31-21.2-7. Data collection and use.** -- (a) ~~Data acquired under this chapter shall not be~~
30 ~~used in any legal proceeding to establish an inference of discrimination except by court order;~~
31 ~~provided, however, that use of the data for this purpose shall be allowed only upon completion of~~
32 ~~the study authorized by section 31-21.2-6.~~ Data acquired under this chapter and chapter 21.1 of
33 this title may be used in any legal or administrative proceeding to establish a rebuttable inference
34 of discrimination on the basis of particular identifying characteristics. All data collected pursuant

1 to this chapter shall be public. For those motor vehicle stops where a citation was issued or an
2 arrest was made, the forms prepared pursuant to section 31-21.2-6(b) of this chapter shall include
3 a citation or arrest number for reference. ~~The data collection form shall not include the name or~~
4 ~~badge number of the officer completing the form.~~

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

8 (c) All police departments shall submit to the office of highway safety on an annual basis
9 beginning on January 15, 2011, and for eight (8) years thereafter, a report indicating what action,
10 if any, has been taken, to address any racial disparities in traffic stops and/or searches
11 documented in the studies authorized by sections 31-21.1-4 and 31-21.2-6, and to otherwise
12 implement any recommendations of those studies, including, but not limited to, any changes to
13 agency policies; revisions to traffic enforcement practices; detailed analysis and review of traffic
14 stop data and the results of such review; or the initiation of any disciplinary action. The office of
15 highway safety shall issue guidelines for police departments to follow in preparing these reports.
16 The reports shall be public records, and shall contain a certification that the department has
17 complied with subsections (j) and (k) of section 31-21.2-6.

18 (d) Within thirty (30) days of the issuance of a quarterly report pursuant to subsection 31-
19 21.2-6(i), each state and municipal law enforcement agency shall submit to the office of highway
20 safety of the Rhode Island department of transportation, on a brief form prepared by that office,
21 information summarizing what, if any, actions were taken by the agency in response to racial
22 disparities documented in the report, including, but not limited to: any changes to agency policies;
23 revisions to traffic enforcement practices; detailed analysis and review of traffic stop data, and the
24 results of such review; or the initiation of any disciplinary action. The forms shall be public
25 records, and shall contain a certification that the department has complied with subsections (j)
26 and (k) of section 31-21.2-6.

27 **31-21.2-8. Complaint procedures. --- Complaint procedures and recordkeeping**
28 **requirements. --** (a) Each state and municipal law enforcement agency shall establish a
29 procedure to investigate complaints of police misconduct by members of the public against
30 personnel of these agencies, and shall make a written description of the procedure available to the
31 public. Copies of any departmental complaint forms shall be available in at least one
32 governmental location other than the police department. The procedure and forms shall also be
33 made available on any website of a law enforcement agency.

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

1 (c) Information on the complaints received by each law enforcement agency shall be
2 submitted on an annual basis under uniform criteria established by the ~~Select Commission on~~
3 ~~Race and Police-Community Relations~~ Rhode Island justice commission. The information
4 provided by each department shall include the total number of complaints received, a breakdown
5 by category of the type of complaint and a further breakdown by category of the disposition of
6 the complaints. The commission shall publish data regarding complaints of police misconduct
7 pursuant to this section.

8 (d) The state police and all municipal law enforcement agencies shall submit to the
9 commission:

10 (1) Copies of any formal or informal arrangements between the state police or a
11 municipal law enforcement agency and the bureau of immigration and customs enforcement
12 concerning the questioning, detention, investigation, arrest, apprehension, stopping, referral or
13 processing of individuals with the state of Rhode Island, including copies of any agreements
14 entered into pursuant to 8 U.S.C. section 1357(g); and

15 (2) Any policies or procedures governing the circumstances under which an inquiry to
16 federal authorities is made to determine a person's immigration status. The commission shall, on
17 an annual basis commencing on January 1, 2011, compile the arrangements and policies in a
18 public report to be submitted to the general assembly.

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

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

24 **42-137-5. Duties.** -- The select commission shall:

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

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

29 (i) Improve law enforcement work and accountability;

30 (ii) Reduce racism;

31 (iii) Enhance the administration of justice; and

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

33 (3) Study, recommend, promote and implement methods to achieve greater citizen
34 participation in law enforcement policy development, review of law enforcement practices, and

1 advocacy for the needs of law enforcement agencies, officers, and the public at large in the
2 prevention of crime, administration of justice and public safety.

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

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

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

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

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

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

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

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

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

19 (vii) Legislation reforming police policies, practices, or procedures involving community
20 relations.

21 ~~(7) To assist the select commission in its duties pursuant to subsection (6), all police~~
22 ~~departments shall submit to the select commission on an annual basis beginning on January 15,~~
23 ~~2004, and for six (6) years thereafter, a report indicating what action, if any, has been taken to~~
24 ~~address any racial disparities in traffic stops and/or searches documented in the study authorized~~
25 ~~by sections 31-21.1-4 and 31-21.2-6, and to otherwise implement any recommendations of that~~
26 ~~study. The reports shall be public records.~~

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

29 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - COMPREHENSIVE RACIAL
PROFILING PREVENTION ACT OF 2009

1 This act would amend the provisions of the general laws banning racial profiling in traffic
2 stops by state and municipal law enforcement agencies by requiring law enforcement agencies to
3 collect data and complete regular reports of findings and statistics regarding traffic stops.

4 This act would take effect upon passage.

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