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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

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A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Representatives Almeida, Diaz, Ajello, Handy, and Slater

Date Introduced: January 30, 2007

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 28.1

4 IMMIGRATION STATUS PROTECTION ACT

5 **12-28.1-1. Declaration and policy.** – The general assembly finds that effective policing
6 demands the establishment of trust between police officers and the community they serve, trust
7 that inspires confidence in victims to come forward and report crimes and that allows
8 investigations to proceed efficiently. Because state or local enforcement of federal immigration
9 laws can only undermine that trust, raise concerns about racial profiling, impede investigations
10 and deter undocumented residents from reporting crime in their communities, the purpose of this
11 chapter is to promote the public safety and prevent discrimination on the basis of race, color,
12 ethnicity or immigration status by recognizing that local law enforcement should properly play a
13 limited role in matters relating to a person's immigration status.

14 **12-28.1-2. Prohibition by state or local enforcement officer as to immigration status.**
15 – (a) No state or local law enforcement officer or agency shall inquire of an individual, or seek
16 documentation from him or her, about his or her immigration status, unless otherwise required by
17 federal law or court order, or necessary to verify the immigration status of a person who is
18 arrested for a felony and the officer or agency has reasonable grounds to believe that the person's
19 status is in violation of immigration laws; provided, however, an arrestee's race, color, ethnicity

1 or national origin shall not constitute reasonable grounds.

2 (b) No law enforcement officer shall use an arrest or criminal charge as a pretext for
3 verifying the immigration status of a person.

4 **12-28.1-3. Nonuse of agency funds.** – (a) No law enforcement agency of the state of
5 Rhode Island or of any political subdivision shall use agency funds, equipment or personnel for
6 the purpose of detecting or apprehending persons whose only violation or alleged violation of law
7 is that they are persons of foreign citizenship who are in violation of federal immigration laws.

8 (b) No law enforcement agency of the state of Rhode Island or of any political
9 subdivision shall enter into an agreement with the federal government to assist in the enforcement
10 of federal immigration law pursuant to 8 U.S.C. section 1357(g) or any similar federal program.

11 **12-28.1-4. Recordkeeping requirements.** – (a) Each municipal law enforcement agency
12 and the state police shall maintain a record of any inquiry made to the United States Bureau of
13 Immigration and Customs Enforcement regarding an individual, the basis for the inquiry, and any
14 action taken as a result of the inquiry.

15 (b) The state police and all municipal law enforcement agencies shall submit to the
16 Rhode Island Justice Commission: (1) information regarding, and copies of, any formal or
17 informal arrangements between the state police or a municipal law enforcement agency and the
18 Bureau concerning the questioning, detention, investigation, arrest, apprehension, stopping,
19 referral or processing of individuals within the state of Rhode Island; and (2) any internal policies
20 or procedures governing the circumstances under which an inquiry to federal authorities is made
21 to determine a person's immigration status. The commission shall, on an annual basis
22 commencing on January 1, 2008, compile the arrangements in a public report to be submitted to
23 the general assembly.

24 **12-28.1-5. Cooperation with federal authorities.** – Nothing in this chapter shall be
25 construed to prohibit any state or local law enforcement officer or employee from cooperating
26 with federal immigration authorities as required by federal law.

27 **12-28.1-6. Enforcement.** – (a) Any individual who alleges a violation of section 12-28.1-
28 2 may file a civil action for damages and any appropriate and equitable relief in superior court.
29 The court may allow a prevailing plaintiff reasonable attorneys' fees as part of the costs.

30 (b) An organization chartered for the purpose of combating discrimination, racism or of
31 safeguarding civil liberties, or of promoting full, free or equal employment opportunities, may
32 seek appropriate relief in a civil action against any police department for violating section 12-
33 28.1-3, and may be awarded its costs, including attorneys' fees, for bringing such an action.

34 SECTION 2. Chapter 14-1 of the General Laws entitled "Proceedings in Family Court" is

1 hereby amended by adding thereto the following section:

2 **14-1-25.1. Search of juveniles without warrant.** -- In the absence of a warrant, no
3 juvenile shall be requested to consent to a search by a law enforcement officer unless there exists
4 reasonable suspicion or probable cause of criminal activity. In those instances where reasonable
5 suspicion or probable cause of criminal activity exists but a warrant would otherwise be required,
6 a law enforcement officer shall advise the juvenile that he or she may refuse to consent to, or
7 limit the scope of, any requested search. Nothing contained herein shall be construed to limit the
8 restrictions contained in section 31-21.2- 5.

9 SECTION 3. Sections 31-21.2-5, 31-21.2-6, 31-21.2-7 and 31-21.2-8 of the General
10 Laws in Chapter 31-21.2 entitled "Racial Profiling Prevention Act of 2004" are hereby amended
11 to read as follows:

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

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

21 The officer shall document in writing his or her "reasonable suspicion" or "probable
22 cause" grounds for conducting a search, which shall be a public record, and shall also, where
23 practicable, call in such information to a dispatcher or supervising officer prior to a search. The
24 written documentation shall also include the results of the search.

25 (c) No passenger of a motor vehicle shall be requested to provide identification by a law
26 enforcement officer when the motor vehicle has been stopped solely for a traffic violation, unless
27 there exists reasonable suspicion or probable cause of criminal activity.

28 (d) No law enforcement officer shall use violations of the traffic laws in this title as a
29 pretext for stopping a motor vehicle for other reasons.

30 (e) No state or local law enforcement officer or agency shall inquire into the immigration
31 status of any driver or of any passenger in a motor vehicle except to the extent authorized by
32 section 12-28.1-2.

33 ~~(e)~~(f) Any evidence obtained as a result of a stop or search prohibited by subsection (a),
34 ~~(b), (c) or (d)~~ shall be inadmissible in any judicial proceeding. Nothing contained herein shall

1 be construed to preclude any search otherwise based upon any legally sufficient cause.

2 ~~(d)~~(g) Law enforcement agencies using video and/or audio surveillance cameras in their
3 vehicles shall adopt written policies and procedures regarding the use of such cameras, which
4 shall be public records.

5 The use of video/audio surveillance cameras in state or local law enforcement vehicles
6 shall conform to the following standards:

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

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

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

15 (4) A driver or passenger of a motor vehicle that was recorded by a video/audio
16 surveillance camera, and/or his or her legal counsel, shall have the right to obtain a copy of the
17 recording involving him or her within ten (10) business days of the request;

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

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

27 (7) A court may impose any appropriate remedy, including the exclusion of evidence
28 obtained in a search, in any civil or criminal proceeding where a violation of these requirements
29 is found to have been committed.

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

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

1 **31-21.2-6. Continued data collection.** -- (a) The Rhode Island Justice Commission is
2 authorized to and shall conduct a study of routine traffic stops by the Rhode Island State Police
3 and each municipal police department in order to determine whether racial profiling is occurring,
4 and to examine whether searches of vehicles and motorists are being conducted in a disparate
5 manner.

6 (b) The Rhode Island Justice Commission shall, not later than forty-five (45) days after
7 enactment of this act, develop a form to be used by each police officer when making a traffic stop
8 to record the data required under this chapter, which form shall include the information listed in
9 section 31-21.1-4.

10 (c) The Rhode Island Justice Commission shall advise the Rhode Island State Police and
11 each municipal police department of the date that data collection shall commence. Data collection
12 shall begin not later than October 1, ~~2004~~ 2007, but may begin prior to that time upon notification
13 to police departments from the Rhode Island Justice Commission.

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

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

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

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

33 (h) The Rhode Island Justice Commission shall be exempt from the provisions of chapter
34 2 of title 37 in connection with its procurement of equipment and services necessary to the

1 implementation of this chapter.

2 (i) On a quarterly basis a summary report of the monthly data provided by each police
3 department and the state police for that quarterly period shall be issued. The report shall be a
4 public record. The summary report shall include a monthly breakdown by race, age, gender and
5 outcome for each police department of the number of traffic stops made and of searches
6 conducted, and any other information deemed appropriate by the Rhode Island Justice
7 Commission. The report shall be released not more than ninety (90) days after the end of each
8 quarterly period. No information revealing the identity of any individual shall be contained in the
9 report.

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

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

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

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

31 **31-21.2-7. Data collection and use.** -- (a) ~~Data acquired under this chapter shall not be~~
32 ~~used in any legal proceeding to establish an inference of discrimination except by court order;~~
33 ~~provided, however, that use of the data for this purpose shall be allowed only upon completion of~~
34 ~~the study authorized by section 31-21.2-6.~~ Data acquired under this chapter and chapter 21.1 of

1 this title may be used in any legal or administrative proceeding to establish a rebuttable inference
2 of discrimination on the basis of particular identifying characteristics. All data collected pursuant
3 to this chapter shall be public. For those motor vehicle stops where a citation was issued or an
4 arrest was made, the forms prepared pursuant to section 31-21.2-6(b) of this chapter shall include
5 a citation or arrest number for reference. ~~The data collection form shall not include the name or~~
6 ~~badge number of the officer completing the form.~~

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

10 (c) All police departments shall submit to the justice commission on an annual basis
11 beginning on January 15, 2008 and for eight (8) years thereafter, a report indicating what action,
12 if any, has been taken, to address any racial disparities in traffic stops and/or searches
13 documented in the study authorized by sections 31-21.1-4 and 31-21.2-6, and to otherwise
14 implement any recommendations of that study. The commission shall issue guidelines for police
15 departments to follow in preparing these reports. The reports shall be public records, and shall
16 contain a certification that the department has complied with subsections (j) and (k) of section 31-
17 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 Rhode Island
20 Justice Commission, on a form prepared by the commission, information summarizing any
21 actions taken by the agency in response to racial disparities documented in the report, including,
22 but not limited to, any changes to agency policies, revisions to traffic enforcement practices,
23 detailed analysis and review of traffic stop data, and the results of such review, or the initiation of
24 any disciplinary action. The forms shall be public records, and shall contain a certification that
25 the department has complied with subsections (j) and (k) of section 31-21.2-6.

26 **31-21.2-8. Complaint procedures.** -- (a) Each state and municipal law enforcement
27 agency shall establish a procedure to investigate complaints of police misconduct by members of
28 the public against personnel of these agencies, and shall make a written description of the
29 procedure available to the public. Copies of any departmental complaint forms shall be available
30 in at least one governmental location other than the police department. The procedure and forms
31 shall also be made available on any website of a law enforcement agency.

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

33 (c) Information on the complaints received by each law enforcement agency shall be
34 submitted on an annual basis under uniform criteria established by the ~~Select Commission on~~

1 ~~Race and Police-Community Relations~~ [Rhode Island Justice Commission](#). The information
2 provided by each department shall include the total number of complaints received, a breakdown
3 by category of the type of complaint and a further breakdown by category of the disposition of
4 the complaints. [The commission shall publish data regarding complaints of police misconduct](#)
5 [pursuant to this section.](#)

6 SECTION 4. Section 42-137-5 of the General Laws in Chapter 42-137 entitled "The
7 Select Commission on Race and Police-Community Relations Act" is hereby amended to read as
8 follows:

9 **42-137-5. Duties.** -- The select commission shall:

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

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

- 14 (i) Improve law enforcement work and accountability;
- 15 (ii) Reduce racism;
- 16 (iii) Enhance the administration of justice; and
- 17 (iv) Affect reconciliation between diverse segments of the statewide community.

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

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

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

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

- 30 (i) Recruitment, hiring, promotion and training of police officers;
- 31 (ii) The level and quality of diversity training, sensitivity awareness and cultural
32 competency;
- 33 (iii) The level and quality of efforts related to building and improving overall community
34 relations;

- 1 (iv) The use of firearms by on-duty and off-duty police officers;
2 (v) The use of force, the use of excessive force or the excessive use of force;
3 (vi) The use of racial profiling and other forms of bias based policing; and
4 (vii) Legislation reforming police policies, practices, or procedures involving community
5 relations.

6 ~~(7) To assist the select commission in its duties pursuant to subsection (6), all police~~
7 ~~departments shall submit to the select commission on an annual basis beginning on January 15,~~
8 ~~2004, and for six (6) years thereafter, a report indicating what action, if any, has been taken to~~
9 ~~address any racial disparities in traffic stops and/or searches documented in the study authorized~~
10 ~~by sections 31-21.1-4 and 31-21.2-6, and to otherwise implement any recommendations of that~~
11 ~~study. The reports shall be public records.~~

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE

- 1 This act would create the Immigration Status Protection Act and would also revise the
- 2 Racial Profiling Prevention Act of 2004.
- 3 This act would take effect upon passage.

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