

LC02794

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES

Introduced By: Representatives Almeida, Williams, Ajello, and Rose

Date Introduced: March 02, 2004

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 31 of the General Laws entitled "Motor and Other vehicles" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 21.2

4 RACIAL PROFILE PREVENTION

5 **31-21.2-1. Title.** – This chapter may be cited as the "End Racial Profiling Act of 2004."

6 **31-21.2-2. Findings.** – (a) Municipal and state law enforcement officers play a vital role
7 in protecting the public from crime. The vast majority of police officers discharge their duties
8 professionally and without bias.

9 (b) The use by police officers of race, ethnicity, or national origin in deciding which
10 persons should be subject to traffic stops, searches and seizures is improper.

11 (c) Statistical evidence from Rhode Island demonstrates that racial disparities in the
12 stopping and searching of cars are prevalent. Specifically, the expert study authorized pursuant to
13 chapter 21.1 of title 31 found that, controlling for other variables, in a majority of jurisdictions
14 persons of color were more likely to be stopped and searched by police, even though they were
15 less likely than white drivers to be found with contraband.

16 (d) Current efforts to eradicate racial profiling and redress the harms it causes, while
17 laudable, have been limited in scope and insufficient to address this problem.

18 (e) In some instances, law enforcement practices may have the unintended effect of
19 promoting racially disparate stops and searches.

1 (f) Racial profiling harms individuals subjected to it because they experience fear,
2 anxiety, humiliation, anger, resentment and cynicism when they are unjustifiably treated as
3 criminal suspects.

4 (g) Racial profiling damages law enforcement and the criminal justice system as a whole
5 by undermining public confidence and trust in the police, the courts, and criminal law, and
6 thereby undermining law enforcement efforts and ability to solve and reduce crime.

7 (h) A comprehensive solution is needed to address racial profiling at the state and local
8 levels.

9 **31-21.2-3. Ban on racial profiling.** – No state or municipal law enforcement officer or
10 law enforcement agency shall engage in racial profiling. For purposes of this chapter, "racial
11 profiling" means the detention, interdiction or other disparate treatment of an individual on the
12 basis, in whole or in part, of the racial or ethnic status of such individual, except when such status
13 is used in combination with other identifying factors seeking to apprehend a specific suspect
14 whose racial or ethnic status is part of the description of the suspect, which description is timely
15 and reliable.

16 **31-21.2-4. Enforcement.** – (a) Any individual who is a victim of racial profiling or a
17 violation of this chapter may file a civil action for damages and any appropriate and equitable
18 relief in state or federal court. The court may allow a prevailing plaintiff reasonable attorneys'
19 fees as part of the costs, and may include expert fees as part of the attorneys' fee.

20 (b) In any action brought pursuant to this chapter, relief may be obtained against any law
21 enforcement agency that employed an officer who engaged in racial profiling; any officer who
22 engaged in racial profiling; and any person with supervisory authority over such officer.

23 (c) Data acquired under this chapter and chapter 21.1 of this title may be used in any legal
24 or administrative proceeding to establish a rebuttable inference of discrimination on the basis of
25 particular identifying characteristics.

26 **31-21.2-5. Law enforcement practices.** – (a) No law enforcement officer shall use
27 violations of the traffic laws in this title as the basis for stopping a motor vehicle for other reason.

28 (b) No operator of a motor vehicle shall be requested to consent to a search by a law
29 enforcement officer of his or her motor vehicle which is stopped solely for traffic violations.

30 (c) No law enforcement officer shall detain an automobile or its passengers to provide
31 time for arrival of a canine unit, or otherwise extend a traffic stop beyond the time necessary to
32 address the traffic violation, unless there exists reasonable suspicion or probable cause of criminal
33 activity.

34 (d) Any evidence obtained as a result of a search prohibited by subsections (a), (b) or (c)

1 shall be inadmissible in any judicial proceeding. Nothing contained herein shall be construed to
2 preclude any search based upon any legally sufficient cause other than consent.

3 (e) The use of video and or audio surveillance cameras in state or local law enforcement
4 vehicles shall conform to the following standards:

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

10 (2) The driver of a stopped vehicle shall be advised by the officer that the encounter is
11 being recorded;

12 (3) The tapes shall only be accessible to and retrieved by a superior officer and a chain-
13 of-custody record shall be maintained;

14 (4) An operator or passenger of a motor vehicle which was recorded by a video and/or
15 audio surveillance camera, and/or his or her legal counsel shall have the right to obtain a copy of
16 the recording involving him or her;

17 (5) All tapes shall be retained for a period of at least ninety (90) days. Any tape that
18 records and incident that is the subject of a pending complaint, misconduct investigation or civil
19 or criminal proceeding shall be retained a minimum of ten (10) days after the final resolution of
20 such investigation or proceeding; and

21 (6) Law enforcement agencies using video and or audio surveillance cameras in their
22 vehicles shall adopt written policies and procedures, which shall be public records, in accordance
23 with this chapter.

24 (f) The policies and procedures established by this section shall be added to and
25 prominently placed in all relevant departmental policy and training manuals, which shall be
26 revised to eliminate any contrary information. Other appropriate training about the requirements
27 of this chapter shall also be provided to all officers.

28 **31-21.2-6. Continued data collection.** – (a) Law enforcement agencies shall continue to
29 collect data for all traffic stops in accordance, at a minimum, with the format and procedures
30 established in 31-21.1-4.

31 (b) A study shall be conducted of the data collected for a period of twenty-four (24)
32 months after passage of this act. The study shall include a multi-variate analysis of the collected
33 data in accordance with general statistical standards, and shall be substantially similar to the study
34 prepared pursuant to chapter 21.1 of this title. The study shall be prepared by an organization

1 company, person or other entity with sufficient expertise in the field of statistics to assist with the
2 implementation of this chapter, and chosen by the attorney general. The study shall be released
3 not later than thirty (30) months after the commencement of the collection of data under this
4 chapter. The report, findings and conclusions submitted pursuant to this subsection shall be
5 deemed a public record.

6 (c) On a quarterly basis a summary report of the monthly data provided by each police
7 department and the state police for that quarterly period shall be issued. The report shall be a
8 public record. The summary report shall include a monthly breakdown by race for each police
9 department of the number of traffic stops made and of searches conducted, and any other
10 information deemed appropriate by the attorney general with the advice of the committee. The
11 report shall be released not more than ninety (90) days after the end of each quarterly period. No
12 information revealing the identity of any individual shall be contained in the report.

13 (d) Every law enforcement agency collecting data pursuant to this chapter shall ensure
14 that supervisory personnel review each officer's stop and search documentation and data results
15 on a weekly basis to ensure compliance with all polices, prohibitions and documentation
16 requirements.

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

21 (f) An organization chartered for the purpose of combating discrimination, racism, or of
22 safeguarding civil liberties, or of promoting full, free, or equal employment opportunities, may
23 seek appropriate relief in civil action against any police department for failing to collect or
24 transmit the data required in this chapter, and may be awarded its costs, including attorneys' fees
25 for bringing such an action.

26 **31-21.2-7. Analysis of prior data.** – (a) Every law enforcement agency subject to this
27 chapter shall analyze the data previously collected under chapter 21.1 of this title in an effort to
28 determine the origin and causes of any racial disparities found by the study issued pursuant to this
29 chapter. Within one hundred twenty (120) days of passage of this chapter, each agency shall
30 submit to the Select Commission on Race and Police-Community Relations a public report
31 affirming that it has engaged in this analysis, and containing any actions taken or findings or
32 conclusions made as a result of that analysis. This report shall be in addition to the annual report
33 required under subsection 42-137-5(g).

34 **31-21.2-8. Complaint procedures.** – (a) Each state and municipal law enforcement

1 agency shall establish a procedure to investigate complaints of police misconduct by members of
2 the public against personnel of these agencies, and shall make as written description of the
3 procedure available to the public. The description shall also be made available on any website of
4 a law enforcement agency.

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

6 (c) Information on the complaints received by each law enforcement agency shall be
7 submitted on an annual basis under uniform criteria established by the Select Commission on race
8 and Police-Community Relations. The information provided by each department shall include
9 the total number of complaints received a breakdown by category of the type of complaint, and a
10 further breakdown by category of the disposition of the complaints.

11 SECTION 2. Section 31-21.1-6 of the General Laws in Chapter 31-21.1 entitled "Traffic
12 Stops Statistics" is hereby amended to read as follows:

13 **31-21.1-6. Data collection and use.** -- (a) ~~Except as otherwise specified in this chapter,~~
14 ~~data acquired under this section shall be used only for research or statistical purposes. Data~~
15 ~~acquired under this chapter shall not be used in any legal or administrative proceeding to establish~~
16 ~~an inference of discrimination on the basis of particular identifying characteristics, except by~~
17 ~~court order. However, during the collection of data, the information and forms collected pursuant~~
18 ~~to this chapter shall be public for~~ For those stops where a citation was issued or an arrest was
19 made, ~~and~~ the forms shall include a citation or arrest number for reference. All data collected
20 pursuant to this chapter shall be ~~made~~ public ~~upon the completion of the study and the submission~~
21 ~~of the report~~; provided, that any complaints filed pursuant to section 31-21.1-4(c)(2) shall be
22 subject to the provisions of chapter 28.6 of title 42.

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

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

29 **42-137-5. Duties.** -- The select commission shall:

30 (a) Analyze and recommend changes that will improve police-community relations in
31 Rhode Island.

32 (b) Study and recommend changes needed to statutes, ordinances, institutional policies,
33 procedures and practices deemed necessary to:

34 (1) Improve law enforcement work and accountability;

- 1 (2) Reduce racism;
- 2 (3) Enhance the administration of justice; and
- 3 (4) Affect reconciliation between diverse segments of the statewide community.

4 (c) Study, recommend, promote and implement methods to achieve greater citizen
5 participation in law enforcement policy development, review of law enforcement practices, and
6 advocacy for the needs of law enforcement agencies, officers, and the public at large in the
7 prevention of crime, administration of justice and public safety.

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

11 (e) Promote greater understanding of the need to incorporate cultural diversity in
12 everyday as well as extraordinary activities involving law enforcement, public safety and the
13 administration of justice.

14 (f) Analyze, review, recommend, assist in and monitor changes to police policies,
15 procedures and practices related to:

16 (1) Recruitment, hiring, promotion and training of police officers;

17 (2) The level and quality of diversity training, sensitivity awareness and cultural
18 competency;

19 (3) The level and quality of efforts related to building and improving overall community
20 relations;

21 (4) The use of firearms by on-duty and off-duty police officers;

22 (5) The use of force, the use of excessive force or the excessive use of force;

23 (6) The use of racial profiling and other forms of bias based policing; and

24 (7) Legislation reforming police policies, practices, or procedures involving community
25 relations.

26 (g) To assist the select commission in its duties pursuant to subsection (f), all police
27 departments shall submit to the select commission on an annual basis beginning on January 15,
28 2004, and for ~~three (3)~~ six (6) years thereafter, a report indicating what action, if any has been
29 taken, to address any racial disparities in traffic stops and/or searches documented in the study
30 authorized by sections 31-21.1-4 and 31-21.2-6, and to otherwise implement any
31 recommendations of that study. The Select Commission shall also ensure receipt of the reports
32 required by section 31-21.2-7. The reports shall be public records.

33 (h) Collect and publish data regarding complaints of police misconduct pursuant to
34 section 31-21.2-8.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would place a ban on racial profiling in traffic stops by state and municipal law
2 enforcement agencies to report and would set up a system 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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