2014 -- S 2976 SUBSTITUTE A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - COMPREHENSIVE COMMUNITY - POLICE RELATIONSHIP ACT OF 2014

Introduced By: Senators Metts, Pichardo, Goodwin, Jabour, and Miller

Date Introduced: May 01, 2014

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. The title of Chapter 31-21.2 of the General Laws entitled "Racial Profiling Prevention Act of 2004" is hereby amended to read as follows:

CHAPTER 31-21.2

Racial Profiling Prevention Act of 2004

CHAPTER 31-21.2

COMPREHENSIVE COMMUNITY - POLICE RELATIONSHIP ACT OF 2014

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

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

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

criminal activity. Nothing contained in this subsection shall be construed to prohibit a law
enforcement officer from conducting a pat down search for weapons based upon a reasonable
belief that the officer's personal safety may be jeopardized.

(c) Each search conducted by a law enforcement officer shall be documented in a
computer-aided dispatch (CAD) entry or other police-generated report. The CAD entry or formal
police report shall include the date, time and location of the stop/search, along with the
"reasonable suspicion" or "probable cause" leading to the search. The CAD entry or formal police
report shall also include the results of the search. The document shall be a public record, subject
to the access to public records act, § 38-2-2(4)(D).

(d) With the exception of operators who are subject to federal motor carrier regulations,
other than a driver's license, motor vehicle registration, and/or proof of insurance when the motor
vehicle has been stopped solely for a traffic violation, unless there exists reasonable suspicion or
probable cause of criminal activity or the operator has failed to produce a valid driver's license.

(e) If a violation of the traffic laws in this title is used to stop a motor vehicle for non-
related investigatory reasons, the law enforcement officer shall document in writing or
electronically the investigatory basis for the stop. The documentation of such stops shall
commence no later than twelve (12) months after passage of this act and shall be assessed every
six (6) months by the respective police department as to whether the suspicion was justified and
the data be made publicly available, subject to the access to public records act, § 38-2-2(4)(D).

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

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

(1) All motor vehicle stops conducted by police vehicles with such equipment shall be
recorded barring exceptions outlined below. In an effort to objectively memorialize relevant
observations, the recording shall begin no later than when an officer first signals the vehicle to
stop, and, barring conditions that could compromise a sensitive investigation, jeopardize the
safety of a vehicle occupant or cooperating victim/witness and/or unforeseen equipment
malfunction, the recording shall continue until the motor vehicle stop is completed and the
stopped vehicle departs, or until the officer's participation in the motor vehicle stop ends;
(2) Law enforcement agencies that acquire video and/or audio surveillance cameras for use in their vehicles shall:

(i) Notify the office of highway safety of the Rhode Island department of transportation that such equipment has been acquired and will be in use and the department of transportation shall post notice of such use on its website;

(ii) Issue a press release advising the public that such equipment will be in use; and

(iii) Post notice on their website that such equipment will be in use;

(3) A chain-of-custody of the video/audio recordings, hereafter referred to as "recording(s)", shall be maintained;

(4)(i) A driver of a motor vehicle that was recorded by a video/audio surveillance camera, and/or his or her legal counsel, shall have the right to view the in-car recording at the police station, provided that the viewing does not compromise an active investigation;

(ii) A passenger of a motor vehicle that was recorded by a video/audio surveillance camera, and/or his or her legal counsel, shall have the right to view the in-car recording at the police station if that passenger became the subject of the police interaction recorded, provided that the viewing does not compromise an active investigation;

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

(6) The policy shall explicitly prohibit any violation of these requirements, including any attempts to disengage or tamper with the video/audio surveillance equipment, deliberately and prematurely erase or alter a recording, or to otherwise fail to record stops as specified herein barring the aforementioned limited exceptions; and

(7) The video/audio surveillance recordings regulated by this section shall not be deemed public records under the access to public records act, § 38-2-1, et seq. A court may impose any appropriate remedy in any civil or criminal proceeding where a knowing and willful violation of these standards is found to have been committed.

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

(i) Law enforcement agencies with mobile display terminals in police vehicles shall adopt policies and procedures governing their use, which shall include the criteria necessary to initiate a
record check on a motor vehicle license or registrant. All law enforcement agencies must comply
with state and federal guidelines related to the use and access of Rhode Island Law Enforcement
Telecommunications System (RILETS) and National Crime and Information Center (NCIC).

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

31-21.2-6. Continued data collection. -- (a) The office of highway safety of the Rhode
Island Justice Commission department of transportation or a designee to be chosen by the
department of transportation by January 1, 2016, is authorized to and shall conduct a study of
routine traffic stops by the Rhode Island State Police and each municipal police department in
order to determine whether racial disparities in traffic stops exist, profiling is occurring, and to
examine whether searches of vehicles and motorists are being conducted in a disparate manner.

(b) The office of highway safety of the Rhode Island Justice Commission department of
transportation or its designee shall, not later than forty-five (45) days after enactment of this act
no later than January 1, 2015, develop a form or electronic equivalent to be used by each police
officer when making a traffic stop to record the data required under this chapter, which form shall
include for each motor vehicle stop, the race and ethnicity of the driver based on the officer's
perception and the information listed in section 31-21.1-4.

(c) The office of highway safety of the Rhode Island Justice Commission department of
transportation or its designee shall advise the Rhode Island State Police and each municipal police
department of the date that data collection shall commence. Data collection shall begin not later
than October 1, 2004, but may begin prior to that time upon notification to police
departments from the office of highway safety of the Rhode Island Justice Commission
department of transportation or its designee.

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

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

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

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

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

(i) On a quarterly basis a summary report of the monthly data provided by each police department and the state police for that quarterly period shall be issued. The report shall be a public record. The summary report shall include at a minimum a monthly breakdown by race, age, gender and outcome for operators for each police department of the number of traffic stops made and of searches conducted, and any other information deemed appropriate by the Rhode Island Justice Commission. For those police departments collecting data through the use of mobile display terminals in police vehicles, the report shall also include a breakdown by race and outcome for operators. The report shall be released not more than ninety (90) days after the end of each quarterly period. No information revealing the identity of any individual shall be contained in the report.

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

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

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

(m) The office of highway safety of the Rhode Island Justice Commission department of
transportation or its designee shall consult with community, police and civil rights
representatives, as the executive director deems appropriate, in the development of the form
required by subsection (b) and on at least a quarterly basis shall consult on other issues that arise
relating to the implementation and enforcement of this chapter including the information
generated by the issuance of the reports required by subsection (i) herein.

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

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

(c) All police departments shall submit to the office of highway safety on an annual basis
beginning on July 15, 2015, and for four (4) years following the conclusion of data collection, a
report indicating what action, if any, has been taken, to address any racial disparities in traffic
stops and/or searches documented in the studies authorized by §§ 31-21.1-4 and 31-21.2-6, and to
otherwise implement any recommendations of those studies, including, but not limited to, any
changes to agency policies; revisions to traffic enforcement practices; detailed analysis and
review of traffic stop data and the results of such review; or the initiation of any disciplinary action. Any reference to disciplinary action shall not identify the officer. The office of highway safety or its designee shall issue guidelines for police departments to follow in preparing these reports. The reports shall be public records, and shall contain a certification that the department has complied with subsections (i) and (k) of § 31-21.2-6.

(d) Every twelve (12) months, each state and municipal law enforcement agency shall submit to the office of highway safety of the Rhode Island department of transportation or its designee, on a brief form prepared by that office, information summarizing what, if any, actions were taken by the agency in response to any racial disparities documented in the previous reports issued pursuant to § 31-21.2-6(i). The summary shall include, but not be limited to: any changes to agency policies; revisions to traffic enforcement practices; detailed analysis and review of traffic stop data, and the results of such review; or the initiation of any disciplinary action. Any references to disciplinary action shall not identify the officer. The forms shall be public records, and shall contain a certification that the department has complied with subsections (i) and (k) of § 31-21.2-6.

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

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

(c) Information on the complaints received by each law enforcement agency shall be submitted compiled on an annual basis under uniform criteria established by the Select Commission on Race and Police Community Relations by the state police and each municipal law enforcement agency and published in each agency's annual report and/or on its website. The information provided compiled by each department shall include the total number of complaints received from the public, a breakdown by category of the type of complaint and a further breakdown by category of the disposition of the complaints.

(d) The state police and all municipal law enforcement agencies shall make available as a public record subject to the access to public records act, § 38-2-2(4)(D):

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

and

(2) Any policies or procedures governing the circumstances under which an inquiry to federal authorities is made to determine a person's immigration status.

SECTION 3. Chapter 14-1 of the General Laws entitled "Proceedings in Family Court" is hereby amended by adding thereto the following section:

14-1-25.1. Search of juveniles without warrant. – No juvenile shall be requested to consent to a search by a law enforcement officer unless there exists reasonable suspicion or probable cause of criminal activity. In those instances in which a warrant would be required, a law enforcement officer must advise the juvenile that he or she may refuse to consent to, or limit the scope of, any requested search. The determination of age of the individual shall be based on the perception of the officer making a good faith effort in advance of requesting consent. Nothing contained herein shall be construed to limit the restrictions contained in § 31-21-2.5, or to prohibit a law enforcement officer from conducting a pat down search for weapons based upon a reasonable belief that the officer's personal safety may be jeopardized.

SECTION 5. This act shall take effect on January 1, 2015.

========
LC005454/SUB A
========
EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - COMPREHENSIVE COMMUNITY - POLICE RELATIONSHIP ACT OF 2014

***

1 This act would have all police departments submit to the office of highway safety or its
designee an annual report indicating what action has been taken to address any racial disparities
in traffic stops and/or searches. This would begin on July 15, 2015 and for four (4) years
following the commencement of data collection.

5 This act would take effect on January 1, 2015.

==========

LC005454/SUB A

==========