

Community Safety Act, Revisioned 04.16.16

An ordinance amending Chapter 18 ½ of the Providence Code of Ordinances to add a new section, entitled, “Community Safety Act.”

Be it ordained by the City of Providence

WHEREAS, True community safety is possible only when the civil liberties of all people are protected; and

WHEREAS, Improved relations between community and police will help reduce crime and violence; and

WHEREAS, Increased investment in recreation programming, services, and employment opportunities creates a more viable long-term solution to the problems of crime and violence than do punitive measures; and

WHEREAS, Discriminatory policing practices undermine the Providence Police Department’s stated commitment to “preserving the peace” and “protecting human rights”; and

WHEREAS, It is the responsibility of a populace to law enforcement agencies with clear guidelines and policies that ensure equal treatment under the law for all; and

WHEREAS, The Rhode Island General Assembly has declared that the use of racial profiling for stopping or searching motorists on our public highways is against public policy and violates the civil rights of the motorist (RIGL 31-21.1); and

WHEREAS, Despite this declaration, multiple studies conducted by Northeastern University have shown that racial disparities continue to exist in stops and searches conducted by the Providence Police Department, including the 2014 finding that non-white drivers are almost twice as likely to be stopped than white drivers and, once stopped, almost twice as likely to be searched (McDevitt et al, “Rhode Island Traffic Stop Statistics Data Collection Study.”); and

WHEREAS, Observation or searches unsupported by individualized suspicion are per se unreasonable and may not provide a basis for arrest, prosecution, or the collection or retention of intelligence information; and

WHEREAS, Racial profiling has long-lasting negative effects on our communities, including psychological distress, racial disparities in incarceration rates, the separation of families, and increased poverty; and

WHEREAS, Instituting changes in search procedure has led to the drastic decrease of racial disparities in motor vehicle stops and searches in other Rhode Island municipalities, including Narragansett and Tiverton (RI ACLU Report, 2007); and

WHEREAS, The First Circuit Court of Appeals ruled in *Glik v. Cunniffe*, 655 F. 3d 78 (1st Cir., 2011) that individuals have a constitutional right to record the activities of police; and

WHEREAS, Federal courts have ruled against local enforcement of federal immigration laws, including *U.S. v. Arizona*, 132 S. Ct at 2509 (“Detaining individuals solely to verify immigration status would raise constitutional concerns”) and *Miranda-Olivares v. Clackamas County*, 3:12-cv-02317-ST (I.C.E. detainees “provide no probable cause for detention”), and the Providence City Council has previously passed a resolution [1319] urging the state to cease honoring such detainer requests; and

Community Safety Act, Revisioned 04.16.16

WHEREAS, The Providence Police Department has no written policies addressing, language access for Limited English Speakers, the procedures for including people on “gang lists,” inquiries as to the immigration status of people questioned or detained, or collaborations with other law enforcement agencies; and

WHEREAS, The Providence City Council has passed numerous resolutions in support of the RI Comprehensive Racial Profiling Prevention Act, most recently in 2013 for H5285, which contains many of the provisions found herein;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PROVIDENCE, That:

SECTION 1: An ordinance amending Chapter 18 ½, “Police,” of the Code of Ordinances of the City of Providence, to add a new section entitled “Community Safety Act.”

(a) Definitions as referred to in this ordinance:

- (1) Racial profiling is defined as the reliance on race, ethnicity, color, national origin, language, as a basis for suspecting that a person has committed or is about to commit a crime. Other forms of discriminatory profiling include using gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability, or serious medical condition as a basis for suspecting that a person has committed or is about to commit a crime.
- (2) Law enforcement officer, or police officer, means any member of the Providence Police Department, duly sworn and vested with police power.
- (3) Standardized Encounter Form – Forms, designed to produce a facsimile at the time it is filled out, with a unique number identifying the original and its copy, and including prompts and space to record the following information:
 - i) The date, time and general location of the stop;
 - ii) The race or ethnicity, gender, and approximate age of the individual(s) stopped; provided that the identification of these characteristics shall be based on the observation and perception of the police officer making the stop and the information shall not be requested of the person(s) stopped;
 - iii) The probable cause giving rise to the stop;
 - iv) Whether a search was executed as a result of the stop and the probable cause giving rise to the search;
 - v) The scope of any search conducted;
 - vi) Whether the search was conducted pursuant to probable cause of or reasonable suspicion to suspect a crime;
 - vii) Whether any contraband, including money, was seized in the course of the search, and if so, the nature of the contraband;
 - viii) Whether any warning or citation was issued as a result of the stop;
 - ix) Whether an arrest was made as a result of either the stop or the search;
 - x) The approximate duration of the stop; and

- xi) The name and badge number of the officer.
- (4) “Investigatory Activity” means any traffic stop, pedestrian stop, interview, interrogation, detention, frisk, pat-down, or any search of a person or property.
- (5) “Stop” means an encounter between one or more police officers and one or more civilians in which the conduct of the police communicates to the person being confronted that they was not free to ignore the police and go about their business.
- (6) Frisk is a pat-down of outer clothing strictly limited to the purpose of discovering weapons.
- (7) Probable Cause means the facts and circumstances known to a police officer at that time that would make a reasonable person think the individual in question has committed, is committing, or is about to commit a crime, or in the case of a search, that evidence of a crime can be found in that cation.
- (8) Reasonable Suspicion means the belief, based on some articulable facts, that the person in question has been, is, or is about to be involved in criminal activity.
- (9) Limited English Proficient Individual refers to a person who does not speak, or understand English, or who does not speak, or understand English proficiently.
- (10) Qualified Interpreter means an individual who has at least three (3) years experience interpreting in formal institutional settings such as courts or health care providers, has completed a recognized training program in interpretation and translation, or who possesses an equivalent combination of experience and training. A qualified interpreted must also uphold a code of ethics and professional responsibility, and is required to take an oath to interpret accurately, faithfully, and impartially

(b) Prohibition on racial profiling and other forms of profiling When conducting any routine or spontaneous investigatory activity, law enforcement shall not rely on race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability, or serious medical condition as a basis for reasonable suspicion or probable cause that a person has committed or is about to commit a crime.

(c) Documentation

(1) Standardized Encounter Forms

- i. Police must document all traffic and pedestrian stops on a Standardized Encounter Form.
- ii. The information recorded must include all fields identified in Subsection 1(c).
- iii. At every encounter, the officer shall provide a copy of the form to the subject of the vehicle or pedestrian stop. The form must be completed and the copy provided so as not to prolong the stop any longer than necessary.
- iv. Completed Standardized Encounter Forms shall be retained by the Police Department and shall be considered public records.

(2) Video Recording

- i. The Providence Police Department shall adopt written procedures regarding the use of video and/or audio recording devices such as, but not limited to, dashboard

cameras, body cameras, and digital audio recorders. These policies shall be public records and shall include, but not be limited to, the following standards:

1. All stops conducted by police officials with such equipment shall be recorded. The recording shall begin no later than when an officer first signals the vehicle or individual to stop or arrives at the scene of an ongoing stop begun by another law enforcement officer, and the recording shall continue until the stop is completed and the subject departs, or until the officer's participation in the stop ends.
 2. The subject of a stop shall be advised by the officer that the encounter is being recorded.
 3. A chain-of-custody record of the recordings shall be maintained.
 4. A subject of a stop that was recorded by a video/audio surveillance camera, and/or their legal counsel, shall have the right to view and listen to the recording at the police station and to obtain a copy of the recording involving them within ten (10) business days of the request;
 5. The policy shall establish a minimum period of retention for such recordings of no less than sixty (60) days, and procedures to ensure that the recording equipment is in proper working order, and shall bar the destruction of any recording related to 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 or to otherwise fail to record stops as specified herein;
- ii. While on duty and in interactions with the public, police shall be prohibited from using personal audio or video recording devices. Only devices subject to the policy outlined above shall be permitted.
 - iii. Police shall not interfere with, harass, demand identification from, or otherwise intimidate members of the public making video or audio recordings of police activity in any place the individual who is recording has a legal right to be present.
 - a. Law enforcement officials shall not intentionally block or obstruct cameras or other recording devices. Law enforcement officials shall not damage any recording device nor alter nor erase its content.
 - b. Any officer found in violation of section 3(b)(iii) may be subject to a fine of up to \$5,000 and/or a jail term of no longer than fifteen (15) days. Violations of this section may also be the subject of appropriate remedy, and may be enforced by a civil cause of action by the person making or attempting to make the recording.

(d) Traffic Stops

- (1) Prior to asking the subject of a vehicle stop for their license, a law enforcement officer must describe to the subject the suspected violation that prompted the stop.
- (2) No operator of a motor vehicle shall be requested to provide any documentation or identification 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 probable cause of criminal activity, or the operator has failed to produce a valid driver's license, or the particular type of vehicle stopped requires other types of documentation specified under R.I.G.L. Title 31.
- (3) No passenger of a motor vehicle shall be requested to provide identification or any other documentation by a law enforcement officer when the motor vehicle has been stopped solely for a traffic violation, unless there exists probable cause of criminal activity.
- (4) No law enforcement officer shall use violations of the traffic laws in Title 31 of the R.I. General Laws as a pretext for stopping a motor vehicle for investigatory or other reasons unless there exists reasonable suspicion or probable cause of criminal activity.
- (5) Unless there exists probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation.
- (6) When an individual is cited for driving without a valid license under §§31-11-18 – 18.1 and this constitutes the only criminal charge resulting from the traffic stop, the individual may be issued a court summons but may not be arrested, providing that the individual can show identification including alternative forms of identification as described in Section 6(h).

(e) Searches

- (1) No individual shall be requested to consent to a search by a law enforcement officer of their motor vehicle, person, or belongings. The officer shall document in writing on a Standardized Encounter Form their "probable cause" grounds for conducting a search, and shall also, where practicable, call in such information to a dispatcher or supervising officer prior to a search.
- (2) Prior to performing a search of any individual, law enforcement officers must inform the individual of the right to request that the search be performed by an officer of the gender of the individual's choosing. Officers must comply with such requests in the performance of searches. If an officer of the requested gender is not present at the time, one will be called to the scene as soon as possible so as not to unnecessarily delay the time required to perform the search.
- (3) Police may not use canines to engage in investigatory activity absent probable cause of criminal activity for which that particular canine is likely to provide investigatory assistance.

(f) Surveillance and Privacy

- (1) Providence Police Department shall not engage in electronic or physical efforts to collect or retain information about the lawful activities of individuals or groups without reasonable

Community Safety Act, Revisioned 04.16.16

- suspicion that such activities relate to criminal activity or a judicial warrant specific to the time, place, and target of such surveillance.
- (2) Police may not engage in undercover infiltration of groups pursuing First Amendment-protected activities without probable cause.
 - (3) Police may not consider lack of proof of identification or failure to respond to a request for identifying information as probable cause or reasonable suspicion of criminal activity.
 - (4) When attempting to determine the identity of a person under eighteen (18) years of age, police or their representatives must accept as true any statement of that youth that they do not have an identification card in their possession and may not repeat the request once a juvenile has stated that they do not have identification.
 - (5) Police may not photograph juveniles except
 - i. As part of formal booking procedures if the juvenile is charged with a delinquency;
 - ii. Via automated recording equipment used in compliance with section 3(b); or
 - iii. For the specific purpose of documenting injury sustained by the juvenile.
 - (6) Police may not inquire about an individual's immigration status.
 - (7) Any identification issued by a foreign government including but not limited to consular identification, foreign driver's license, or passport, shall be considered acceptable identification to the same extent as identification issued by a domestic government agency.
 - (8) No police officer shall identify any individual as a member of a gang in any list or database maintained by any law enforcement agency, nor in any written notes, reports, memoranda or other document, without identifying criteria for inclusion on a so-called "gang list" or "gang database" that apply to that individual. The list of criteria used to determine inclusion on the "gang list" or "gang database" shall not include:
 - i. Association with other people identified as gang members or any substantially equivalent factor;
 - ii. Race;
 - iii. Physical characteristics;
 - iv. Location of domicile; nor
 - v. Location of encounter.
 - (9) Any individual whose name has been included on a "gang list" or "gang database" shall be notified of that fact by notarized letter delivered via certified mail. The letter shall include an explanation of what evidence police have used in alleging that a person is a member of a gang, and a form which the individual may fill out and return in person or by mail initiate an appeal process to remove their name from the "gang list."
 - (10) Upon request, the individual whose name has been included on a gang list or gang database may challenge that designation through a formal appeal to the Community Safety Review Board, described in section 9(f). A hearing shall be scheduled within thirty days at which the Police Department shall carry the burden of proof to convince a simple majority of the Board.

- (11) In the event that an appeal is not successful, a notation will be made in the file and in any of transmission of the information concerning that individual, that the person denies the allegation of gang membership or association.
- (12) Under no circumstances shall contested allegations of gang membership or association be shared with any third party, including courts, prosecutors, or schools. Nothing in this section shall be construed to mean that records concerning alleged gang membership shall be withheld from the person whose membership is thereby alleged.
- (13) If an individual has no convictions within a two-year period after their name has been placed on the “gang list,” the name shall be removed and all related records destroyed. A letter confirming that the individual's name has been removed from the gang list shall be sent to the person at their last known address.
- (14) Each year, the Providence Police Department shall produce a report providing the total number of individuals whose names are included on the “gang list,” with demographic detail including age, race, ethnicity, and gender, and a total of how many of those individuals have challenged their inclusion on the “gang list.”

(g) Language access for Limited English Proficient (LEP) individuals

1. The Police Department shall establish a language access hotline to connect police officials in the field with qualified interpreters in a timely manner. Officers who wish to question an LEP individual for any reason and are not fluent in a language spoken proficiently by that individual, shall not question that individual until a qualified interpreter is present, except in emergency situations.
2. Police shall not use family members, friends or bystanders as interpreters except in emergency situations.
3. No employee of the Providence Police Department shall serve as interpreter during interrogation. Interpreters must be contracted from outside agencies.
4. Miranda Warnings, and all other vital written materials, will be available to the suspect or witness in their primary language. In the case of a language into which forms have not been translated and in the case of illiteracy, forms will be read to the suspect or witness in their primary language using the contracted interpretation services.
5. At each police building with direct public access, signs shall be posted in the most commonly spoken languages at each public access point or lobby stating that interpreters are available free of charge to LEP individuals.

(h) Collaboration with other law enforcement agencies

1. Any formal agreements addressing cooperation and mutual assistance between Providence Police and other law enforcement agencies shall comply with the following conditions:
 - i. The proposed agreement shall be submitted to the Providence City Council for review and approval.
 - ii. The outside agency shall agree to comply with all the terms of this ordinance as a precondition for the approval of the proposed agreement.

- iii. The text of the agreement shall be posted to the Providence Police Department website.
 2. No department, agency, commission, officer or employee acting on behalf of the City of Providence shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information on the immigration status of individuals in the City of Providence.
 3. Police may not arrest individuals based on non-criminal requests by the United States Immigration and Customs Enforcement (ICE).
 4. The Providence Police Department will not honor requests by ICE to detain or prolong the detention of any individual for suspected violations of federal civil immigration law.
 5. All joint activities undertaken between Providence Police Department and other law enforcement agencies not governed by formal agreements as covered in this Section shall publicly report upon completion of the operation
- (i) Accountability and Enforcement:**
1. Generally
 - i. When conducting a stop or search, a police officer must provide their name and badge number.
 - ii. Any member of the public may ask an on-duty law enforcement officer for a business card containing the officer's name and badge number. The officer must comply with the request. Such requests shall not be deemed reasonable suspicion of criminal activity.
 - (2) An individual subjected to any violation of this ordinance may enforce is law in a civil action for injunctive and declaratory relief, as well as compensatory or punitive damages against:
 - i. Any governmental body that employs any law enforcement officer who has engaged, is engaging, or continues to engage in violations of any section of this ordinance; and
 - ii. Any law enforcement officer who has engaged, is engaging, or continues to engage in violations of any section of this ordinance.
 - (3) In any action or proceeding to enforce this ordinance, the court shall allow a prevailing plaintiff reasonable attorney's fees as part of the costs, and may include expert fees as part of the attorney's fees.
 - (4) Preservation of rights. This section shall be in addition to all rights, procedures, and remedies available under the United States Constitution, Section 1983 of Title 42 of the United States Code, the Constitution of the State of Rhode Island and all other federal law, state law, municipal law and all pre-existing civil remedies, including monetary damages, created by statute, ordinance, regulation or common law.
 - (5) The chief of police shall prepare and make available on the city's website, as well as to the Providence External Review Authority, the City Council and the public, a quarterly report commencing with the city's fiscal year containing the following information:
 - i. Data compilation of Standard Encounter Forms, prepared by a qualified academic institution, and providing at a minimum statistical descriptions of individuals

Community Safety Act, Revisioned 04.16.16

- stopped, results of the stop, analyzed by direct and cross-tabulation of race, ethnicity, gender, and age (as perceived by the officer initiating the stop).
- ii. Maps or other graphic representations providing approximate geographical locations of aggregate stops based on Standard Encounter Forms.
 - iii. Complaints received by the Office of Professional Responsibility involving alleged violations of one or more provisions of this ordinance.
 - iv. A summary of all pending civil and criminal litigation against the Providence Police Department or any of its employees, or the City of Providence, alleging violations of any provision of this ordinance.
- (6) The Providence External Review Authority, upon review of all data described in Subsection (5)i., may recommend diversionary reinvestments that would, if implemented, re-allocate City funding from the Police Department Budget as a whole, and from the funds specifically allocated to the office of Public Safety Commissioner, to municipal recreation, youth programming and employment opportunities.
- i. A written description of these recommendations shall be submitted to the Mayor and the City Council no later than the last day of January.
 - ii. The Mayor and or the Public Safety Commissioner shall provide a written response to the recommendations no later than 20 days after receiving them.
 - iii. The Finance Committee of the City Council, or any other Committee within the City Council most responsible for preparing a budget proposal to be considered by the Council as a whole, shall review and respond to the recommendations during its budget deliberations. It shall conduct a public hearing at which members of the public may present their responses to the recommendations. For any city Department potentially affected by a diversionary reinvestment, the Director or their designee must attend the public hearing described in this subsection.
- (7) The Providence External Review Authority shall be authorized to review proposed labor agreements between the City of Providence and any labor union representing sworn officers employed by the City, and to make recommendations to either or both parties negotiating the labor contract.
- (8) The Providence External Review Authority shall be specifically authorized to accept complaints relating to any violation of the Community Safety Act.

(j) Severability The provisions of this Ordinance shall be severable. If any phrase, clause, sentence or provision of this Ordinance is declared by a court of competent jurisdiction to violate the Constitution of the United States or the Constitution of the State of Rhode Island, or if its applicability to any agency, person or circumstance is held invalid, the validity of the remainder of the Ordinance and its applicability to any other agency, person or circumstances shall not be affected.