

# THE END RACIAL PROFILING ACT OF 2004

## SECTION 1. ADD A NEW SECTION OF THE GENERAL LAWS AS FOLLOWS:

31-21.2-1. Title. -- This chapter may be cited as the “End Racial Profiling Act of 2004.”

31-21.2-2. Findings -- (1) Municipal and state law enforcement officers play a vital role in protecting the public from crime. The vast majority of police officers discharge their duties professionally and without bias.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Any evidence obtained as a result of a search prohibited by subsections (a), (b) or (c) shall be inadmissible in any judicial proceeding. Nothing contained herein shall be construed to preclude any search based upon any legally sufficient cause other than consent.

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

(1) All motor vehicle stops conducted by police vehicles with such equipment shall be recorded. The recording shall begin no later than when an officer first signals the vehicle to stop or arrives at the scene of an ongoing motor vehicle stop begun by another law enforcement officer; and 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) The driver of a stopped car shall be advised by the officer that the encounter is being recorded;

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

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

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

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

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

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

(b) A study shall be conducted of the data collected for a period of twenty-four (24) months after passage of this act. The study shall include a multi-variate 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 to assist with the implementation of this chapter, and chosen by the attorney general. The study shall be released not later than thirty (30) months after the commencement of the collection of

data under this chapter. The report, findings and conclusions submitted pursuant to this subsection shall be deemed a public record.

(c) 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 a monthly breakdown by race for each police department of the number of traffic stops made and of searches conducted, and any other information deemed appropriate by the attorney general with the advice of the committee. 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.

(d) 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 at least a weekly basis to ensure compliance with all policies, prohibitions and documentation requirements.

(e) The head of every law enforcement agency subject to this chapter, or his/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.

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

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

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 the personnel of these agencies, and shall make a written description of the procedure available to the public. The description shall also be made available on any web site 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 on an annual basis under uniform criteria established by the Select Commission on Race and Police-Community Relations. The information provided by each department shall include the total number of complaints received, a breakdown by category of the type of complaint, and a further breakdown by category of the disposition of the complaints.

## **SECTION 2. AMEND §31-21.1-6 as follows:**

**§ 31-21.1-6 Data collection and use. –** ~~(a) Except as otherwise specified in this chapter, data acquired under this section shall be used only for research or statistical purposes. Data~~

~~acquired under this chapter shall not be used in any legal or administrative proceeding to establish an inference of discrimination on the basis of particular identifying characteristics, except by court order. However, during the collection of data, the information and forms collected pursuant to this chapter shall be public for~~ For those stops where a citation was issued or an arrest was made, ~~and~~ the forms shall include a citation or arrest number for reference. All data collected pursuant to this chapter shall be ~~made public upon the completion of the study and the submission of the report;~~ provided, that any complaints filed pursuant to § 31-21.1-4(c)(2) shall be subject to the provisions of chapter 28.6 of title 42.

**SECTION 3. Amend §42-137-5 as follows:**

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

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

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

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

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

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

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

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

- (1) Recruitment, hiring, promotion and training of police officers;
- (2) The level and quality of diversity training, sensitivity awareness and cultural competency;
- (3) The level and quality of efforts related to building and improving overall community relations;
- (4) The use of firearms by on-duty and off-duty police officers;
- (5) The use of force, the use of excessive force or the excessive use of force;
- (6) The use of racial profiling and other forms of bias based policing; and
- (7) Legislation reforming police policies, practices, or procedures involving community relations.

(g) Collect and publish data regarding complaints of police misconduct pursuant to §31-21.2-8.

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

The reports shall be public records.

END

## **SUMMARY OF MAJOR PROVISIONS IN THE “END RACIAL PROFILING ACT OF 2004”**

1. **BAN ON RACIAL PROFILING.** The bill contains an explicit ban on racial profiling by police and the inclusion of specific legal remedies, including damages, for victims of racial profiling. The bill allows the use of a police department’s collected traffic stops statistical data in order to establish a “rebuttable inference of discrimination” in such cases.

2. **RESTRICTIONS ON CERTAIN LAW ENFORCEMENT PRACTICES THAT MAY ADVERSELY IMPACT RACIAL MINORITIES.** The bill bans so-called “pretext stops,” which is when police use a minor traffic violation as a pretext for pulling over a car for other reasons for which they do not have sufficient legal grounds to justify the stop. The bill bans so-called “consent searches,” which is when police obtain the “consent” of a driver to engage in a car search under circumstances when the police do not otherwise have sufficient legal grounds for doing so. The bill also bars police from detaining a car unnecessarily, whether to await arrival of a canine unit or for other reasons, absent grounds to believe criminal activity has occurred. In order to deter police misconduct, the bill bars the use in court of any evidence obtained in violation of these restrictions.

3. **CONTINUED DATA COLLECTION.** The bill requires police departments to resume collection of traffic stops data, as was done during the 2001-2002 study, and provides for another 24-month study of the data to be conducted. The format and structure of the study would be similar to the one released last June by Northeastern University.

4. **REGULAR REVIEW OF DATA.** The bill requires police departments to review on a regular basis the traffic stops forms being submitted by officers in order to ensure cards are being filled out completely and accurately. The bill also requires police departments to regularly review the traffic stops data to respond to any racial disparities that may appear through their examination of the data. This extends to review of the data collected in the prior two-year study to help determine the origin and causes of any racial disparities that may have been found by that study. Departments must submit a report to the Select Commission on Race and Police-Community Relations describing their review of the data.

5. **MISCELLANEOUS.** The bill contains detailed standards on the use of video cameras by police, in order to ensure that police encounters are both properly recorded and appropriately retained. The bill requires training of officers on the new policies established by the bill. The bill establishes complaint procedures for police misconduct and requires that certain information about such complaints and their dispositions be reported to the Select Commission.

**BRIEF EXPLANATION OF EACH PROVISION OF  
THE “END RACIAL PROFILING ACT OF 2004”**

SECTION 1.

Section 1 gives the Act’s title.

Section 2 contains a list of eight findings relating to the problem of racial profiling, and serves as a preamble for the need for strong legislation to address the problem.

Section 3 bans police from engaging in racial profiling. The definition of “racial profiling” is virtually identical to that already contained in the original Traffic Stops Statistics Act (TSSA).

Section 4 allows victims of racial profiling to sue for damages and other appropriate relief. It further allows plaintiffs to make use of collected traffic stops data to create a “rebuttable inference of discrimination” where the statistics so suggest.

Section 5 sets standards and limits on certain law enforcement practices that may contribute to racial profiling.

Subsection (a) prohibits so-called pretext stops, where police use a traffic violation as an excuse for pulling a car over for another reason.

Subsection (b) bans so-called consent searches, where police request permission from a driver to search a car when they have no legally permissible cause for doing so. The Northeastern study showed that consent searches are very unproductive.

Subsection (c) bars police from detaining a car unnecessarily, whether to await arrival of a canine unit or for other reasons, absent grounds to believe criminal activity has occurred.

Subsection (d) prohibits the use in court of any evidence obtained in violation of these restrictions. This is an important deterrent to police misconduct.

Subsection (e) sets standards for the use of police cruiser cameras.

Subsection (f) requires appropriate training of officers on the policies and procedures established by this section.

Section 6 requires police departments to continue to collect traffic stops data.

Subsection (a) requires that the data collection follow the same form and procedures used for the previously-authorized two-year study in the TSSA.

Subsection (b) provides that another study will be conducted of the first 24 months of data collected under this bill. The format and structure of the study will be similar to the one previously conducted by Northeastern University.

Subsection (c) requires quarterly data reports to be issued during this period. The reports would mirror the quarterly reports previously issued by Northeastern University during the first study.

Subsection (d) requires police departments to review on at least a weekly basis the traffic stops forms being submitted by officers in order to ensure cards are being filled out completely and accurately.

Subsection (e) requires police departments to regularly review the traffic stops data to respond to any racial disparities that may appear through their examination of the data.

Subsection (f) allows civil rights organizations to sue police departments that fail to properly collect or transmit traffic stops data. It is similar to a provision in the TSSA.

Section 7 requires police departments to review the data collected in the prior two-year study to help determine the origin and causes of any racial disparities that may have been found by that study. Departments must submit a report to the Select Commission on Race and Police-Community Relations describing their review of the data.

Section 8 deals with complaint procedures for police misconduct.

Subsection (a) requires all departments to have a written procedure on handling complaints of police misconduct.

Subsection (b) requires that such complaints be accepted, at a minimum, in person, by mail and by fax.

Subsection (c) requires that certain information on complaints and their dispositions be reported to the Select Commission.

SECTION 2 of the bill makes the TSSA consistent with this bill by allowing the data collected to be used in legal proceedings.

SECTION 3 of the bill reiterates the additional duties provided the Select Commission under the new act.

## THE CURRENT STATUTE

**§ 31-21.1-2 Declaration and policy.** – The general assembly declares 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. For purposes of this chapter, “racial profiling” means the detention, interdiction or other disparate treatment of an individual on the basis, in whole or in part, of the racial or ethnic status of such individual, except when such status is used in combination with other identifying factors in seeking to apprehend a specific suspect whose racial or ethnic status is part of the description of the suspect. The purpose of this chapter is to conduct a study of the traffic stops by the police to determine whether racial profiling is occurring and to require that police prohibit the practice of racial profiling.

**§ 31-21.1-3 Advisory committee – Establishment – Duties.** – (a) There is established an advisory committee to be called the “traffic stop study advisory committee.” The committee shall consist of thirteen (13) members:

(1) Three (3) of whom shall be from the house of representatives, not more than two (2) from the same political party, to be appointed by the speaker;

(2) Three (3) of whom shall be from the senate, not more than two (2) from the same political party, to be appointed by the president of the senate;

(3) Two (2) of whom shall be appointed by the governor;

(4) One of whom shall be the attorney general’s designee, who shall be the president of the Rhode Island Police Chiefs Association;

(5) One of whom shall be the executive director of the Urban League of Rhode Island or his or her designee;

(6) One of whom shall be the executive director of the National Conference for Community and Justice (NCCJ) or his or her designee;

(7) One of whom shall be the executive director of the Rhode Island commission for human rights or his or her designee; and

(8) One of whom shall be a representative from a college or university in Rhode Island, who shall be a professor of statistics, to be appointed by the governor.

(b) The committee shall advise the attorney general throughout the course of the traffic stop study authorized by this chapter. The attorney general shall work in cooperation with the committee and shall keep the committee informed on all matters relating to the implementation and enforcement of this chapter, including but not limited to, information on all data collected

and budgetary expenditures. The committee is advisory only with all power under the chapter resting with the attorney general.

**§ 31-21.1-4 Traffic stop study.** – (a) The attorney general is authorized to and shall conduct a study of routine traffic stops by the Rhode Island state police and each municipal police department. The study shall include the collection and analysis of the data received from the police department pursuant to this section, which shall include the following information for each traffic stop conducted by the police:

- (1) The date, time and general location of the traffic stop;
- (2) The race or ethnicity, gender, and approximate age of the driver 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 stopped;
- (3) The reason for the stop;
- (4) Whether a search was instituted as a result of the stop;
- (5) The scope of any search conducted;
- (6) Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime;
- (7) Whether any contraband, including money, was seized in the course of the search, and if so, the nature of the contraband;
- (8) Whether any warning or citation was issued as a result of the stop;
- (9) Whether an arrest was made as a result of either the stop or the search;
- (10) The approximate duration of the stop; and
- (11) Whether the vehicle is registered in Rhode Island or out of the state.

(b) Not later than ninety (90) days after July 13, 2000, the attorney general, with the advice of the committee, shall develop a form, in both printed and electronic format, to be used by each police officer when making a traffic stop to record the data required under this chapter.

(c) Beginning January 15, 2001, and monthly thereafter, each municipal police department and the Rhode Island state police shall transmit to the attorney general a report containing:

- (1) All of the forms collected to date of motorists who were stopped;
- (2) Any complaints filed by motorists who believed they were the subject of racial profiling, provided that no information revealing the identity of the complainant, witnesses or the law

enforcement officer involved in the traffic stop shall be used, transmitted or disclosed in violation of the provisions of Chapter 28.6 of Title 42, the Law Enforcement Officers' Bill of Rights; and

(3) Any other information the police department or Rhode Island state police deem appropriate.

(d) The study authorized under this chapter shall include a multi-variate analysis of the collected data in accordance with general statistical standards. The attorney general shall collect data for a period of not less than twenty-four (24) months and report its findings and conclusions to the governor and the general assembly not later than thirty (30) months after the commencement of the collection of data under this chapter. The report, findings and conclusions submitted pursuant to this subsection shall be deemed a public record.

(e) In addition, the attorney general, with the advice of the committee, shall prepare on a quarterly basis a summary report of the monthly data provided by each police department and the state police for that quarterly period. The report shall be a public record. The summary report shall include a monthly breakdown by race for each police department of the number of traffic stops made and of searches conducted, and any other information deemed appropriate by the attorney general with the advice of the committee. 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.

(f) Upon July 13, 2000, the attorney general with the advice of the committee shall procure the services of an organization, company, person or other entity with sufficient expertise in the field of statistics to assist with the implementation of this chapter. The organization, company, person or other entity so retained shall assist the attorney general and the committee with the design of the methodology for gathering statistics pursuant to this chapter, monitor compliance with the act throughout the study, and conduct a statistical analysis at the conclusion of the study to determine the extent to which racial profiling exists within the state.

(g) Appropriate funding shall be made available to implement the provisions of this chapter.

(h) The department of attorney general 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.

**§ 31-21.1-5 Adoption of written policies.** – Not later than ninety (90) days after January 1, 2004, each police department and the state police shall adopt written policies which shall prohibit the use of racial profiling as the sole reason for stopping or searching motorists for routine traffic stops.

Copies of the policies adopted pursuant to this section shall be submitted to the attorney general and the committee, and shall be public records.

**§ 31-21.1-6 Data collection and use.** – (a) Except as otherwise specified in this chapter, data acquired under this section shall be used only for research or statistical purposes. Data acquired

under this chapter shall not be used in any legal or administrative proceeding to establish an inference of discrimination on the basis of particular identifying characteristics, except by court order. However, during the collection of data, the information and forms collected pursuant to this chapter shall be public for those stops where a citation was issued or an arrest was made, and the forms shall include a citation or arrest number for reference. All data collected pursuant to this chapter shall be made public upon the completion of the study and the submission of the report; provided, that any complaints filed pursuant to § 31-21.1-4(c)(2) shall be subject to the provisions of chapter 28.6 of title 42.

(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.

**§ 31-21.1-7 Penalties for refusal to act.** – An organization chartered for the purpose of combating discrimination, racism, or of safeguarding civil liberties, or of promoting full, free, or equal employment opportunities, may seek appropriate relief in a civil action against any police department for failing to collect or transmit the data as 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 attorney general and the committee identifying the police department which is failing to collect or transmit the data and the organization shall then allow fifteen (15) days to elapse to allow the police department to come into compliance or to allow the attorney general to commence a civil action to enforce compliance with this chapter.