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TESTIMONY IN SUPPORT OF THE COMMUNITY SAFETY ACT
April 10, 2017

The ACLU of Rhode Island strongly supports the Ordinance Committee's passage of the Community Safety Act (CSA). As Committee members know, this proposal has been the subject of lengthy debate, negotiations and compromise with numerous stakeholders over the course of a few years. Its passage will mark an important step forward in community-police relations, by helping to counter some of the problems associated with bias-based policing and the feeling of too many members of the community, particularly black and Latino residents, that they are considered second-class citizens.

You will receive testimony from many people on various aspects of this comprehensive ordinance. I wish to focus on two: one that it is critical to maintain in the ordinance despite pushback from the Administration, and one that we believe still needs to be revised in order to properly comport with federal law.

The former involves Section (i)(3), relating to accountability and enforcement. This section specifically provides for the awarding of attorneys' fees to plaintiffs who successfully challenge violations of the ordinance, which is essential if the CSA is to be more than just words on a piece of paper. The second involves Section (g), relating to language assistance, and which we believe fails to comport with federal law. We briefly examine each of these two issues below.

I. Section (i)(3): Attorneys' Fee Awards

Section (i)(3), authorizing attorneys' fee awards to prevailing plaintiffs, is based directly on a federal civil rights law passed in 1976 by Congress, which recognized just how critical such a remedy was to meaningful enforcement of civil rights laws. A House committee report recommending passage of the law noted at the time:

> The effective enforcement of Federal civil rights statutes depends largely on the efforts of private citizens. Although some agencies of the United States have civil rights responsibilities, their authority and resources are limited. In many instances where these laws are violated, it is necessary for the citizen to initiate court action to correct the illegality. Unless the judicial remedy is full and complete, it will remain a meaningless right. Because a vast majority of the victims of civil rights violations cannot afford legal counsel, they are unable to present their cases to the courts.

The Senate committee report similarly noted that attorneys' fees award in civil liberties cases were necessary if civil rights laws "are not to become mere hollow pronouncements which the average citizen cannot enforce." Without this remedy, victims of governmental misconduct are forced to spend their own money to vindicate rights that never should have been denied them in the first place. That is unfair and only serves to further punish the victim. Indeed, it prevents many victims, without the often-substantial resources needed to hire counsel, from even making use of the judicial system to uphold their rights. The ACLU urges the Committee to resist any attempt to water down this essential provision of the Act.

II. Section (g): Language Access for LEP Individuals

Despite recognizing that this ordinance is the product of compromise, we must raise concerns about the present status of Section (g), relating to language access for Limited English Proficient individuals, as we believe it violates federal law.

As presently proposed, this section would bar police, except in emergency situations, from questioning an LEP individual without the aid of a "language access hotline" or a "qualified interpreter." However, this section goes on to state that "family members, friends or bystanders" *can* be used as interpreters in non-emergency situations when the "language access hotline is unavailable." We respectfully submit that this violates Title VI of the Civil Rights Act of 1964.

The U.S. Department of Justice's "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" [1] [DOJ Guidance], which instructs recipients of federal funding in fulfilling their Title VI obligations vis-à-vis LEP persons, specifies that "*reliance on informal interpreters should not be part of any recipient LEP plan."*[2] It is only in emergency situations that are not reasonably foreseeable, that the police department may have to temporarily rely on non-department-provided language services, such as LEP persons' family and friends.[3]

Use of informal interpreters generally is deemed "inappropriate" given that most such interpreters "are not competent to provide quality and accurate interpretations" and because "[i]ssues of confidentiality, privacy, or conflict of interest may also arise."[4] For instance, LEP persons may be reluctant to reveal or describe "sensitive, confidential or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community."[5] Informal interpreters may also have "a personal connection to the LEP person or an undisclosed conflict

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[1] 67 FR 41455 (June 18, 2002).

[2] *Id*. at 41456 (emphasis added).

[3] *Id*. at 41456; 41467.

[4] *Id*. at 41456; 41467.

[5] *Id*. at 41467.

of interest, such as the desire to protect themselves or another perpetrator in a domestic violence or other criminal matter" that would inhibit their ability to credibly and accurately interpret.[6]

Indeed, given the inherent risks with using informal interpreters, the DOJ Guidelines suggest that police departments rely upon their own, independent interpreter *even where an LEP person has chosen to enlist a friend*, family member or bystander to interpret on their behalf.[7]

We therefore believe the proposed ordinance's language permitting use of informal interpreters in foreseeable, non-emergency scenarios contravenes the DOJ Guidelines. The ordinance applies to operations in which PPD officers would interact with LEP individuals in a myriad of situations, such as in the course of apprehending suspected criminals, conveying Miranda rights, speaking with crime scene witnesses, providing first aid to accident victims, and assessing domestic violence situations. These situations would implicate the very risks associated with relying on informal interpreters as highlighted by the DOJ Guidance, including, among others, the need for accurate interpretation, issues of confidentiality and conflict of interest, and gathering of sensitive information. Consequently, planning to enlist LEP persons' friends, family members or bystanders as interpreters, simply because the language access hotline is "unavailable," would be inappropriate and in breach of the PPD's Title VI obligations. We therefore urge that this provision be removed.

We appreciate the Committee's consideration of these comments and hope they will be favorably received. We also look forward to positive action in moving this major initiative forward. Thank you for considering our views.

Submitted by: Steven Brown, Executive Director
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6 *Id*. at 41462.

7 *Id*.