



Model Legislation for Local Governments

Ordinance to protect the focus of local law enforcement agencies on their core public safety mission by limiting their surveillance, intelligence collection, and immigration enforcement activities

This model legislation offers local legislative bodies an opportunity to protect the focus of local law enforcement agencies on their core public safety mission, by limiting their domestic surveillance and immigration enforcement activities in cooperation with federal officials. The legislation's sections include the following:

- Limits on intelligence collection and surveillance to restore the Fourth Amendment's warrant requirement;
- A prohibition on profiling according to race, religion, or country of origin;
- Data collection and disclosure requirements to ensure transparency of potential profiling;
- Limits on profiling according to political speech or activity;
- Limits on immigration enforcement operations by local officials;
- Limits on cooperation with federal or military officials; and
- A provision for a civil action and damages to enable the measure's provisions to be enforced by aggrieved individuals acting in the public interest.

Each of these sections can be removed, supplemented, or modified to suit the needs of any particular jurisdiction. If you seek research support to modify portions of this legislation, or have developed a modified version yourself, please [contact BORDC](#).

Ordinance to protect the focus of local law enforcement agencies on their core public safety mission by limiting their domestic surveillance and immigration enforcement activities.

Whereas [list local law enforcement agencies] (“local law enforcement agencies”) are accountable to this municipality; responsible for its public safety while granted limited resources; and charged with a mission to serve and protect its law-abiding residents, rather than to monitor, harass or intimidate them;

Whereas the Constitution and Bill of Rights ensure the rights of law-abiding Americans to be free from arbitrary state scrutiny, surveillance, searches, interrogations, seizures, or arrest;

Whereas public trust in law enforcement officers, and their reciprocal respect for the rule of law, are vital to promoting public safety;

Whereas federal agencies responsible for collecting domestic intelligence have repeatedly and systematically violated the law by exceeding their authorities;

Whereas federal agencies responsible for collecting domestic intelligence have repeatedly violated the privacy and First Amendment rights of law-abiding Americans, and even service members, subjected to unjustified and unreasonable surveillance;

Whereas oversight by neither the Congress nor the Article III Judiciary has achieved transparency into the expanding array of domestic spying and surveillance programs and policies pursued by federal agencies, often with support from local agencies;

Whereas the Department of Homeland Security’s Inspector General found in March 2010 that local immigration enforcement under 287(g) of the Immigration and Nationality Act has led to rampant racial profiling and widespread violations of the rights of US citizens;

Whereas the State of Arizona has required incremental scrutiny of individuals, including US citizens, based on their national origin;

Whereas federal legislation to curb rule of law abuses—such as the JUSTICE Act, the End Racial Profiling Act, and comprehensive immigration reform—has not been enacted and does not currently appear near the top of the national agenda;

Whereas the ongoing secrecy surrounding domestic surveillance activities has precluded the effective operation of democratic checks and balances; and

Whereas the experiences of localities across the United States demonstrate conclusively that allowing local law enforcement agencies to focus on their core public safety mission (without the distraction or counter-productive pursuit of federal immigration enforcement or intelligence collection mandates) offers public safety benefits far beyond any perceived benefits,

BE IT RESOLVED:

That [the City of ____] remains firmly committed to the protection of civil rights and civil liberties for all people.

I. Definitions

A. "Observation" or "monitoring" means surveillance, monitoring, or data collection facilitated by human intelligence, undisclosed participation by law enforcement agents or informants, warrantless wiretaps, remote or live imaging, data recorded from cellular telephones, internet, and other telecommunications devices, or other routine or spontaneous investigative activities.

B. "Data Centers" refer to any facilities accepting public funds to facilitate the collection, dissemination, or analysis of data by participants including federal, state, or local law enforcement agencies, or of data concerning non-criminal behavior collected through observation by federal, state, or local law enforcement agencies.

II. Limits on Intelligence Collection and Surveillance

A. Local law enforcement agencies shall not participate in intelligence collection programs involving federal or military officials, or private sector data sources. Nor shall local law enforcement agencies engage in efforts to collect or retain information about the lawful activities of individuals or groups unless directly related to criminal activity.

B. Local law enforcement agencies will pursue, engage in, or support neither electronic nor physical surveillance activities unless supported by a warrant specific to the time, place and target of such surveillance. Intelligence collection activities unauthorized by a warrant are per se unreasonable and strictly prohibited.

C. Local law enforcement agencies shall disseminate criminal or intelligence information only to law enforcement agencies that:

1. need to know specific information in order to perform a specific law enforcement activity;
2. have a well-established right to know that information notwithstanding the privacy and due process protections of the Fourth and Fifth Amendments to the US Constitution; and
3. agree to follow procedures regarding information receipt, maintenance, security, and dissemination which include robust protections for individual privacy and independent oversight.

D. Criminal intelligence collected by local authorities shall be disseminated only to law enforcement agencies; recipients may include neither military nor private sector actors, nor data centers through which military or private sector actors could gain access to such data.

E. Local law enforcement agents may not collect, retain, disseminate or analyze intelligence information concerning an individual, including DNA information, unless there is probable cause to believe that the individual is involved in criminal conduct or activity and the information is directly related to that criminal conduct or activity. No incident reports concerning allegedly suspicious activities shall be reported to databases accessible by federal officials unless such activities constitute a criminal violation.

III. Individualized Suspicion Requirements Prohibiting Profiling According to Race, Religion, or National Origin

A. Law enforcement agents shall conduct observation or searches of individuals in this jurisdiction only on the basis of probable cause that a criminal offense has been committed. Reasonable suspicion that an offense has been committed may justify a cursory pat down of outer clothing for weapons, but shall not justify a search, seizure, or the collection or retention of intelligence information. Suspicionless observation or searches are per se unreasonable and may not provide a basis for arrest, prosecution or the collection or retention of data for intelligence purposes.

B. Local law enforcement agents and agencies shall not select individuals for observation, searches, pat-downs, interrogations, or arrest based in *any part* on the individual's race, ethnicity, country of origin, or religion (except where trustworthy information relevant to the locality and timeframe links an individual of a particular race, ethnicity, country of origin, or religion to a specific criminal incident or scheme, along with other factors forming reasonable suspicion).

C. Absent reasonable suspicion of criminal activity, agents may not demand an individual's identification.

IV. Measures to Verify Potential Profiling According to Race, Religion, or National Origin

A. Immediately following any observation, stop, frisk, search, interrogation, or arrest of any individual or community, the agent initiating that activity shall record the following information about the suspect:

1. the date, time, and location of the investigatory activities;
2. the particular investigatory tactics employed;
3. the amount of time, if any, during which the subject of the investigatory activities was detained;
4. whether force was employed, and if so, of what sort and the effect of such force;
5. with what criminal violation, if any, the suspect was ultimately charged;
6. the nature of the suspicion prompting the investigatory activity, and the specific basis or bases for that suspicion;
7. the approximate age of the person observed, searched, or interrogated;
8. the sex and gender of the person observed, searched, or interrogated;
9. the country of origin of the person observed, searched, or interrogated, as perceived by the law enforcement official;
10. the religion of the person observed, searched, or interrogated, as perceived by the law enforcement official.

11. the race or ethnicity of the person observed, searched, or interrogated, as perceived by the law enforcement official.

B. At the time of the search, agents shall record a detailed description of any search conducted, including the documents, files, or other units of stored electronic information searched.

C. Agencies shall securely maintain information collected through observation and searches. Access to the information shall be limited to law enforcement agents on a “need to know” basis. Agencies shall employ encryption or other security measures to protect against theft or unauthorized access to the information.

D. The information described above shall be publicly disclosed in aggregate form to the [local legislative body] every six months. The information shall also be made available to litigants who allege discriminatory profiling, or criminal defendants seeking to exclude evidence obtained through an allegedly unconstitutional search.

V. Limits on Undercover Infiltration and Political Profiling

A. Local law enforcement authorities shall engage in neither undercover infiltration, nor undisclosed participation of any kind, in groups or organizations pursuing First Amendment-protected activity, without probable cause that a criminal offense has been committed. Nor shall local authorities conduct pretextual interviews of individuals affiliated with such groups concerning the organizations’ activities absent probable cause.

B. Local law enforcement authorities may not select individuals, organizations, associations, or institutions for any investigative scrutiny, to *any* extent, on the basis of their First Amendment-protected (e.g., speech, political or religious) activities.

C. Religious institutions and political organizations shall not be subjected to undercover or covert investigative methods absent a compelling investigative purpose pursued through narrowly tailored means subject to independent oversight and recurring examination. Local authorities shall not collect, disseminate or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is probable cause to believe that the subject of the information is or may be involved in criminal conduct or activity.

VI. Limits on Local Immigration Enforcement Activities

A. Local law enforcement agencies shall not participate in activities related to enforcing federal immigration laws. Local agencies shall not engage in agreements with the Department of Homeland Security pursuant to section 287(g) of the Immigration and Nationality Act, nor shall they provide support for immigration enforcement activities in coordination with federal officials, nor shall local facilities be used to detain individuals held for suspected immigration violations.

B. Local law enforcement authorities shall not monitor, stop, detain, question, interrogate, or search a person solely for the purpose of determining that individual’s immigration status. Officers shall not inquire about the immigration status of any crime victim or witness, or suspects of alleged misdemeanor offenses, nor shall they refer such information

to federal immigration enforcement authorities. Officers shall not initiate a criminal investigation based solely on information or suspicion that an individual has committed a civil violation by residing in the United States without proper authorization.

C. The use of an otherwise valid criminal investigation or arrest as a pretext to ascertain information about an individual's civil immigration status is prohibited. When proposing potential plea bargains, authorities and local prosecutors shall offer neither payment, nor reduction in charges or recommended sentence, in exchange for information about third parties who may be present in the country without documentation.

D. Officers shall not make arrests or detain individuals based on administrative warrants for removal entered by ICE into the National Crime Information Center database.

VII. Limits on Cooperation with Federal or Military Officials

A. Activities undertaken by local law enforcement agencies in coordination with federal counterparts, including joint intelligence analysis activities with private sector data sources, or federal intelligence shall be strictly limited to

1. law enforcement involving the investigation of suspected criminal acts that have been committed, or
2. disaster preparedness and recovery activities.

B. Local agencies may coordinate their activities with military or National Guard personnel only to the extent their activities relate specifically to disaster preparedness and recovery. Under no circumstances will due process be suspended: even in the event that a natural disaster precludes the operation of courts, local agencies shall endeavor to detain suspected criminals, and shall not commit executions without judicial process.

VIII. Accountability for Potential Abuses

A. Local law enforcement agencies shall conduct training activities to ensure that all officers are knowledgeable about the provisions of this ordinance.

B. Law enforcement officials shall engage neither in the unnecessary use of force, nor tamper with evidence. Allegations that officials either employed unnecessary force, tampered with evidence, or engaged in biased policing practices violating Section I(B), shall be cause for suspension with pay pending an internal investigation and public hearing.

C. Any officer found to have employed unnecessary force shall be reassigned.

D. Any officer found to have tampered with evidence shall be dismissed.

IX. Civil Action and Damages

A. Any person subjected to law enforcement activity exceeding the limits imposed by this Act may file in a State court of general jurisdiction a civil action for declaratory or injunctive relief against either

1. the local law enforcement agency employing the individual agent whose conduct constituted a violation,

2. the individual agent(s) responsible for the injury, or both.

B. Litigants shall be allowed access to aggregate data collected under Section III-A.

C. A disparate impact on communities of a particular race, country of origin, religion, or sexual orientation shall constitute a violation of this Act.

D. Aggrieved individuals may receive the higher of liquidated damages of \$1,000 per occurrence or actual damages, in addition to attorneys' fees.

X. Severability

A. 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 [], 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.

XI. Distribution

A. Local agencies shall train all officers on the implication of this measure for their respective responsibilities. Agencies shall also conduct written and behavioral assessment to ensure that this measure is understood and followed by officers.

B. The [city executive official] shall send copies of this ordinance to our US Congressional and Senate representatives, the US Senate Committee on the Judiciary, the US Senate Select Committee on Intelligence, the US House of Representatives Committee on the Judiciary, the US House of Representatives Permanent Select Committee on Intelligence, the US Attorney General, and the President of the United States.