



Model Legislation for Local Governments

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

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;
- Limits on profiling according to race, religion, or country of origin;
- 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;
- A provision for a civil action and damages

Each of these sections can be removed, supplemented, or modified to suit the needs of any particular jurisdiction. If you develop a modified version of this legislation, please [share it with 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 and systematically violated the privacy and First Amendment rights of law-abiding Americans and servicemembers 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 ongoing secrecy surrounding domestic surveillance activities has precluded the 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. 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 inter-agency collaborations (e.g., fusion centers, Joint Terrorism Task Forces) through which military or private sector actors could gain access to such data.

II. Requirements for Individualized Suspicion Standards

A. Law enforcement agents shall conduct 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 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 surveillance, 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).

C. Absent reasonable suspicion of criminal activity, agents may not demand an individual's identification. Local law enforcement agents may not collect, disseminate or maintain criminal 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 violation of a criminal statute.

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

A. Prior to beginning a search, interrogation, or any monitoring of any person, the law enforcement agent initiating that activity shall record the following information:

1. the nature of the suspicion prompting the search, and the specific basis or bases for that suspicion;
2. the approximate age of the person searched or interrogated;
3. the sex and gender of the person searched or interrogated;
4. the country of origin of the person searched or interrogated, as perceived by the law enforcement official;
5. the religion of the person searched or interrogated, as perceived by the law enforcement official.
6. the race or ethnicity of the person 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 maintain such information. 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 provided in aggregate form to the public [local legislative body] every 6 months. The information shall also be available to litigants who allege discriminatory profiling, or criminal defendants seeking to exclude evidence obtained through an allegedly unconstitutional search.

IV. Limits on Undercover Infiltration and Political Profiling

A. Local law enforcement authorities shall neither engage in undercover infiltration of, 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,

B. Local law enforcement authorities may not select organizations, associations, or institutions for investigative scrutiny, to *any* extent, on the basis of 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. 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.

V. Limits on Immigration Enforcement

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 stop, detain, question, interrogate, monitor or search a person solely for the purpose of determining that individual's immigration status. When conducting a criminal investigation of a petty misdemeanor, local law enforcement authorities shall not inquire into an individual's immigration status, nor shall they refer information about the individual to federal immigration enforcement authorities. Nor shall local authorities 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. In order to encourage undocumented individuals to report criminal activity without fear of retribution, local authorities shall not inquire into the immigration status of victims or witnesses of crimes.

VI. 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 detain suspected criminals rather than pursue execution without judicial process

VII. Accountability for Potential Abuses

- A. Law enforcement officials shall engage neither in the unnecessary use of force, nor tamper with evidence. Allegations that officials either employed unnecessary force or tampered with evidence shall be cause for suspension with pay pending an internal investigation and public hearing.
- B. Any officer found to have employed unnecessary force shall be reassigned.
- C. Any officer found to have tampered with evidence shall be dismissed.

VIII. 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.

IX. 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.

X. 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 U.S. Congressional and Senate representatives, the U.S. Senate Committee on the Judiciary, the U.S. Senate Select Committee on Intelligence, the U.S. House of Representatives Committee on the Judiciary, the U.S. House of Representatives Permanent Select Committee on Intelligence, the U.S. Attorney General, and the President of the United States.