

Brett P. Smiley
Mayor

Colonel Oscar L. Perez
Chief of Police



Department of Public Safety, Police Department
"Building Pride in Providence"

Ferenc Karoly, Esq.
Executive Director
Providence External Review Authority
400 Westminster Street, Suites 201-202
Providence, Rhode Island 02903

Dear Director Karoly:

The Providence Police Department is in receipt of your letter dated January 15, 2025, regarding the Providence External Review Authority's (PERA) proposed policy changes to General Order 360.10 (Intelligence Assessment Database). Please find our responses to your recommendations outlined in a similar fashion to what is outlined in your letter.

Purpose Section (Edits and Additions)

It is the police department's belief that the existing policy already speaks to many of these proposed additions, and thus the amended purpose section is unnecessary and cumulative. Additionally, as stated further below, the department is both confused and concerned about the referral of gang members to "community partners" and where and when in the process these referrals would take place. As it relates to juveniles, the Police department already notifies juveniles and their parents before an individual is included in the database – pursuant to existing policy and local ordinance - and furthermore utilizes the Juvenile Hearing Board, which is a rehabilitative alternative to traditional juvenile court, for certain types of offenses.

Policy Section (Additions to Gang Member Designation Criteria)

PERA recommends that the criteria for designation be modified to include at least two (2) designated criteria with self-admission at the Adult Correctional Institution (ACI) alone as being insufficient for inclusion unless accompanied by another criterion. Currently the policy requires the existence of one (1) criteria for inclusion. PERA also recommends that the policy emphasize that mere association with gang members is insufficient for inclusion unless combined with concrete evidence of criminal intent or activity.

In 2020 this policy was meticulously – specifically the criteria for inclusion in the database - rewritten as part of a settlement in a federal lawsuit. Our department, in conjunction with the City Solicitor’s Office, worked collaboratively with the plaintiffs in that case to develop the current criteria. The plaintiffs were satisfied with this new (and current) criteria and the lawsuit was ultimately settled and dismissed¹. We believe, and apparently the plaintiffs in that litigation did as well, that the current criteria are fair and strike the proper balance between effective law enforcement techniques and Constitutional rights. Therefore, it is the department’s position that the number of criteria will not be modified to include two (2) criteria rather than one (1). Additionally, self-admission that one is a gang member is the most reliable intelligence that one could garner of gang membership. Similar to a rule of evidence that would deem admissible an out-of-court statement against interest despite otherwise being hearsay, a statement that one is in a gang is certainly tantamount to a statement against one’s own interests and would not be stated unless it was true, or in other words, it is inherently reliable.

Additionally, the department does not see a need to change the policy to further emphasize that association with gang members is not grounds for inclusion. This is abundantly clear from the criteria. The policy specifically defines what is considered to be criminal street gang activity² and the active role someone would need to take in furtherance of and with the specific intent³ to engage in such criminal street gang activity. This surely goes well beyond mere association, nor could it be considered as such.

Notification and Appeals Process

PERA proposes that the Providence Police Department in every case notify an individual within ten (10) days of inclusion in the intelligence database. This is contrary to Providence City Ordinance. Section 18 ½-2(f)(9)(a) clearly indicates that the police department only must provide notice that someone has been included in the database *after* an inquiry from that individual, and even then, only if such disclosure does not adversely impact imminent law enforcement action. It is at that point under the ordinance that the appeal notification would be provided. PERA’s proposal would flip this portion of the ordinance on its head and put the burden on the police department to initiate notifications - this is not the expressed intent of the ordinance. The department does not agree to make this modification because it would be contrary to the ordinance. Additionally, there

¹ Pursuant to the consent agreement, any changes to this policy must be presented to the plaintiffs at least thirty (30) days before being made to give the plaintiffs an opportunity to communicate any concerns or recommendations to the police department.

² Criminal street gang activity is defined as “criminal, delinquent, unlawful, or other acts conducted for any of the following reasons: to enhance the criminal or unlawful standing or reputation of the criminal street gang in a neighborhood, as retaliation for acts of opposing criminal street gangs, to threaten opposing criminal street gangs, to provoke opposing criminal street gangs, to claim territory in the name of a criminal street gang, to intimidate members of the local community, to enhance the criminal or unlawful reputation of an individual criminal street gang member or criminal street gang within the gang community, to prove or demonstrate loyalty to a criminal street gang, to aid members of a criminal street gang in criminal or unlawful endeavors, or to assist in recruiting new members to a criminal street gang.”

³ Specific intent is defined as “the intent to accomplish the precise act of criminal street gang activity that one is alleged to have been engaged.”

very well could be and likely would be legitimate law enforcement investigatory reasons and even officer safety concerns with notifying every person upon their inclusion that they are in a database and potentially the target of an investigation. This would never happen in the normal course of investigatory work, namely, that potential targets are notified when an investigation commences.

Juvenile Provisions

PERA's recommendation here seeks for notice to be provided to juveniles and their guardians of their gang member designation. It is unclear per the recommendation if this notification is to come before or after the designation and inclusion in the database. Regardless, the police department policy as well as the ordinance in Section 18 ½-2(f)(9)(b) state that "*prior to*" adding or designating a juvenile as a gang member, the notifications shall take place. Therefore, it is the department's position, assuming PERA intends their recommendation of notification to apply before the inclusion and/or designation, that existing policy is consistent with PERA's recommendation.

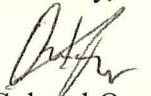
Where PERA's recommendation and the existing policy differ is the recommendation seeks referrals of juveniles to "community-based programs, including counseling and educational opportunities." To begin, it is unclear what the aim of this inclusion would be in the existing policy. Furthermore, it is unclear as to when these referrals would take place: at the time of notification of pending inclusion or after they have successfully challenged the inclusion? Regardless, I would be concerned with referring potential or established gang members to any outside entities or community-based partners.

Recommendation for Juvenile Assistance

I consider these recommendations for referrals to local organizations as unclear, similar to the above, specifically as to where and when any referrals would fall in the juvenile designation appeal process. Additionally, as already stated, we do already utilize the Juvenile Hearing Board as a rehabilitative alternative to traditional juvenile court for a wide variety of juvenile offenses, provided the referral meets the criteria in the ordinance for referral.

Thank you for your recommendations. Should you have any additional questions, please feel free to contact me at your convenience.

Sincerely,



Colonel Oscar Perez
Chief of Police

Cc: Mayor Brett P. Smiley
City Council President Rachel Miller
City Clerk Tina Mastroianni