The Just Criminal Justice Group, LLC

Michael A. DiLauro, Esq.
Owner/Manager

TESTIMONY IN OPPOSITION TO 2026—H 8088 & 2026—S 3168

Rhode Island has a long and distinguished history of affording its citizens robust substantive and procedural protections grounded in state law that outlaw the type of intrusions that could become lawful should this legislation be enacted. These protections exceed those afforded by its federal counterpart and include the following:

Substantive Protections.

- In contrast to the 4th Amendment of the US Constitution, the Rhode Island Constitution's provision pertaining to search and seizure provides additional protections, including a requirement that the application describe "as nearly as may be" the place to be searched and the persons or things to be seized before a search warrant may issue. [i]

- Over the years both the Rhode Island General Assembly and Supreme Court have acted consistently with the additional protections afforded by *RI Const. Art.1, Sec.6* by:

  - enacting a statutory exclusionary rule for by creating a statutory exclusionary rule for violations [ii]

  - prohibiting certain law enforcement investigative tools like road blocks [iii]

- Enactment of this legislation would inevitably lead to increased opportunities for the police to seize evidence of a most intimate and personal nature, by force if necessary, including breath, blood, and other bodily fluids.

- There has not been nor can there be a claim that the current statutory scheme has inhibited law enforcement in the successful investigation, charging, and prosecution of serious impaired driving cases.

Procedural Protections.

- The Rhode Island Supreme Court has recognized the importance of the statutorily created and appropriate procedural protections necessary for the fair administration of justice, especially when warrants are sought for the seizure of biological evidence that may yield a genetic profile or potential indicia of impaired driving. [iv]

401.487.3644 • madpd2001@yahoo.com • PO Box 7000 • Warwick, RI 02887-7000

- Ideally, any procedures promulgated by legislation, court rule or decisions to get at sensitive evidence relevant to the determination of whether or not a motorist is impaired should contain enhanced procedural protections. Some of these enhanced procedures acknowledged as "best practices" are not contained in the legislation. These include but are not limited to the following:

    - Reliable electronic means for transmitting the application and the warrant. Although the legislation contains the phrase "reliable electronic means" it does not specify what is required to satisfy that predicate such as the use of a dedicated court portal or secure email

    - Allow for flexibility to adapt to emerging technologies by not prescribing the specific electronic or digital methods of transmission

    - Provision for oral testimony by telephone or video to allow officers to be sworn in remotely without having to give the oath in-person

    - Language that addresses the need for recording the oral statement and certification by the judge that the sworn oral statement is a true recording under oath

    - Language that addresses the retention of the recording as part of the record of proceedings

    - The use of "best practices" in this context should also include the direct involvement of stakeholders in the formulation of legislation and any changes necessary to court rules and procedures necessary to effectuate the implementation of electronic search warrants [v]

Michael A. DiLauro, Esq.
The Just Criminal Justice Group, L.L.C.
P.O. Box 7000
Warwick, RI 02887-7000
401-487-3644
madpd2001@yahoo.com

ENDNOTES

---

[i]

- *US Const. Amend. 4.* The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

- *RI Const. Article 1, Section 6. Search and seizure.* The right of the people to be secure in their persons, papers and possessions, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but on complaint in writing, upon probable cause, supported by oath or affirmation, and describing as nearly as may be, the place to be searched and the persons or things to be seized.

- Perhaps the best example of the power of and the Rhode Island Supreme Court's reliance on this language is *State v. Costakos, 226 A.2d 695 (RI 1967).* In *Costakos* the State Police obtained an otherwise valid search warrant for a Newport mansion that had been subdivided into numerous separate apartments. The court in overturning the conviction held that the warrant did not describe the place to be searched with "particularly" and "as nearly as may be". Instead, it commanded the police to conduct a blanket or general search of an entire building thereby making it unreasonable and the warrant invalid and defective.

[ii]

- *§ 9-19-25. Illegally seized evidence inadmissible*. In the trial of any action in any court of this state, no evidence shall be admissible where the evidence shall have been procured by, through, or in consequence of any illegal search and seizure as prohibited in § 6 of article 1 of the constitution of the state of Rhode Island.

- In *Weeks v. United States, 232 US 383 (1914)* the US Supreme Court issued two important holdings. First, the Court held that the Fourth Amendment's guarantee against unreasonable searches and seizures prohibited the use at trial of evidence seized by federal officials in violation of the Fourth Amendment to the Constitution. Second, the Court held that the limitations on government action provided by the Fourth Amendment did not apply to state and local officials. It wasn't until 1961 that the exclusionary rule created by the court in *Weeks* was made binding upon the states in *Mapp v. Ohio, 367 US 643 (1961).* In *Mapp*, the Supreme Court of the United States adopted the exclusionary rule as a national standard. Thus, *§ 9-19-25* , enacted in 1938, receded the application of the exclusionary rule to the states for 4th Amendment violations by about twenty-three (23) years.

[iii]

Pimental v. Department of Transportation, 561 A.2d 1348 (RI 1989) (state's founders valued freedom and liberty above all other interests of society therefore court declines to dilute the

guarantees of the Rhode Island Constitution Art. 1, Sec. 6 holding that police roadblocks for drunk driving are so violative of our citizens' rights that they must be declared unconstitutional).

[iv]

- *State v. Dearmas, 841 A.2d 659 (RI 2004)* (holding that blood samples forcibly taken from a living person for DNA testing do not constitute "property" under the search warrant statute (G.L. 1956 § 12-5-2).

- *State v. DiStefano, 764 A.2d 1156 (R.I. 2000)* (a sharply divided court held that the search warrant statute did not contemplate the seizure of evidence in impaired driving cases in the absence of consent and that in order to so changes must emanate from the General Assembly)

- Following the *Dearmas* ruling, the Rhode Island General Assembly amended the law, ensuring that warrants can now be issued for "samples of blood, saliva, hair, bodily tissues, bodily fluids, or dental impressions" to identify suspects, making them admissible in court.

[v]

This final section is taken almost entirely from *Borakove & Banks, IMPROVING DUI SYSTEM EFFICIENCY: A Guide to Implementing Electronic Warrants by the National Sheriffs Association, Foundation for Advancing Alcohol Responsibility, and the Justice Management Institute*. Available at https://www.responsibility.org/wp-content/uploads/2018/04/FAAR_3715-eWarrants-Interactive-PDF_V-4.pdf (last accessed 3/31/26)