

MEMORANDUM

TO: Mike Hanlon
FROM: Jim Martin
DATE: August 24, 2020
RE: 8/24/20 letter to City Council

Dear Mike:

Please circulate the enclosed letter among members of Allentown City Council. Thank you

Jim Martin

Enc.

JAMES B. MARTIN
District Attorney



OFFICE OF THE DISTRICT ATTORNEY
LEHIGH COUNTY COURTHOUSE

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August 24, 2020

Allentown City Council
435 Hamilton Street
Allentown, PA. 18101

RE: Resolution R-2020 and letter to Council from the ACLU

Dear Council:

At the request of Police Chief Glenn Granitz, I was asked to review some portions of Resolution R-2020 and provide my opinion as to potential legal issues that could arise with certain areas. I prepared a memorandum for the Chief that provided a brief overview of the pertinent issues, and consented to his sharing it with all of you. The ACLU has provided you with a response to my memorandum and after reviewing it, I am compelled to reply so that you may have a complete and accurate picture as to my assessment of Resolution R-2020 as it was presented to me at the time of my memo.

I first wish to note that my memorandum was drafted in response to a distinct inquiry in regard to potential legal issues. I was not asked my opinion as to the propriety of the resolution as a whole or the validity of the concerns of Council. As such, my memorandum should not be construed to express any such opinions on these matters. I certainly do not object to a balanced and open dialogue between Council and the citizens of the City of Allentown and the County of Lehigh regarding criminal justice and law enforcement. Indeed, I, like you am a public servant and as District Attorney, am also the Chief Law Enforcement Officer of Lehigh County. It is my statutory duty to represent the Commonwealth's interests in the enforcement of its criminal laws. In this capacity, I function at times in a quasi-judicial capacity, as an investigator of crime, a prosecutor of crime, as well as a policy maker for

the purposes of combatting crime and prosecuting criminals while at the same time defending our Constitution and the rights of all.

My job requires me to be cognizant of matters not only in the courtroom but also of those in our communities. It is this awareness and concern that has led to my collaboration with other community stakeholders to create and support programs and task forces that benefit our communities.

It is not my desire to be involved in or interfere with Council's management of internal day to day operations or employment policies with regard to the Police Department. However, I do have a direct interest if those policies violate the Crimes Code. After reviewing the letter sent to you by the ACLU, I am compelled to reply in order to provide you with a more complete assessment than the one I had previously been asked to provide.

Use of Force Policies, Excessive Force, Discharge of a Weapon

In my memorandum to Chief Granitz, I set forth the section of the Crimes Code that I would apply when determining whether or not a police officer's use of force or discharge of a weapon was criminal. I stand by this authority and my reliance upon it. The intent of my general conclusions were not to be interpreted as a declaration as to Council's authority to enact any internal operation or employment policy with regard to the Police Department. Rather my intention was to advise Council should they choose to do so and to make clear that regardless of any such policy Council should wish to impose, it will not factor into my finding of criminal liability and whether or not an officer's use of force was "excessive."

My finding will be based solely on the Constitution and Crimes Code. Should Council reach a different conclusion than mine based on application of an internal policy, I simply caution you and recommend that you discuss this with your solicitor as it may have financial implications for the City should it take disciplinary action against an officer in a case where I ruled that force was neither legally excessive nor criminal, i.e. the officer may file a suit against the City.

Body Camera Audio/Video Recordings

ACLU's guidance to Council is misdirected. The ACLU is incorrect when it states that "Pennsylvania's Right to Know Law governs" this issue. In 2017, Governor Wolf signed SB 560 which amended Title 42 to include Chapter 67A - Recordings by Law Enforcement Officers. This Act specifically exempted such video recordings from the Right to Know Law. 42 Pa.C.S.A. § 67A02. Any requests for Body Camera video/audio recordings as well as review of the request must adhere to the parameters set forth in this Act and not the Right to Know Law.

Additionally, "if a law enforcement agency determines that an audio recording or video recording contains potential evidence in a criminal matter, information pertaining to an investigation or a matter in which a criminal charge has been filed, confidential information or victim information and the reasonable redaction of the audio or video recording would not safeguard potential evidence, information pertaining to an investigation, confidential information or victim information, **the law enforcement agency shall deny the request.**¹ 42 Pa.C.S.A. § 67A04(a). As District Attorney I will be consulted in such a case and will follow the foregoing and instruct the police to follow my direction.

The Criminal History Record Information Act and Home Rule

With regard to the ACLU's recitation as to the scope of your power and relevance of the Crimes Code to this authority, I agree with the ACLU that the City of Allentown is indeed governed by a Home Rule Charter and our Constitution instructs that the grant of power to a home rule municipality is to be liberally construed in favor of the municipality. However, as many other Home Rule municipalities have learned, this power is far from absolute.

¹ Pertinently, Chapter 67A defines the following terms:

"Information pertaining to an investigation." An audio recording or video recording which contains any of the following:

- (1) Complaints or depictions of criminal conduct, including all actions or statements made before or after the criminal conduct that are part of or relate to the same incident or occurrence.
- (2) Upon disclosure, information that would:
 - (i) reveal the institution, progress or result of a criminal investigation;
 - (ii) deprive an individual of the right to a fair trial or an impartial adjudication;
 - (iii) impair the ability of the Attorney General, a district attorney or a law enforcement officer to locate a defendant or codefendant;
 - (iv) hinder the ability of the Attorney General, a district attorney or a law enforcement officer to secure an arrest, prosecution or conviction; or
 - (v) endanger the life or physical safety of an individual.
- (3) Upon disclosure, information that would:
 - (i) Reveal the institution, progress or result of an agency investigation.
 - (ii) Deprive a person of the right to an impartial administrative adjudication.
 - (iii) Constitute an unwarranted invasion of privacy.
 - (iv) Hinder an agency's ability to secure an administrative or civil sanction.
 - (v) Endanger the life or physical safety of an individual.

Under the Home Rule Charter Law, “a municipality is prohibited from exercising ‘powers contrary to, or in limitation or enlargement of, powers granted by statutes, which are applicable in every part of this Commonwealth’ and uniform statutes ‘applicable in every part of this Commonwealth shall remain in effect and shall not be changed Statutes shall supersede any municipal ordinance ... on the same subject.’” 53 Pa.C.S.A. § 2962(c)(2) and (e). If a county rule or ordinance “stands ‘as an obstacle to the execution of the full purposes and objectives’ of the General Assembly” it shall be deemed invalid. “Local legislation cannot permit what a state statute or regulation forbids”. Fross v. County of Allegheny, 28 A.3d 1193, 1203 (Pa. 2011). Thus, “a municipal ordinance cannot be sustained to the extent that it is contradictory to, or inconsistent with, a state statute.” Hoffman Mining Co., Inc. v. Zoning Hearing Board of Adams Township, 32 A.3d 587, 594 (Pa. 2011) (citations omitted).

Simply put, a Home Rule Charter may not supersede any Constitutional provision or statute of statewide magnitude and where a Home Rule Charter and provision of a state statute is in conflict, the state statute will prevail.² In re Pittsburgh Citizen Police Review Board,

² See, e.g., Carter v. City of Philadelphia, 989 F. 2d 117 (3rd Cir. 1993) (the Home Rule Act did not give the City of Philadelphia legislative authority to deny veterans a preference in promotion because doing so would conflict with an Act of the General Assembly); Fross, *supra* (County’s sex offender residency restriction ordinance preempted by state law; Court did not only look at the language in the relevant state codes and local ordinance, but also considered policy and legislative intent.); Holt’s Cigar Co. v. City of Philadelphia, 10 A.3d 902 (Pa. 2011) (local ordinance which sought to prohibit the sale of products that could be used as drug paraphernalia preempted by Controlled Substance Act); Ortiz v. Com., 681 A.2d 152, 155 (Pa. 1996) (“[T]he General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or possession of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate.”); County of Delaware v. Township of Middletown, 511 A.2d 811 (Pa. 1986) (even with expanded autonomy, home rule municipalities remain subject to limitations set by the General Assembly); TWL Realty, LLC v. W. Hanover Twp. Zoning Hearing Bd., 132 A.3d 533, 540 (Pa.Cmwlt. Ct. 2016) (Ordinances allowing only “nonviolent criminals” and “nonviolent crime detainees” to reside at privately owned community work-release facility preempted by Sentencing and Parole Codes); Dillon v. City of Erie, 83 A.3d 467 (Pa.Cmwlt. 2014) (Ordinance precluding firearms in city parks, preempted by state law); Nat’l Rifle Ass’n v. City of Philadelphia, 977 A.2d 78 (Pa.Cmwlt. 2009) (Ordinances prohibiting possession and sale of assault weapons and straw purchases were preempted by state firearms act); Clarke v. House of Representatives of Com., 957 A.2d 361 (Pa.Cmwlt. 2008) (Seven Philadelphia ordinances preempted by state firearms act); City of Philadelphia v.

36 A.3d 631 (Pa.Cmwlth. 2011); In re District Attorney, Lackawanna County, 756 A.2d 711 (Pa.Cmwlth. 2000). Consequently, although municipalities have limited police power over matters of local concern and interest, the scope of this power does not extend to subjects inherently in need of uniform treatment or to matters of general public interest which necessarily require an exclusive state policy – such as those embodied in Pennsylvania’s Crimes Code and specifically, the Criminal History Records Information Act, Title 19, Chapter 91 (“CHRIA”). See, e.g., Duff v. Northampton Twp., 532 A.2d 500, 505 (Pa.Cwlth. 1987).

CHRIA extensively regulates the dissemination of criminal history record information as well as protected information, and establishes guidelines for the maintenance and security of said information. Lehigh County President Judge Edward D. Reibman once observed, “The Legislature of this Commonwealth has taken pains to regulate in considerable detail the compilation, retention, and dissemination of the information relating to criminal activity.” In re: Charles Cullen Litigation, 2006 WL 4826217 (Pa.Com.Pl. 2007). Indeed, CHRIA was enacted with the express purpose of protecting the individual right to privacy, and all Commonwealth agencies that collect, maintain, disseminate or receive Criminal History Record Information must comply.

Section 9102 defines *Criminal History Record Information* as “information that is collected by *Criminal Justice Agencies* concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any

Fraternal Order of Police, 723 A.2d 747 (Pa.Cmwlth. 1999) (the General Assembly did not violate Philadelphia’s home rule charter powers by passing a law entitling temporarily disabled police officers to higher compensation than the City allowed); Norristown Fraternal Order of Police v. DeAngelis, 611 A.2d 322 (Pa.Cmwlth. 1992) (a borough’s status as a home rule municipality does not preclude it from being bound by civil service requirements passed by the General Assembly); Schneck v. City of Philadelphia, 383 A.2d 227 (Pa.Cmwlth. 1978) (Philadelphia’s local ordinance attempting to regulate firearms was preempted by a conflicting state law notwithstanding the grant of powers in Philadelphia’s Home Rule Charter); Commonwealth v. Davis, 618 A.2d 426 (Pa.Super. 1992) (“[T]he express classification of possession of marijuana as a misdemeanor in the Controlled Substance Act is clear evidence of the General Assembly’s intent to grade the offense as a misdemeanor rather than a summary offense, notwithstanding that the sentence for the offense is consistent with a summary offense.”); 75 Pa.C.S.A. § 3316(e) (preempt “all ordinances of any municipality with regard to the use of an interactive wireless communications device by the driver of a motor).

dispositions arising therefrom.” 18 Pa.C.S.A. §9102. CHRIA defines a *Criminal Justice Agency* as “any court, or agency with the principle purpose of administering justice such as municipal police departments, district attorneys, parole boards and detention facilities.” *Id.* The “*Administration of criminal justice*” encompasses those “activities directly concerned with the prevention, control or reduction of crime, the apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage dissemination or usage of criminal history record information.” *Id.*

The PA Attorney General provides the following guidance in its CHRIA Handbook³ regarding “What are Criminal Justice Agencies”:

1. Any court including the minor judiciary
Note: The court must have criminal jurisdiction.
2. Governmental agency or subdivision thereof,
 - (a) Must be created by state or federal constitution and authorized to perform as **its primary function the administration of criminal justice. It must also allocate a substantial portion of its annual budget to this function** (emphasis added).
3. Agencies determined to be criminal justice agencies by the Office of the Attorney General after **review of applicable statutes** (emphasis supplied).

Criminal justice agencies include:

Pennsylvania State Police
Municipal Police Departments
County, Regional and State Correctional Facilities
Probation Agencies
District Attorneys
Office of Attorney General
Parole Boards

³ “The Regulatory Compliance Section of the Office of Attorney General has specific authority through its [CHRIA] Unit to perform the duties legislated by the Act and delegated to the Attorney General by Chapter 91. These duties include audit and sanction functions to develop accurate and complete criminal records system in the Commonwealth. ... The Regulatory Compliance Section is charged with the responsibility to advise, assist and educate agencies to achieve these goals.” See CHRIA Handbook, p. 1.

Pardon Boards
Sheriffs
County Detectives
Clerk of Courts
College and University Police, Act 120 certified
Housing Authority Police
Transit Police

CHRIA permits *Criminal Justice Agencies* to disseminate *Criminal History Record Information* to individuals or *Non-Criminal Justice Agencies* upon request. However, before doing so, it must extract “all notation of arrests, indictments or other information relating to the initiation of criminal proceedings where: three years have elapsed since the arrest, where no conviction has occurred and where no proceedings are pending seeking a conviction.” 18 Pa.C.S.A § 9121(b).

Criminal History Record Information “does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records.” 18 Pa.C.S.A. § 9102. CHRIA deems this information to be “Protected.” 18 Pa.C.S.A. § 9106.⁴ *Protected Information* may only be disseminated by *Criminal Justice Agencies* to other *Criminal Justice Agencies* and only pursuant to specific rules. 18 Pa.C.S.A. § 9106. CHRIA **does not** permit the dissemination of *Protected Information* to *Non-Criminal Justice Agencies* under any circumstances. 18 Pa.C.S.A. §9106(c)(1),(4).

Violations of CHRIA carry both civil liability as well as possible criminal liability. 18 Pa.C.S.A. § 9183. See, e.g., 18 Pa.C.S.A. § 3933 (Unlawful Use of Computer); 18 Pa.C.S.A. § 4911 (Tampering with Public Record or Information); 18 Pa.C.S.A. § 5101 (Obstructing Administration of Law or Other Governmental Functions); 18 Pa.C.S.A. § 5741 (Unlawful Access to Stored Communications). See also Hunt v. Pennsylvania State Police, 983 A.2d 627 (Pa. 2009) (“CHRIA provides for the possibility of

⁴ *Intelligence information* is “information concerning the habits, practices, characteristics, possessions, associations or financial status of any individual or organization compiled in an effort to anticipate, prevent, monitor, investigate or prosecute criminal activity.” *Investigative information* is “information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.” *Treatment information* is “information concerning medical, psychiatric, psychological or other rehabilitative treatment provided, suggested or proscribed for any individual charged with or convicted of a crime.” 18 Pa.C.S.A. § 9102.

actual and real damages, and reasonable costs of litigation and counsel fees, where a person is found to have been aggrieved by a violation of CHRIA; the statute also provides for the award of exemplary and punitive damages when the violation is found to be willful”).

A Citizens Review Board established for the purpose of reviewing, among other things, cases where excessive force was allegedly used and cases where a weapon was discharged, could in no way be construed as a *Criminal Justice Agency* as that term is defined in CHRIA and, thus, the dissemination of *Protected Information* would be prohibited. To the extent a Citizen Review Board would seek such information, is of great concern to the Office of the District Attorney and would be violative of the law.⁵

Contrary to the assessment provided by the ACLU, In re Pittsburgh Citizen Police Review Bd., 36 A.3d 631, 634–39 (Pa.Cmwth.Ct. 2011) is instructive and supports this position. In this case, as a result of numerous citizen complaints regarding alleged police misconduct, the City of Pittsburgh “established an Independent Citizen Review Board ... for the purpose of receiving, investigating and recommending appropriate action on complaints regarding police misconduct and for the purpose of improving the relationship between the police department and the community.” Art. 2, Section 228 of the Home Rule Charter. This Board was given the authority to initiate investigations and studies of incidents of police misconduct regardless of whether or not a complaint had been filed, to hold public hearings, and to make recommendations on policy matters, including police training, hiring and discipline.

In furtherance of the underlying investigation in this case, the Board issued subpoenas to the City’s Chief of Police seeking: “1) arrest reports and related documents pertaining to 29 arrests and 2) a large number of documents relating to the activities of the Pittsburgh Bureau of Police and police officers from other jurisdictions temporarily assigned to Pittsburgh.” The Chief and Mayor refused to honor the subpoena.

The Court of Common Pleas of Allegheny County initially ruled “in favor of the Board thereby requiring the City to produce the subpoenaed documents, except those documents otherwise protected by law. The

⁵ I note that against my advice, Allentown previously adopted an ordinance requiring firearm owners to report lost or stolen guns within 24 hours. At that time, I advised that, in my opinion, the ordinance was preempted by state law and, thus, unconstitutional. My office did not approve any charges nor prosecute any cases based on alleged violations of this ordinance. As I warned, the City was threatened with lawsuits in response to this ordinance and widely repealed it.

City produced some of that requested by the Board, but refused to produce certain police reports. Ultimately it provided these reports, but redacted those portions it deemed to be "Protected Information" under CHRIA. The lower court ruled in favor of the City and denied the Board's request for intelligence, investigative and treatment information related to police activity because that information is protected by CHRIA and the Board was not entitled this information because it is not a Criminal Justice Agency.

The Board appealed arguing that a "home rule municipality is empowered to legislate over a wide range of local interests, even in the presence of an inconsistent or conflicting law of statewide application, particularly where the local ordinance pertains, as in the present case, to municipal personnel and administration." The Commonwealth Court affirmed the order of the lower court.

In reaching its decision, the Court observed that there was no dispute that the Board was not a Criminal Justice Agency as defined by CHRIA and although criminal history record information may be disseminated to **non-criminal justice agencies**, Protected Information as defined by CHRIA may not. In re Pittsburgh Citizen Police Review Bd., 36 A.3d at 635 and n. 4. The Court further observed "CHRIA is a statute concerning substantive matters of statewide concern and not merely concerning the personnel or administration of the City. Specifically, it concerns the dissemination of criminal records."

The Court acknowledged the Board's assertion that the requested information was "being used for personnel or administrative purposes because an investigation using the documents could result in the discipline of City police officers," but observed that nevertheless, "the information protected by the CHRIA is used for much more than making determinations as to whether police misconduct has taken place. Criminal justice agencies may disseminate this information pursuant to the CHRIA for any number of reasons not related to the personnel and administration of a particular home rule municipality." The Court therefore held that "CHRIA supersedes the City's Home Rule Charter, and the trial court did not err by denying the Board's request for intelligence, investigative and treatment information protected by the CHRIA." Id. at 636.

According to the ACLU, the Court's decision in In re Pittsburgh Citizen Police Review Bd., was premised on the fact that the documents requested by the Board potentially could contain information regarding arrested individuals not connected to the City or law enforcement personnel temporarily assigned to the City for the G-20 conference. I disagree.

In support for its position, the ACLU cited to only a portion of the rationale provided by the Court for its decision. The remainder of the Court's reasoning included as follows:

Finally, the information protected by the CHRIA is used for much more than making determinations as to whether police misconduct has taken place. Criminal justice agencies may disseminate this information pursuant to the CHRIA for any number of reasons not related to the personnel and administration of a particular home rule municipality. Therefore, the CHRIA supersedes the City's Home Rule Charter, and the trial court did not err by denying the Board's request for intelligence, investigative and treatment information protected by the CHRIA.

Id., at 636. A plain reading and complete review of this case can leave no doubt that a Board such as the one established in Pittsburgh would not be a Criminal Justice Agency and CHRIA cannot be expanded or impeded by a Home Rule Charter.⁶ Should Council nevertheless choose to create a Citizen's Review Board for the purpose of conducting inquiries into police interaction with those in the community I advise that pursuant to CHRIA, this Board would not be entitled to receive that which would be the most relevant to its determination – i.e. "Protected Information."

⁶ See e.g., Commonwealth v. Pennsylvania State Police, 146 A.3d 814, 818 (Pa.Cmwlth.Ct. 2016) (although a quasi-adjudicatory agency, Office of Open Records primary purpose is providing information and education, and issuing advisory opinions and final determinations under the RTKL; OOR does not function as an agency "authorized to perform as its principal function the administration of criminal justice"and is not a Criminal Justice Agency under CHRIA"); Barros v. Martin, 92 A.3d 1243 (Pa.Cmwlth.Ct. 2014) ("the criminal complaint file, forensic lab reports, any confession and record of polygraph of Quinones, the 'Communication Center Incident Review,' the 'Internal Police Wanted Notice,' 'Reports on individual mistakenly apprehended,' and three signed witness statements" are records relating to a criminal investigation and protected from disclosure); Coley v. Philadelphia District Attorney's Office, 77 A.3d 694 (Pa.Cmwlth.Ct. 2013) (witness statements were "investigative information" protected by CHRIA even though they were made public during trial and thus could not be disseminated by a Criminal Justice Agency to a Non-Criminal Justice Agency); Pennsylvania State Police v. Office of Open Records, 5 A.3d 473 (Pa.Cmwlth.Ct. 2010) (an incident report even in a redacted form, was protected under CHRIA); Department of the Auditor General v. Pennsylvania State Police, 844 A.2d 78 (Pa.Cmwlth.Ct. 2004) (Auditor General is not a Criminal Justice Agency and not authorized by CHRIA to receive protected information).

By contrast, I observe that the Allentown Police Department's Office of Professional Standards is well positioned to review all relevant information and is already established for the purpose of:

assur[ing]the public that the policies, procedures, values, and guiding principles of the department are upheld. The Office also maintains to establish a prompt, fair, thorough, factual, and impartial means to investigate complaints or allegations involving APD personnel. When deficiencies are identified, the Office of Professional Standards will recommend to the Chief of Police the policies and procedures necessary to guide the department toward the primary vision.

The goals of the Office of Professional Standards are to protect the public, protect the department and personnel, and to discover unsatisfactory performance.

<https://www.allentownpa.gov/Police/Divisions-and-Units/Office-of-Professional-Standards>

Stop and Frisk

With regard to my brief and general comment as to Council's proposal to "Ban" "Stop and Frisk", my intent was to merely direct Chief Granitz to what I believe controls this issue, which is the Fourth Amendment of the US Constitution. This is precisely what we teach at the Police Academy and reinforce at the many meetings and trainings we conduct with the Allentown Police Department, Pennsylvania State Police, and other municipal police departments in Lehigh County.

"Stop" and "Frisk" are distinct legal terms. To be clear what each legally means, we regularly provide police as well as our prosecutors with updated instruction as to the following:

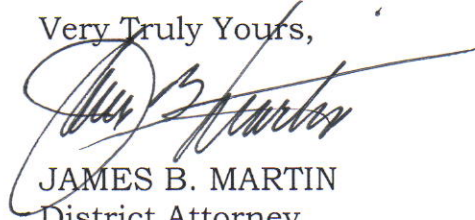
- MERE ENCOUNTER - The law does not require there be any level of suspicion for a police officer to encounter a person. Police are always free to initiate contact with any member of the public and request information. However, such an encounter carries with it no official compulsion for the person to stop or respond.
 - Our instruction to officers is that if a person chooses not to respond, they cannot detain that person or force the interaction in any way. The individual maintains the right to ignore the police and go about his business.
 - This level of interaction is not considered a "Stop" as the courts has defined that term.
 - Officers are NOT permitted to "frisk" any person under these circumstances

- STOP (Also called a “Terry” Stop or Investigative Detention) - If an officer has specific and articulable suspicion that there is criminal activity afoot and that suspicion is reasonable, only then may the officer stop that person for a period of time.
 - That time period may only be the length of time it reasonably takes to investigate the circumstances that provoked suspicion
 - We instruct the officers as to examples that the courts have deemed to be “suspicious” facts that would support a “stop” and what facts are not reasonable and not a permissible basis to “Stop” a person.
 - A traffic stop can only occur under these circumstances – i.e. reasonable suspicion of a violation of the Vehicle or Criminal Code, or a City Ordinance
- When an officer has conducted a “Stop” they may only frisk that person if the officer reasonably believes that the person may be armed or that officer’s safety is in jeopardy.
 - We instruct the officers as to examples that the courts have deemed to be reasonable facts to support a frisk as well as facts which are not deemed reasonable
 - For example, we instruct that officers may NOT frisk someone simply because they think the person may have drugs or other contraband on their person

As previously noted, one aspect of my job is to defend the Constitution. Thus, if my Office determined that a stop or frisk was violative of the Fourth Amendment, we would not defend it and would not proceed to trial on charges resulting from that interaction. It would seem apparent that we all want police to engage with the community they serve. These interactions should be done professionally and respectfully in a way that is ultimately beneficial to the community as a whole. Simply banning “Stop and Frisk” without an understanding or clear directive as to what those terms mean to the Council and to the Police will only create confusion and possible barriers to meaningful interactions between the community and its police department. I encourage Council to simply support our instruction that the Police department act professionally, respectful, and perform their duties within the parameters permitted them under our Constitution and not based on any other discriminatory factor(s). No further limitations are warranted nor legally justified. And, I will instruct the police to continue to follow the law irrespective of any resolution or ordinance.

I recommend that Council consult with your Solicitor prior to enacting any ordinances that would infringe on any of these aforementioned issues.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read 'James B. Martin', with a large, stylized initial 'J' and a long horizontal flourish extending to the right.

JAMES B. MARTIN
District Attorney

Cc: Chief Glenn Grantiz,