

## **2.2 Bias Based Policing**

### **I. POLICY**

We are committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, sexual orientation, national origin, ethnicity, age, or religion. Respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and by statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions that support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement consensual contacts between officers and the public.

### **II. PURPOSE**

The purpose of this order is to inform officers that bias-based policing is prohibited by the department. Additionally, this order will assist officers in identifying key contexts in which bias may influence these actions and emphasize the importance of the constitutional guidelines within which we operate.

### **III. DEFINITIONS**

Most of the following terms appear in this policy statement. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

- A. Bias: Prejudice or partiality based on preconceived ideas, a person's upbringing, culture, experience, or education.
- B. Biased-based policing: Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.
- C. Ethnicity: A cluster of characteristics that may include race but also cultural characteristics or

traits that are shared by a group with a common experience or history.

- D. Gender: Unlike sex, a psychological classification based on cultural characteristics or traits.
- E. Probable cause: Specific facts and circumstances within an officer's knowledge that would lead a reasonable officer to believe that a specific offense has been or is being committed, and that the suspect has committed it. Probable cause will be determined by the courts reviewing the totality of the circumstances surrounding the arrest or search from an objective point of view.
- F. Race: A category of people of a particular decent, including Caucasian, African, Hispanic, Asian, Middle Eastern, or Native American descent. As distinct from ethnicity, race refers only to physical characteristics sufficiently distinctive to group people under a classification.
- G. Racial profiling: A law-enforcement initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.
- H. Reasonable suspicion: Specific facts and circumstances that would lead a reasonable officer to believe criminal activity is afoot and the person to be detained is somehow involved. Reasonable suspicion will be determined by the courts reviewing the totality of the circumstances surrounding the detention from an objective point of view.
- I. Sex: A biological classification, male or female, based on physical and genetic characteristics.
- J. Stop: An investigative detention of a person for a brief period of time, based on reasonable suspicion.

#### **IV. PROCEDURES**

##### **A. General responsibilities**

1. Officers are prohibited from engaging in bias-based profiling or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes. (TBP: 2.01)
2. Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, subject stops, arrests, nonconsensual searches, and property seizures. Except as provided in number 3 below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.
3. Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity to an unlawful incident(s). Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion. Except as provided above, reasonable suspicion or

probable cause shall form the basis for any enforcement actions or decisions. Individuals shall be subjected to stops, seizures, or detentions only upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.

4. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
  - a. As traffic stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. How the officer disengages from a traffic stop may be crucial to a person's perception of fairness or discrimination.
  - b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.
5. All personnel shall treat everyone with the same courtesy and respect that they would have others observe to department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
  - a. Personnel shall facilitate an individual's access to other governmental services whenever possible and shall actively provide referrals to other appropriate agencies.
  - b. All personnel shall courteously accept, document, and forward to the Chief of Police any complaints made by an individual against the department. Further, officers shall provide information on the complaint's process and shall give copies of "How to Make a Complaint" when requested.
6. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety.
7. When concluding an encounter, personnel shall thank him or her for cooperating.
8. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give their departmental identification number, name of the immediate supervisor, or any other reasonable information.
9. All personnel are accountable for their actions. Personnel shall justify their actions when required.

#### B. Supervisory responsibilities

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties and those of their subordinates. Supervisors shall identify and correct instances of bias in the work of their subordinates.
2. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with this order and the constitutional requirements of law enforcement.
3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are critical to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.
4. Supervisors are reminded that biased enforcement of the law engenders not only mistrust of law enforcement but increases safety risks to personnel as well as exposing the employee(s) and department to liability.
5. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates if the supervisor knew, or should have known, of the subordinate's actions.
6. Supervisors shall ensure that all enforcement actions are duly documented per departmental

policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable. Any enforcement action that begins as a consensual encounter will also have the circumstances of the initial encounter documented.

7. Supervisors shall facilitate the filing of any complaints about law- enforcement service.
8. Supervisors will randomly review at least three video tapes per officer (either body camera and/or in-car camera video) per quarter. For this policy, a “quarter” is defined as a 3-month period of time. Supervisors are not required to watch each incident of an entire shift; however, reviewing the footage in a manner intended to gain an understanding of that officer’s performance and adherence to policy and law is required. Supervisors will document the random review of the video in their daily activity logs and any violations of policy or law will be addressed using existing internal affairs policy. (TBP: 2.01)
9. Section 8 above applies only to first-line uniformed officers and their immediate supervisors. In the absence of a first-line supervisor this responsibility will move to the Chief of Police.

#### C. Disciplinary consequences

1. Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

#### D. Training (TBP: 2.01)

1. Officers shall complete all training required by state law regarding bias- based profiling.

## **II. COMPLAINTS**

- A. The department’s complaint process and its bias-based profiling policy will be posted on the department’s website. The information shall include, but is not limited to, the email, physical address, and telephone contact information for making a complaint against an employee. Whenever possible, the media will be used to inform the public of the department’s policy and complaint process.
- B. Complaints alleging incidents of bias-based profiling will be fully investigated as described under Policy 2.4.
- C. Complainants will be notified of the results of the investigations when the investigation is completed.

## **III. RECORD KEEPING**

- A. The department will maintain all required records on traffic stops where a citation or warning is issued or where an arrest is made after a traffic stop.
- B. The information collected above will be reported to the town council as required by law.
- C. The information will also be reported to TCOLE in the required format.