

# LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS

## RACIAL PROFILING POLICY

### *POLICY A*

(with Cameras)

#### I. PURPOSE

The purpose of this policy is to reaffirm the \_\_\_\_\_ Department's commitment to unbiased policing in all its encounters between officer and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

#### II. POLICY

It is the policy of this department to police in a proactive manner and to aggressively investigate suspected violations of law. Officers shall actively enforce state and federal laws in a responsible and professional manner, without regard to race, ethnicity, or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in this policy. This policy shall be applicable to all persons, whether drivers, passengers or pedestrians.

Officers shall conduct themselves in a dignified and respectful manner at all times when dealing with the public. Two of the fundamental rights guaranteed by both the United States and Texas constitutions are equal protection under the law and freedom from unreasonable searches and seizures by government agents. The right of all persons to be treated equally and to be free from unreasonable searches and seizures must be respected. Racial profiling is an unacceptable patrol tactic and will not be condoned.

This policy shall not preclude officers from offering assistance, such as upon observing a substance leaking from a vehicle, a flat tire, or someone who appears to be ill, lost or confused. Nor does this policy prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.

#### III. DEFINITIONS

**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.

Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants or other citizen contacts. The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision. Race, ethnicity or national origin may be legitimate factors in a

detention decision when used as part of an actual description of a specific suspect for whom an officer is searching. Detaining an individual and conducting an inquiry into that person's activities simply because of that individual's race, ethnicity or national origin is racial profiling. Examples of racial profiling include but are not limited to the following:

- (a) Citing a driver who is speeding in a stream of traffic where most other drivers are speeding because of the cited driver's race, ethnicity or national origin.
- (b) Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess that specific make or model of vehicle.
- (c) Detaining an individual based upon the determination that a person of that race, ethnicity or national origin does not belong in a specific part of town or a specific place.

A law enforcement agency can derive at two principles from the adoption of this definition of racial profiling:

- (1) Police may not use racial or ethnic stereotypes as factors in selecting whom to stop and search, while police may use race in conjunction with other known factors of the suspect.
- (2) Law enforcement officers may not use racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling is not relevant as it pertains to witnesses, etc.

**Race or Ethnicity** – Of a particular decent, including Caucasian, African, Hispanic, Asian, or Native American.

**Pedestrian Stop** – An interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

**Traffic Stop** – A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic.

## IV. TRAINING

Officers are responsible for adhering to all Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law.

All officers shall complete a TCLEOSE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. A person who on September 1, 2001, held a TCLEOSE intermediate proficiency certificate, or who had held a peace officer license issued by TCLEOSE for at least two years, shall complete a TCLEOSE training and education program on racial profiling not later than September 1, 2003.

The chief of police, as part of the initial training and continued education for such appointment, will be required to attend the LEMIT program on racial profiling.

An individual appointed or elected as a police chief before the effective date of this Act shall complete the program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

## **V. COMPLAINT INVESTIGATION**

- A. The department shall accept complaints from any person who believes he or she has been stopped or searched based on racial, ethnic or national origin profiling. No person shall be discouraged, intimidated or coerced from filing a complaint, nor discriminated against because he or she filed such a complaint.
- B. Any employee who receives an allegation of racial profiling, including the officer who initiated the stop, shall record the person's name, address and telephone number, and forward the complaint through the appropriate channel or direct the individual(s). Any employee contacted shall provide to that person a copy of a complaint form or the department process for filing a complaint. All employees will report any allegation of racial profiling to their superior before the end of their shift.
- C. Investigation of a complaint shall be conducted in a thorough and timely manner. All complaints will be acknowledged in writing to the initiator who will receive disposition regarding said complaint within a reasonable period of time. The investigation shall be reduced to writing and any reviewer's comments or conclusions shall be filed with the chief. When applicable, findings and/or suggestions for disciplinary action, re-training, or changes in policy shall be filed with the chief.
- D. If a racial profiling complaint is sustained against an officer, it will result in appropriate corrective and/or disciplinary action, up to and including termination.
- E. If there is a departmental video or audio recording of the events upon which a complaint of racial profiling is based, upon commencement of an investigation by this department into the complaint and written request of the officer made the subject of the complaint, this department shall promptly provide a copy of the recording to that officer.

## **VI. PUBLIC EDUCATION**

This department will inform the public of its policy against racial profiling and the complaint process. Methods that may be utilized to inform the public are the news media, radio, service or civic presentations, the Internet, as well as governing board meetings. Additionally, information will be made available as appropriate in languages other than English.

## **VII. CITATION DATA COLLECTION & REPORTING**

An officer is required to collect information relating to traffic stops in which a citation is issued. On the citation officers must include:

- (1) the violator's race or ethnicity;
- (2) whether a search was conducted;

- (3) was the search consensual; and
- (4) whether an arrest was made for this cited violation or any other violation.

By March of each year, the department shall submit a report to its governing board that includes the information gathered by the citations from the preceding calendar year. The report will include:

- (1) a breakdown of citations by race or ethnicity;
- (2) number of citations that resulted in a search;
- (3) number of searches that were consensual; and
- (4) number of citations that resulted in custodial arrest for this cited violation or any other violation.

This report will not include identifying information about a peace officer who makes a stop or about an individual who is stopped or arrested by a peace officer.

## **VIII. USE OF VIDEO AND AUDIO EQUIPMENT**

Peace officers and this department are exempt from the compilation, analysis and reporting requirements in Section VIII above if during the calendar year before the date that a report under Section VIII above is due:

- (1) Each motor vehicle regularly used by this department to make traffic and pedestrian stops is equipped with a video camera and transmitter-activated equipment, and each motorcycle regularly used by this department to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and
- (2) Each traffic and pedestrian stop made by an officer of this department that is capable of being recorded by video and audio, or audio, as appropriate, is recorded.

This department shall retain the video and audiotapes, or the audiotape of each traffic and pedestrian stop, for at least ninety (90) days after the date of the stop. If a complaint is filed with this department alleging that one of our officers has engaged in racial profiling with respect to a traffic or pedestrian stop, this department shall retain the video and audiotapes, or the audiotape, of the stop until final disposition of the complaint.

Supervisors will ensure officers of this department are recording their traffic and pedestrian stops. A recording of each officer will be reviewed at least once every ninety (90) days. If the equipment used to record audio and/or video of traffic or pedestrian stops is malfunctioning or otherwise not operable, the officer making the stop shall properly record and report the information as required in Section VIII above.

NOTE: This model policy is intended as a guide. It should be reviewed by legal counsel prior to modification and implementation in any specific community.

# RACIAL PROFILING POLICY

## *POLICY B*

(without Cameras)

### I. PURPOSE

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- C. Investigation of a complaint shall be conducted in a thorough and timely manner. All complaints will be acknowledged in writing to the initiator who will receive disposition regarding said complaint within a reasonable period of time. The investigation shall be reduced to writing and any reviewer's comments or conclusions shall be filed with the chief. When applicable, findings and/or suggestions for disciplinary action, retraining, or changes in policy shall be filed with the chief.
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## **VII. COLLECTION AND REPORTING INFORMATION GATHERED FROM TRAFFIC AND PEDESTRIAN STOPS**

An officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense, shall record and report the following information:

- (1) A physical description of each person detained as a result of the stop, including:
  - (a) The person's gender;
  - (b) The person's race or ethnicity, as stated by the person or as determined by the officer to the best of his/her ability.

- (2) The street address or approximate location of the stop.
- (3) The suspected offense or the traffic law or ordinance alleged to have been violated.
- (4) Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search.
- (5) Whether probable cause to search existed and, if so, the fact(s) supporting the existence of that probable cause.
- (6) Whether any contraband was discovered in the course of the search and, if so, the type of contraband discovered.
- (7) Whether the officer made an arrest as a result of the stop and/or search, and, if so, a statement of the offense charged.
- (8) Whether the officer issued a warning or a citation as a result of the stop and, if so, a statement of the offense charged.

This department shall compile and analyze the information contained in these individual reports. Not later than March 1<sup>st</sup> of each year, this department shall submit a report to our governing body containing the information compiled from the preceding calendar year in a manner they approve.

This report will include:

- (1) A comparative analysis of the information contained in the individual reports in order to:
  - (a) Determine the prevalence of racial profiling by officers in this department; and
  - (b) Examine the disposition of traffic and pedestrian stops made by this department's officers, including searches resulting from stops.
- (2) Information relating to each complaint filed with this department alleging racial profiling.

This report will not include identifying information about a peace officer who makes a stop or about an individual who is stopped or arrested by a peace officer.

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