



| | |
|--|---|
| Bias-Based Policing | Related Policies: Stops, Search & Arrest; Motor Vehicle Contacts; |
| <i>This policy is for internal use only and does not enlarge an employee’s civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i> | |
| Applicable Arkansas Statutes: A.C.A. § 1-2-503 (2011), 1-2-504 | |
| CALEA Standard: 1.2.9 | |
| Date Implemented: | Review Date: |

I. Purpose

- A. Members of this department shall not violate the constitutional rights of persons, regardless of race, ethnicity, national origin or religion (note that other statements may be included in your policy as deemed appropriate by the particular law enforcement agency; these include but are not limited to: color, creed, gender, age, sexual orientation, disability or any other belief system).
- B. This policy serves to (1) reaffirm this department’s commitment to unbiased law enforcement practices, (2) further clarify the circumstances in which officers may consider race or ethnicity when making enforcement decisions, and (3) reinforce procedures that assure the public this department is providing service and enforcing laws in an equitable and lawful fashion.¹

II. Policy: It is the policy of this department to respect the rights of all persons. As such, this department will work diligently to ensure the following:

- A. Law enforcement officers of this department shall not violate citizens’ equal protection rights. Toward this end, members are prohibited from engaging in racial/bias profiling in any aspect of law-enforcement activity as defined by this policy.
- B. It shall be the policy of this department that officers base pedestrian or motor vehicle stops, detentions, investigative activities, searches, property seizures, or arrests of a person upon a standard of reasonable suspicion or probable cause in compliance with the United States and Arkansas Constitutions as well as federal and state law.
- C. Law enforcement officers of this department shall be prohibited from utilizing race, ethnicity, national origin, or religion to any degree in making law enforcement decisions, except to determine whether a person matches the description of a particular suspect. ²

- D. The statements of policy and definitions contained herein shall not be construed or interpreted to be contrary to the Arkansas Rules of Criminal Procedure or the Constitutions of the United States or the State of Arkansas.³

III. Definitions

- A. “Probable cause” means that set of facts or circumstances based on reliable information, personal knowledge or observation by an officer, which reasonably shows and would warrant an ordinary prudent person in believing that a particular person has committed, is threatening, or is about to commit some criminal violation of the law. This definition is subject to federal and state court interpretation and other applicable law.
- B. “Reasonable suspicion” means suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion.⁴ This definition is subject to federal and state court interpretation and other applicable law.
- C. “Reasonable cause to believe” means a basis for belief in the existence of facts, which, in view of the circumstances under and purposes for which the standard is applied, is substantial, objective, and sufficient to satisfy applicable constitutional requirements.⁵ This definition is subject to federal and state court interpretation and other applicable law.
- D. “Reasonable belief” means a belief based on reasonable cause to believe.⁶ This definition is subject to federal and state court interpretation and other applicable law.
- E. “Racial profiling” means the practice of a law enforcement officer relying, to any degree, on race, ethnicity, national origin or religion in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity, except that racial profiling does not include reliance on the criteria in combination with other identifying factors when the law enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect, and the description is thought to be reliable and locally relevant.⁷ This definition is subject to federal and state court interpretation and other applicable law.

IV. Field Officer Responsibilities

- A. Members of this law enforcement agency, whether sworn, civilian, or volunteer, shall treat every person with courtesy and respect when interacting with the public and will conduct all law enforcement duties in a professional manner.
- B. Officers shall base all pedestrian and motor vehicle stops, detentions, investigative activities, or arrests on a standard of reasonable suspicion or probable cause and in doing so shall not violate this policy.⁸
- C. Upon initial contact, each law enforcement officer shall provide his or her full name, written identification, jurisdiction, and the reason for the pedestrian or motor vehicle stop to the accused.⁹ If asked for a serial or badge number by the pedestrian or

driver of a motor vehicle, the law enforcement officer shall oblige, when it is reasonable to do so, by providing such information.

- D.** When stopping a pedestrian or a driver of a vehicle for an alleged motor vehicle violation, each law enforcement officer shall take into account circumstances associated with each individual pedestrian or motor vehicle stop and shall use discretion in determining whether to issue a verbal warning, a written warning, or a citation.
- E.** In an effort to minimize conflict during interactions with accused violators when stopping and or detaining persons, it is recommended that officers attempt, where feasible and reasonable, to:
 - i.** Extend a customary greeting to each person such as, “Good morning, afternoon, or evening.”
 - ii.** Identify themselves by name. For instance:
 - i.** I am Officer Smith of the _____ Law Enforcement Agency.
 - iii.** Explain the reason for the stop or detention:
 - i.** I stopped you because _____.
 - iv.** Listen politely and give the accused ample opportunity to tell his or her story and explain his or her behavior.
 - v.** Politely ask for identification and any required documents: May I please see your driver’s license, registration and proof of motor vehicle insurance?
 - vi.** Complete paperwork and advise driver or pedestrian as to what action is being taken and what, if anything, the person must do as a result, such as pay a fine, obtain a court hearing, etc.
 - vii.** Extend a departing pleasantry such as, “Please drive safely or thank you for your cooperation.”
 - viii.** Make sure the driver is able to merge safely back into traffic.¹⁰
 - ix.** Remain courteous and project a professional demeanor during the interview, questioning, or contact.
 - x.** Officers shall refrain from participating in or encouraging any actions or statements that could be reasonably perceived as racial/bias-related profiling, including, but not limited to, racial slurs or derogatory references about a minority group.
 - xi.** Officers shall report any acts of racial/bias-related profiling to their immediate supervisor as is more specifically defined herein.

V. Supervisor Responsibilities

- A.** Each supervisor is responsible for ensuring that all personnel under their command fully understand the content of this policy and are operating in compliance with the procedures herein.¹¹
- B.** Each supervisor shall be responsible for making contact, when possible, with any known complainant alleging biased law enforcement practices by his or her field

VII. Departmental Review¹³

- A.** Management of this department shall implement a systematic review process to generate quarterly analyses of the statistical information collected from the Citizen Complaint Form.
- B.** These analyses shall identify allegations specific to biased law enforcement practices.
- C.** If a pattern is identified, the Chief or his or her designee or the Internal Affairs Unit, if applicable, shall be responsible for conducting an investigation to determine whether officers of the department have violated the provisions of this policy and/or other department policies or procedures.
- D.** Officers found to have engaged in biased law enforcement practices shall receive counseling, remediation, corrective training, timely assistance and/or discipline, including but not limited to termination, in a timely manner.¹⁴

VIII. Documentation and Record Keeping¹⁵

- A.** Any 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 document the stop with the following information, which shall be included in addition to any other information documented by the officer:
 - i.** A physical description of each person detained as a result of the stop, including:
 - a.** the person's gender; and,
 - b.** the person's race or ethnicity.
 - ii.** The traffic law or ordinance alleged to have been violated or the suspected offense;
 - iii.** Whether the officer conducted a search as a result of the stop, and if so, the basis for that search: consent of the person detained, existence of probable cause, frisk for weapons, or other;
 - iv.** Whether any contraband was discovered in the course of the search and the type of contraband discovered;
 - v.** Whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
 - vi.** The street address or approximate location of the stop;
 - vii.** The date and time of the stop; and,
 - viii.** Whether the officer issued a warning or a citation as a result of the stop.
- B.** Every year, no later than April 1, this department will compile the above information relating to the race/ethnicity of individuals stopped.
- C.** The information will be reported in a format that may include, but is not limited to, the reporting of the data in numerical and/or percentage categories of ethnicity, stops, reasons for the stops, searches resulting from the stops, disposition of the stops, and the duration of the stops.

- D. This department shall also compile data on individual officers to be used in evaluation and as an early warning system for possible racial/bias profiling.
- E. The data and documentation collected pursuant to this general order shall not constitute prima facie evidence of racial profiling or any other violation of civil rights or of state or federal law.

IX. Training¹⁶

- A. Training shall comply with state law and regarding this policy. This training shall include:
 - i. Training of all current and future department employees as to this policy and the prohibition against racial/biased profiling;
 - ii. Annual in-service training stressing the understanding and respect for racial, ethnic, national, religious and cultural differences and development of effective and appropriate methods of carrying out law enforcement duties;
 - iii. Input from those classes of persons identified in the department policy in development of curriculum;
 - iv. Specific lesson plans for patrol officers, supervisors, etc.;
 - v. A review of the agency's operating procedures that implement the prohibition against racial profiling and the affirmation by department employees that they have copies of, understand, and are following the policy; and,
 - vi. If necessary and possible, foreign language instruction to ensure adequate communication with residents of a community.
- B. Further, training shall be planned and completed in compliance with the standards designed by the Commission on Law Enforcement Standards and Training ("CLEST").

X. Communication to the Community of this Policy

- A. This department shall be responsible for providing public information relating to the agency's efforts to comply with government mandates on racial profiling. This will include public education relating to the agency's complaint process. Avenues for this information may be, but not limited to, any of the following:
 - i. Pamphlets developed by the agency;
 - ii. Public service announcements concerning this policy and additional outreach efforts on local radio stations, television stations and local newspapers;
 - iii. Community meetings and public forums in which bias/racial profiling is discussed; and,
 - iv. News/press releases.
- B. Where appropriate to meet the goals of this policy, communication of this policy with the community shall be available in English and in Spanish.

XI. Retaliation

- A. No member of this law enforcement agency, regardless of rank or stature, shall retaliate against fellow officers, officials, civilians, or volunteers for reporting

incidents of biased law enforcement practices or for participating in or cooperating with the investigation of those incidents.

- B.** Actions or behaviors found to constitute retaliation shall be immediately addressed and such actions or behaviors may lead to dismissal.

XII. The Use of Mobile Video/Audio Recording (MVR) Equipment

- A.** If MVR equipment is available within the law enforcement agency, please refer to Section 100.0, The Use of Mobile Video and Audio Recording Equipment in Vehicles.

XIII. Legislative Audit Requirements

- A.** To the extent that state law mandates local law enforcement agencies to file reports with Legislative Audit, this order/policy shall be included in the annual report that the department submits to the Division of Legislative Audit.¹⁷

XIV. Public Inspection

- A.** A copy of this policy shall be kept at _____ (name specific location where the policy will be kept or posted) for public inspection.¹⁸

XV. Application

- A.** This order constitutes department policy and it is not intended to enlarge the employee's existing civil or criminal liability in any way. It shall not be construed as the creation of an additional cause of action by either the employee or any third party.¹⁹

¹ Fridell, L. Lunney, R. Diamond, D., & Kubu, B. (2001). *Racially Biased Policing: A Principled Response*. Conducted through the Police Executive Research Forum and funded by the Office of Community Oriented Policing Services under Grant No. 1999-CK-WX-0076.

² Fridell, L. Lunney, R. Diamond, D., & Kubu, B. (2001). *Racially Biased Policing: A Principled Response*. Conducted through the Police Executive Research Forum and funded by the Office of Community Oriented Policing Services under Grant No. 1999-CK-WX-0076.

³ Ark. Code Ann. 12-12-1402(b).

⁴ Ark. R. Crim. P. 2.1.

⁵ Ark. R. Crim. P. 10.1(h).

⁶ Ark. R. Crim. P. 10.1(i).

⁷ Ark. Code Ann. 12-12-1401

⁸ Commission on Accreditation of Law Enforcement Agencies (CALEA) CALEA Standard 61.1.8; 590.650 and 590.653 RSMO. Race Based Traffic Stops Procedural Instructions. Found online at www.mopca.com/members/documents/vol3/MODRACIAL.doc. See also Act 2136 of 2005, Section 3.

⁹ Commission on Accreditation of Law Enforcement Agencies (CALEA) CALEA Standard 61.1.8; 590.650 and 590.653 RSMO. Race Based Traffic Stops Procedural Instructions. Found online at www.mopca.com/members/documents/vol3/MODRACIAL.doc.

¹⁰ General Orders Manual of the Milton, Florida Police Department, Order #17, Professional Traffic Stops.

¹¹ Fridell, L. Lunney, R. Diamond, D., & Kubu, B. (2001). *Racially Biased Policing: A Principled Response*. Conducted through the Police Executive Research Forum and funded by the Office of Community Oriented Policing Services under Grant No. 1999-CK-WX-0076.

¹² Commission on Accreditation of Law Enforcement Agencies (CALEA) CALEA Standard 61.1.8; 590.650 and 590.653 RSMO. Race Based Traffic Stops Procedural Instructions. Found online at www.mopca.com/members/documents/vol3/MODRACIAL.doc

¹³ Sections VII, VIII, and X of this model policy and procedures referencing Departmental Review, Documentation and Record Keeping, and Communication to the Community of this Policy are not mandated by Arkansas law; however, it is recommended by the Arkansas Municipal League that law enforcement agencies carefully study the issue of record keeping, keeping in mind that agency's or department's budget and available manpower and determine whether they wish to implement any record keeping system.

¹⁴ See Ark. Code Ann. 12-12-1403(a)(6).

¹⁵ Sections VII, VIII, and X of this model policy and procedures referencing Departmental Review, Documentation and Record Keeping, and Communication to the Community of this Policy are not mandated by Arkansas law; however, it is recommended by the Arkansas Municipal League that law enforcement agencies carefully study the issue of record keeping, keeping in mind that agency's or department's budget and available manpower and determine whether they wish to implement any record keeping system.

¹⁶ See Ark. Code Ann. 6-11-105(a), 12-8-104, 12-12-1404 and Act 2136 of 2005, Section 5.

¹⁷ Ark. Code Ann. 12-12-1403(b)(1). Further, the name of any law enforcement agencies that fail to comply with this requirement shall be submitted to the Attorney General by the Division of Legislative Audit for appropriate actions to ensure that the policy is provided. The Attorney General is to review each policy to ensure the policy meets the standards required by law.*

¹⁸ Ark. Code Ann. 12-12-1403(c)(2).*

¹⁹ Commission on Accreditation of Law Enforcement Agencies (CALEA) CALEA Standard 61.1.8; 590.650 and 590.653 RSMO. Race Based Traffic Stops Procedural Instructions. Found online at www.mopca.com/members/documents/vol3/MODRACIAL.doc. * Act 1048 of 2007.