

New Mexico State University Police Department

Prohibition of Improper Profiling Practices

POLICY

Employees are prohibited from treating someone adversely or to engage in prejudicial conduct because of the person's race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability, or serious medical condition.

DISCUSSION

It is unethical to treat someone in an adverse manner solely because of their membership in a protected group. While it is perfectly acceptable and expected that certain characteristics of an individual may be taken into consideration while investigating a crime due to descriptions from witnesses, victims, video cameras, or other credible sources (for example, gender and race are common descriptors, just like height, build, eye color, hair style and color, and tattoos), it is not appropriate to treat someone different from others under similar circumstances just because of their membership in a protected group. Thus, it is appropriate to make contact with people who match a description provided by a witness. On the other hand, it would be a violation of policy and ethics if there are two suspects in a crime, one male and one female, if the officer arresting them decided to issue a citation to one and to take the other to the detention center based solely on gender. Disparate treatment absent the consideration of gender may be appropriate under some circumstances, however, such as if one person used a weapon and the other did not, or if one person was cooperative and the other was combative. It is also improper to observe two motorists commit the same traffic violation, but to only stop and take action against one because of his/her race or ethnicity, while letting the other go without action because of that person's race or ethnicity. These examples also apply to the other protected groups.

DEFINITIONS

Adverse Treatment: Official action that is taken against an individual that subjects them to investigation, deprives them of their freedom (even if only briefly), causes them embarrassment, results in prosecution for traffic or criminal offenses, or is otherwise undesirable.

Profiling: Using specific characteristics of an individual or group to select someone for further investigation or other law enforcement action. Profiling based on criminal activity, furtive movements, specific intelligence, witness or victim statements, video surveillance footage, and similar criteria is an appropriate technique for police officers, and is necessary and desirable to provide for the safety of the public and officers. However, it is not acceptable to use profiling based solely on membership in a protected group, nor to consider membership in a protected group unless said membership is directly related to timely, credible information that links a person with those identifying characteristics to an identified criminal incident or criminal activity in or near the area.

Protected Group: For purposes of this policy, a protected group is considered race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability, or serious medical condition. This may differ from definitions in other policies or laws.

PROCEDURES

Training: All officers hired after September 2012 shall receive training on this policy and procedures during the Field Training Officer Program. All officers shall receive initial and/or refresher training in this area during calendar year 2012, and at least once every two (2) years thereafter.

Supervisory Responsibilities: Supervisors shall monitor the actions of their assigned employees, and shall pay particular attention to any comments, behaviors, or actions that indicate the employee(s) is engaging in improper profiling practices. This may include, but is not limited to, reviewing characteristics of people stopped or arrested by the employee, examining postings made by the employee that indicate prejudice against a protected group, and overhearing comments or jokes made by the employee that suggest prejudice against a protected group.

Reporting Misconduct: Any employee who has reason to believe that an officer is acting contrary to this policy and/or procedures is required to report said conduct as soon as practical to the Chief of Police (or designee, if the Chief is not available).

Receiving Complaints from Citizens: Any complaint from a citizen that alleges a violation of this policy and/or procedures shall be forwarded as soon as practical to the Chief of Police (or designee, if the Chief is not available). The Citizen Complaint Form shall be used whenever possible. Complaints may be made in person, over the phone, via facsimile (fax) or e-mail, via a mailed letter, anonymously, or via a third party. If the person does not want to complete the Citizen Complaint Form, the employee receiving the complaint shall fill out said form on behalf of the complainant, marking in the certification and signature section "n/a". Employees shall not discourage, intimidate, coerce, or threaten retaliation against a person to discourage or prevent them from filing complaints. Copies of any letters, documentation, recordings, reports, or other information shall be included if available. In accordance with Section 29-21-3.C NMSA 1978, et seq, complaints shall be accepted unless they are made more than 180 days after the date of the alleged violation.

Investigation of Complaints: The Chief of Police (or designee) shall direct an appropriate supervisor to conduct the investigation of any complaints made under this section. A complete investigation shall be conducted without any undue delay. If the person filed the initial complaint via telephone, anonymously, or by third party, the assigned supervisor shall determine the validity of the complaint as soon as possible during the investigation, and shall ensure compliance with Section 29-14-4 NMSA 1978, et seq. The results of the investigation and all supporting documentation and evidence shall be provided to the Chief of Police (or designee). These shall be kept in the centralized Complaint Investigation files in the Police Department for a period of at least seven (7) years, regardless of outcome. If sustained, the files shall be retained for the length of employment of the person complained against, plus seven (7) years.

Findings of Violation: If the investigation reveals that an employee violated the Prohibition of Improper Profiling Practices section or violated a Section 29-21-2 NMSA, et seq., the Command Staff shall ensure appropriate corrective and/or disciplinary action is taken. In addition, a redacted copy of the complaint, disposition, and action taken shall be submitted to the New Mexico Attorney General, in accordance with Section 29-21-3.B(5) NMSA 1978, et seq. The documents submitted shall include the nature and disposition of the complaint, but shall not disclose personal identifying information of the complainant nor the officer.