

HIDALGO COUNTY SHERIFF'S DEPARTMENT

POLICY: 36

Subject: **PROHIBITION OF RACIAL PROFILING**

I. PURPOSE

The purpose of this policy is to emphasize this department's commitment to unbiased, equitable treatment of all persons in enforcing the law and providing police services.

II. POLICY

Maintenance of public trust and confidence in Hidalgo County Sheriff's Department is critical to effective law enforcement and is achieved largely through fair and equitable treatment of the public. This is a basic requirement of law enforcement and the right of all persons in our society. All persons having contact with members of this department shall be treated in a nonpartisan, fair, equitable, and objective manner, in accordance with law, and without consideration of their race, color, national origin, or other individual characteristics or distinctions as defined in this policy.

Two of the fundamental rights guaranteed by both the United States and New Mexico 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 employees 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

Race or ethnicity: means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American decent.

Racial Profiling: Discrimination in the performance of law enforcement duties or delivery of police services, based on personal prejudices or partiality of employees that interferes with their professional judgment, or training, departmental policy, or adherence to law. Racial profiling includes but is not limited to prejudicial decisions affecting individuals in classes protected by federal and state law. It also includes, for example, persons with whom employees have such "personal involvement" that they cannot act impartially, as defined herein.

Equal Treatment: In the present context, equal treatment means that persons, irrespective of race or other distinction, shall be treated in the same basic manner under the same or similar circumstances. This *does not* mean that all persons in the same or similar circumstance can or must be treated *identically* in all cases. Reasonable concessions and accommodations may be, and sometimes should be made, when dealing with individuals with physical or mental disabilities, injury, illness, infirmity, or similar conditions, or when information about them necessitates different treatment.

Police Service Functions: Sometimes referred to as community caretaking functions, these are actions and activities that may not directly include enforcement of the law but that contribute to the overall well-being and safety of the public. These include but are not limited to such tasks as assistance at fire scenes, traffic crashes, and medical emergencies, lifesaving services, crime prevention, preventive patrol, traffic control, public information, education, assistance, and similar activities.

Pedestrian Stop: means any 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: means the stopping of a motor vehicle by a peace officer for an alleged violation of law or ordinance regulating traffic *and/or* criminal offenses *and/or* in the investigation of suspected criminal activity which may or may not lead to an arrest.

IV. PROHIBITION

Hidalgo County Sheriff's Department employees are strictly prohibited from engaging in racial profiling. The prohibition against racial profiling does not preclude the use of race, ethnicity, or national origin when they may be legitimate factors in such a decision when used as part of a description of a suspect or witness for whom an employee is searching.

V. PROCEDURES

1. Fair and Equal Treatment
2. Racial profiling is prohibited both in enforcement of the law and the delivery of police services and/or community services.
3. Employees may not use race, ethnic background, gender, gender identity, sexual orientation, religion, economic status, age, or cultural group as the sole criteria for determining when or how to take enforcement action or provide police services.
4. Employees shall take equivalent enforcement actions and provide equivalent services to all persons in the same or similar circumstances.
5. Employees who cannot make objective judgments uninfluenced by prejudicial views or attitudes, intolerance to or preference for certain individuals that are unrelated to the situation at hand shall, as soon as reasonably possible, request that another employee assume responsibility for the matter after first contacting their immediate supervisor.
6. Unless exigent circumstances exist, employees shall not engage in a law enforcement matter when it involves a family member, friend, or relative such that the employee's objectivity may be, or may appear to be, compromised. Employees shall summon another employee/agency for assistance or intervention where reasonably possible.
7. Nothing in this policy prohibits employees from using the traits and characteristics of persons, such as race, ethnicity, or national origin in combination with other facts to assist in establishing reasonable suspicion or probable cause in the same manner that employees would use hair color, height, weight, or gender for such purposes.

COMPLAINTS

1. The Hidalgo County Sheriff's Department takes seriously allegations of racial profiling. Any person who believes that an employee of the Hidalgo County Sheriff's Department has engaged in racial profiling with respect to that person may file a complaint with the Sheriff, and no person shall be discouraged, intimidated, or coerced from filing such a complaint, or be discriminated against because they have filed such a complaint. All complaints must be made within 90 days of the original incident. The Department will provide complaint forms and personnel will make them available to the public.
2. The Sheriff shall accept and investigate citizen complaints alleging racial profiling by its employees. Such complaints shall be in writing or the County Employee, Deputy, or Official receiving the complaint should reduce the same to writing, and should include the time, place and details of the incident of alleged racial profiling, the identity of description of the employee involved, and the identity and manner of contacting the complainant.
3. Any employee who witnesses or is aware of instances of racial profiling or receives a citizen complaint alleging racial profiling shall forward the complaint to the Sheriff before the end of the shift. Receipt of each complaint shall be acknowledged to the complainant in writing; all such complaints shall be reviewed and investigated by the Sheriff within a reasonable period of time.
4. At the commencement of a Racial Profiling investigation involving an incident which was recorded on audio or video, the employee will promptly provide a copy of the recording to the Sheriff.
5. In investigating a complaint alleging racial profiling, the Sheriff shall also seek to determine if the employee who is subject of the complaint has engaged in a pattern of racial profiling.
6. Any employee who is found, after investigation, to have engaged in racial profiling in violation of this policy shall be subject to corrective action, which may include reprimand, diversity, sensitivity or other appropriate training or counseling; paid or unpaid suspension, termination of employment, or other appropriate action as determined by the Sheriff.

TRAINING

All employees are responsible to adhere to all NM Department Public Safety Law Enforcement Academy (NM DPS) training or an approved NMDPS accredited training.

All employees will receive basic and in-service training and, where necessary, remedial training deemed suitable for preventing incidents of racial profiling.

All Deputies/Dispatchers shall complete a NMDPS accredited training no later than the first anniversary of the date of employment with the Hidalgo County Sheriff's Department.

The Hidalgo County Sheriff's Department provides training to its law enforcement officers during orientation and every two years thereafter to assist deputies in adhering to this policy and the Prohibition of Profiling Practices Act, Laws 2009 Chapter 177 §1-4, NMSA 1978 § 29-21-1 et seq.

INVESTIGATION OF ALLEGATIONS OF ILLEGAL PROFILING

Allegations of illegal profiling will be handled as follows:

- A. All complaints will be investigated by a Hidalgo County Sheriff's Department Supervisor unless that supervisor is the subject of the complaint in which case the Sheriff shall designate an alternate investigator.
- B. Training will be utilized to address needs based on the outcome of the investigation.
- C. The Sheriff will submit a redacted copy of all complaints and a description of their disposition to the New Mexico Attorney General. The documents submitted to the Attorney General shall disclose the nature and disposition of the complaint but shall not disclose personal identifying information of a law enforcement officer or complainant.

(SEE CITIZEN COMPLAINT FORM)

CITIZEN COMPLAINT FORM

You have the right to make a complaint against any Hidalgo County Sheriff's Department Employee for improper conduct. The Department will conduct an investigation and you will be notified of the outcome if you have given us a way to contact you.

Complainant Information (if known):

Name: _____

Address: _____

Phone: _____

Email: _____

Sheriff's Department personnel involved in the alleged misconduct (if known):

Name: _____

Description of the incident (please provide as much detail as possible):

I understand that this statement will be submitted to the appropriate Hidalgo County Sheriff's Department supervisor and will serve as a basis for an internal investigation. I declare and affirm that the facts contained in this statement are complete, accurate and true to the best of my knowledge and belief. Furthermore, I agree to fully cooperate with the investigation and agree to appear at any civil or criminal proceedings, if necessary. I also understand that if I attest to any intentional false statement it may be cause for criminal and/or civil proceeding against me.

Signed: _____ Date: _____

Parent or Guardian if under 18 years of age: _____

Department personnel accepting the complaint:

Name (print) _____ Date: _____

VI. USE OF VIDEO AND AUDIO EQUIPMENT

Each motor vehicle regularly used by the Hidalgo County Sheriff's Department to make traffic and pedestrian stops should be equipped with a video camera and transmitter-activated or an audio recorder if video is not readily available.

All policies and procedures will be adhered to as stated in POLICY 33 in this policy manual for the purpose of investigating any complaints alleging racial profiling by any employee of the Hidalgo County Sheriff's Department.