

MAGDALENA MARSHAL'S OFFICE		GENERAL ORDERS	
SUBJECT: Bias Based Profiling		NUMBER: 2-39	
EFFECTIVE DATE: 7-1-2011		REVIEW DATE: 10/24/2012	
AMENDS/SUPERSEDES: 7-1-2011 Ammended 10/24/2012		APPROVED: <i>Larry Cearley</i> MARSHAL LARRY CEARLEY	

NOTE

This rule or regulation is for internal use only, and does not enlarge a police officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by the Magdalena Marshal's Office, and then only in a non-judicial administrative setting.

I. POLICY

It is the policy of the Magdalena Marshal's Office to avoid bias-based policing.

II. PURPOSE

The purpose of this policy is to avoid bias-based policing. Legislation cited is derived from the New Mexico Prohibition of Profiling Practices Act. NMSA 1978, Section 29-21-1 (2009)

III. Applicability

This policy is applicable to all officers of the Magdalena Marshal's Office

IV. DEFINITION OF Biased Base Profiling

Any police initiated action (stopping, standing, searching, etc.) that applies upon this section of individuals based solely on a common trait or group. This includes but not limited to race, ethnicity, gender, sexual orientation, religion, national origin, or any other identifiable group. This broad definition includes racial profiling.

V. Definition of Racial Profiling

Any police initiated action base on the individual race, ethnicity, or nation origin. Examples:

- A. Stopping a person and doing a pat down on the belief that a person of that race, ethnicity or national origin is most likely to possess contraband.
- b. Asking for consent to search a vehicle on the belief tat a person of that race, ethnicity or national origin is more likely to be in possession of contraband.

VI. New Mexico Statute- Profiling Practices Prohibited

In conducting an investigative activity, a law enforcement officer shall not rely on race, ethnicity, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition.

Investigative activity includes an interview, a detention, a traffic stop, a pedestrian stop, a frisk or search of a person or a search of personal or real property,

An exception to this is when an officer uss a person's description to assist in an ongoing criminal investigation. NMSA 1978, Section 29-21-2.

An officer may, for example, use the reported race, ethnicity, or national origin of a suspect in th same way she or he use specific information regarding height, weight, hair color, etc.

VII. Practical Ways to Avoid Profiling

- A. The most effective way to avoid profiling is to use reasonable suspicion when stopping (detaining) people or vehicles and using probable cause when doing a search or an arrest.
- B. The legal standard of reasonable suspicion and probable

cause, as required by the United States and New Mexico constitutions, will be used for investigative detentions, traffic stops, personal and property searches, and arrests.

- C. Reasonable suspicion is needed to detain someone. A simple, common sense definition of reasonable suspicion: You have a suspicion and it's reasonable that a person is about to commit a crime, is involved in a crime, or had committed a crime.
- D. Probable cause is needed to arrest someone. A simple, common sense definition of probable cause: A crime has been committed and this person probably did it. The key word is "probably"; this person more than likely than not "probably" did the crime.
- E. Officers must be able to articulate specific facts that support reasonable suspicion or probable cause for investigative detentions, traffic stops, personal searches, and arrests.

Stopping (detaining) an Individual

- F. Individualized reasonable suspicion is needed to stop and detain someone. Officers must be able to articulate specific facts that support reasonable suspicion when a person is detained.
- G. The facts that support reasonable suspicion to detain an individual shall be included in the criminal complaint or statement of probable cause and shall also be noted in the police report.

Doing a pat-down on an Individual

- H. Reasonable suspicion that a person is armed and dangerous (a possible threat to officers) is needed to do a pat down of someone. Officers must be able to articulate specific facts that support reasonable suspicion that a person is armed and dangerous.

- I. The facts that support reasonable suspicion to do a pat down of an individual shall be included in the criminal complaint or statement of probable cause and shall also be noted in the police report.

Procedures of a Traffic Stop

- J. Reasonable suspicion is required for a traffic stop.
- K. Officers on a traffic stop sometimes ask questions related to the traffic stop (example: questions about drugs, etc.) Officers must articulate facts or reasons as to why additional questions unrelated to the traffic stop were asked.
- L. These facts shall be included in the criminal complaint or statement of probable cause and shall also be noted in the police report.
- M. Officers on a traffic stop sometimes ask for consent to search a vehicle. Officers must articulate facts or reasons why a consent to search is requested.
- N. These facts shall be included in a criminal complaint or statement of probable cause and shall be also included in the police report.
- O. No motorist, once cited or warned, shall be detained when there is no reasonable suspicion of further activity.
- P. Absent reasonable suspicion or probable cause, a vehicle or its occupants shall not wait for a drug detection dog.
- Q. Biased based profiling can occur with any group. One example: asking to search vehicles of young people (without reasonable suspicion) more often than senior citizens. Another example: asking to search a vehicle (without reasonable suspicion) in one part of town more often than another part of town.

Non-citation or non arrests situations

- R. A person may be detained or searched without being cited or arrested. The legal standard of reasonable suspicion and probable cause apply in these situations as well.

Immigration status

- S. Officers will not stop or detain people solely on the grounds that they may be foreign nationals or undocumented illegal aliens.
- T. An officer need not be a racist to engage in profiling. An officer, for example, may subconsciously fall prey to stereotypes about who is more likely to be involved in criminal activity and act accordingly.
- U. Following the legal standard or reasonable standard is the most effective way to avoid profiling.
- V. Nothing in this policy shall limit an officer's ability to interview witnesses or have routine conversations with citizens .

VIII. Preventing Perceptions of Profiling

In an effort to avoid perceptions of profiling, each officer shall do the following when conducting pedestrian and vehicle stops.

- a. Be courteous and professional.
- b. Introduce her/himself to the citizen and state the reason for the stop as soon as practical.
- c. Ensure that the detention is no longer than necessary to take action and that the citizen understands that purpose of reasonable delays.
- d. Answer any questions the citizen may have.
- e. Provide officer's name and badge number verbally, when requested. Officers may also provide the information in writing or on a business card.
- f. Give an appropriate closing. Vehicle stop: If a

motorist was cooperative, "Thank you for your cooperation" may be helpful.

- g. Vehicle stop: Do not use the trite expression, "Have a nice day". More appropriate, "Please drive carefully, your safety is important to us."
- h. The initial reasonable suspicion for the stop may be unfounded. If so, officers need to explain the bias for the stop and the bias for the officers decision.

IX. Training

- A. All officers shall become familiar with the approved outline for profiling, approved by the New Mexico Law Enforcement Academy, found at www.dps.nm.org/training.
- B. All Officers shall receive training on profiling during orientation and at least once every two years thereafter. NMSA1978, Section 29-21-3
- C. Officers are encouraged to take classes in cultural awareness, diversity training, or similar classes that enhance an understanding or profiling.
- D. The Magdalena Marshal's Office will continue to train officers in Community Policing, Ethics, Laws of Arrest, Search and Seizure, and Verbal Communication, all of which deal with biased policing to some degree.
- E. Officers will continue to receive Legal Update training, including statutory requirements and case law relating to reasonable suspicion and probable cause, as it pertains to vehicle stops and investigative detentions.
- F. Officers of the Magdalena Marshal's Office shall continue to respect the rights of all citizens to be free from unreasonable government intrusions or police actions that undermine a positive police experience.

X. Supervision

- a. Supervisors shall ensure that all personnel in their command are familiar with the contents of this policy and operate in compliance with it.
- b. Supervisors will randomly review police reports. Audio tapes or video tapes for patterns or possible violations of the profiling policy.
- c. Supervisors should pay special attention to complaints dismissed because (1) a stop was made without reasonable suspicion, (2) a pat down was done without reasonable suspicion the person was armed and dangerous, or (3) questions were asked unrelated to a stop (speeding-asking for consent to search for drugs).
- d. Profiling may occur if the persons for whom complaints are being dismissed belong to a group out of proportion to the rest of the population.
- f. In the event a supervisor notices a pattern of conduct or practice which leads the supervisor to suspect an employee of bias-based policing, the supervisor shall take immediate action to prevent the conduct from continuing.

XI. Compliance

- A. The Magdalena Marshal's Office shall vigorously investigate complaints of profiling.
- B. Policy violations shall be handled in accordance with the agency's policy on Internal Investigations.
- C. A complaint of profiling may be made within 90 days of the commission of the alleged violation to the Magdalena Marshal's Office.

- D. A complaint of profiling may be made in person, or in writing sent by mail, facsimile or electronic mail and signed by the complainant.
- E. A complaint of profiling may also be made by telephone, anonymously or by third party.
- F. The chief or her/his designee of the Magdalena Marshal's Department will notify the complainant in writing of the results of the investigation.
- G. A copy of the completed investigation of any bias-based policing complaint, including a copy of the redacted complaint and disposition, shall be submitted to the Attorney General of the State of New Mexico.
- H. A redacted copy means the personal identifying information of a law enforcement officer or complainant shall not be disclosed.

XII. Administrative Review

The Magdalena Marshal's Office will designate a person or committee to conduct an annual review or audit issues regarding bias-based profiling and citizen encounters. The review will include but not be limited to the following:

- A. a list of all internal and external complaints relating to bias-based policing and citizen encounters.
- B. Note if an employee has a pattern of complaints about possible profiling.
- C. Review of dismissed complaints lacking reasonable suspicion.
- D. Review of tort-claims relating to bias-based profiling.
- E. Review of tort-claims relating to bias-based profiling.
- F. The report shall indicate whether policy or training

should be addressed.

- G. Explain corrective action(s) taken (disciplinary actions, new training, etc.)
- H. A summary of the review shall be provided to the Chief.

XIII. Sources (Policy retrieved from <http://nmlea.dps.nm.us/>).

- A. International Chiefs Association-Racial Profiling/
Sample Policy
- B. New Mexico Department of Public Safety Policy: Citizen Encounters and Bias-Based Profiling.
- C. New Mexico State Statutes.
- D. Standards established by CALEA. (Commission of Accreditation for Law Enforcement Agencies.)
- E. Numerous other state and local policies were reviewed.

XIV. Contributors

- A. Attorney General of the State of New Mexico
- B. NM Department of Public Safety-Law Enforcement Academy