

<b>RED RIVER MARSHAL'S OFFICE</b>	<b>ADMINISTRATION</b>
<b>SUBJECT:</b> <i>Bias-Based Profiling</i>	<b>NUMBER:</b> <i>ADM. 18.01(A)</i>
<b>EFFECTIVE DATE:</b> <i>October 1, 2012</i>	<b>REVIEW DATE:</b>
<b>AMENDS/SUPERSEDES:</b>	<b>APPROVED:</b> <u>David Smith</u> Town Marshal
<b>NMMLEPSC STANDARDS:</b>	<b>NMSA:</b>

**I. Policy**

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

**II. Purpose**

The purpose of this policy is to offer guidance 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 Red River Marshal's Office.

**IV. Definition of Biased-Based Profiling**

Any police initiated action (stopping, detaining, searching, etc.) that relies upon the selection of individuals based solely on a common trait or group. This includes but is not limited to race, ethnicity, gender, sexual orientation, religion, nation origin, or any other identifiable group. This broad definition includes racial profiling.

**V. Definition of Racial Profiling**

Any police action based on an individual's race, ethnicity, or national origin. Example:

- a. Stopping a person and doing a pat down on the belief that a person of that race ethnicity or national origin is more likely to possess contraband.
- b. Asking for consent to search a vehicle on the belief that 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 upon race, ethnicity, color, 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 uses 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 the same way she or he will 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 has 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 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, property 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 an officer) 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 included in the police report.

#### Procedures On A Traffic Stop

- J. Reasonable suspicion is required for a traffic stop.
- K. Officers on a traffic stop sometimes ask questions unrelated 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 was requested.
- N. These facts shall be included in the criminal complaint or statement of probable cause and shall also be noted in the police report.
- O. No motorist, once cited or warned, shall be detained when there is no reasonable suspicion of further criminal activity.
- P. Absent reasonable suspicion or probable cause, a vehicle or its occupants shall not be detained to wait for a drug detection dog.
- Q. Bias-based policing 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-arrest 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 they may be foreign nationals or undocumented illegal aliens.

#### Conclusion

- 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 of reasonable suspicion is the most effective way to avoid profiling.
- V. Nothing in the 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 appropriate action and that the citizen understands the purpose of reasonable delays.
- D. Answer any questions the citizen may have.
- E. Provide officer's name and badge name verbally, when requested. Officers may also provide the information in writing or on a business card.
- F. Give an appropriate closing. If the citizen was cooperative, "Thank You" may be helpful.
- G. Do not use trite expressions, such as "Have a nice day".
- H. The initial reasonable suspicion for a stop may be unfounded. If so, officers need to explain the basis for the stop and the basis for the officer's 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](http://www.dps.nm.org/training).
- B. All officers shall receive training on profiling during orientation and at least once every two years thereafter. NMSA 1978, Section 29-21-3.
- C. Officers are encouraged to take classes in cultural awareness, diversity training, or similar classes that enhance an understanding of profiling.

- D. The Red River 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 Red River 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 complains 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 population.
- E. 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 immediately notify the Marshal who will take immediate action to prevent the conduct from continuing.

**XI. Compliance**

- A. The Red River 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 alleging profiling must be made within 90 days of the commission of the alleged violation to the Red River Marshal's Office.
- D. A complaint of profiling may be made in person, by telephone 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 a third party.
- F. The Marshal or his/her designee of the Red River Marshal's Office 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 a 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. NMSA 1978 Section 29-21-3.

## **XII. Administrative Review**

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

- A. List 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 training related to bias-based policing.
- E. Review of tort claims relating to bias-based policing.
- F. The report shall indicate whether policy or training should be addressed.
- G. Explain corrective action(s) taken.
- H. A summary of the review shall be provided to the Marshal.

## **XIII. Sources (Policy Retrieved from <http://nmlea.dps.state.nm.us>)**

- A. International Police 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 on Accreditation for Law Enforcement Agencies)

**XIV. Contributors**

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