

## BIASED BASED PROFILING POLICY

### PURPOSE:

While the San Juan County Sheriff's Office currently has and enforces a policy of equal treatment of all persons, we recognize the need to clearly define our position regarding the treatment of people based in a protected class. The Sheriff's Office serves a diverse community and recognizes that community support is vital to our mission. Perceptions of biased law enforcement will erode that support and must be avoided.

### POLICY:

It is the policy of the San Juan County Sheriff's Office to provide law enforcement services in a fair, equitable and constitutional manner. The Sheriff's Office does not tolerate nor condone bias-based profiling by personnel. The Legislation cited in this policy is derived from the New Mexico Prohibition of Profiling Practices Act. NMSA 1978, Section 29-21 (1-4) (A) (2009).

### DEFINITIONS:

**Bias-Based Profiling** - The selection of an individual based solely on a common trait of a group while making routine or spontaneous law enforcement decisions. This includes, but is not limited to, race, ethnic background, gender, sexual orientation, religion, economic status, age, culture, or any other identifiable group.

### TRAINING:

All enforcement personnel will receive specific bi-annual training relevant to profiling which includes a review of this policy, immigration policy and laws, and search and seizure laws including but not limited to scope, detention, probable cause and reasonable suspicion. Supervisors will be responsible for reviewing policy, forwarding complaints, and knowing and observing procedures for managing employees who may have had a complaint filed against them.

### PROCEDURE:

#### **Prohibitions:**

Biased based profiling is prohibited in all circumstances including vehicle stops, investigative detentions, field contacts, arrests, and asset seizure and forfeiture efforts, or other enforcement related activity.

All contacts will be based on individualized and particularized circumstances supported by specific facts that can be articulated through the required applicable standard of reasonable suspicion or probable cause for investigative detentions, traffic stops, personal and property searches, arrests and others. All prolonged or expanded detentions will be based on the same standard of reasonable suspicion or probable cause as the scope of the investigation broadens.

Deputies on traffic stops may sometimes ask questions unrelated to the traffic stop based on articulated facts of reasonable suspicion that expand the scope. Deputies may also engage in casual conversation wherein the detention is not prolonged beyond reason. The answers provided by the individual detained, in some instances may prolong the detention based on reasonable suspicion.

No motorist, once cited, warned or otherwise, shall be detained when there is no reasonable suspicion of further criminal activity. Absent reasonable suspicion or probable cause, a vehicle or its occupants shall not be detained to wait for a drug detection dog, Federal Agents, Detectives, or Narcotic Agents. On traffic stops, deputies will ask for a valid driver's license, vehicle registration, and valid insurance. If a deputy is unable to verify identification of any motorist or detained subject, he/she may detain the driver while utilizing local and federal resources to locate an accurate driver's license and/or sufficient identification.

An Incident Report will be completed any time a person is turned over to US Immigration & Customs Enforcement (ICE) for an immigration violation. The incident report will include the reason that the person was contacted, what circumstances led the deputy to believe that the person was in violation of immigration laws, the time ICE was contacted, and the time ICE arrived.

### **Police Investigations:**

When conducting an investigative activity, a deputy shall not rely exclusively upon race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition. An exception will be made in cases linking specific series of crimes in an area to an individual or group of individuals of a particular racial or ethnic background.

Investigative activity includes but is not limited to an interview, a detention, a traffic stop, a pedestrian stop, a frisk or search of a person or a search of real property.

Deputies may take into account the reported race, gender, age, ethnicity, national origin, or other characteristics of a specific suspect or suspects based on credible, reliable, locally-relevant information that links a person or specific group to a particular criminal incident or links a specific series of crimes in an area to a group of individuals of a particular racial or ethnic background, or other specific characteristics. Specific types of criminal behavior may be utilized by deputies; their training and experience may be utilized making these determinations.

### **Complaints, Process, and Corrective Measures:**

Violations of this policy will be investigated and resolved pursuant to the Sheriff's Office discipline process. In reference to biased based profiling complaints and New Mexico Statute 29-21-3, the Sheriff's Office will allow complaints to be made in person or in writing by mail, facsimile or electronic mail and signed by the complainant, or by telephone, anonymously, or by a third party; provided that the law enforcement agency shall determine the complaint to be valid before taking appropriate measures. It is strongly recommended all individuals making complaints be personally

contacted and interviewed if possible. When a language barrier is present, it is recommended that a third party and the complainant come to the Sheriff's Office to review the complaint.

Complaint forms will be posted on the San Juan County website ([www.sjcsso.com/](http://www.sjcsso.com/)).

The Sheriff's Office will accept, process, and respond to complaints pursuant to the complaint policy. As cited in State Statute, the time frame for a complaint to be made should not exceed a minimum ninety days, but up to 180 days after the commission of the alleged violation; however, the Sheriff's Office will accept all biased based policing complaints indefinitely. It is recommended the complaint be made soon as possible after the commission of the alleged violation. Individuals will be notified if a course of action was taken in writing, and listed will be the outcome or results of the complaint within 60 days of the filing date.

As with all complaints, the Sheriff's Office will incorporate an independent level of oversight to process and review biased based profiling complaints. Biased based profiling complaints will be investigated and directly forwarded to the Administrative Captain. At the completion of the investigation, a redacted copy of the complaint packet will be sent to the Attorney General's Office for review via certified mail. The complaints will be monitored by the Administrative Captain to identify any patterns of biased based profiling.

#### **Annual Review:**

The Administrative Captain will conduct an annual review of the agency's practices by reviewing documentation such as Use of Force reports, pursuit reports, citizen complaints and internal investigations. The purpose of the review is to identify any practices that could be perceived as bias-based profiling and to address them with policy revisions, training and discipline as warranted. The Sheriff's Office early intervention system will also be utilized as a resource in identifying any patterns and or practices that violate this policy.

#### **CONCLUSION:**

The San Juan County Sheriff's Office recognizes its role in the community to fight crime by implementing strategies and utilizing all available tools to do so. It is our duty to protect persons and their rights. Our commitment to our mission extends to all persons that are victims of crimes or persons that are engaged in criminal activity within our county, irrespective of their immigration status.

## IMMIGRATION AND CUSTOMS ENFORCEMENT PROTOCOL

The purpose of this protocol is to provide guidelines for the management of undocumented persons that come in contact with law enforcement officers.

### POLICY:

The San Juan County Sheriff's Office is committed to improving the quality of life in the community by implementing strategies to reduce crime whether committed by citizens, visitors, and/or illegal immigrants, and maintain the trust of all individuals residing in San Juan County. It is the policy of the San Juan County Sheriff's Office to follow constitutional guidelines when deputies encounter or arrest a foreign national.

In 1996, the United States Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). IIRIRA addressed the relationship between the federal government and local governments by permitting certain designated deputies/officers to perform immigration law enforcement functions provided they receive the appropriate training and agree to function under the supervision of officers from Immigration and Customs Enforcement to identify, process, and when appropriate, detain immigration offenders they encounter during their regular, daily law-enforcement activity.

Federal immigration laws are complicated in that they involve both civil and criminal aspects. Federal agencies such as ICE have the authority to determine if a person will be criminally prosecuted for their violations of immigration laws or be dealt with through a civil deportation process. Immigration violations are different from the typical criminal offenses that patrol deputies face every day, where such activities revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and a myriad of other criminal matters. The immigration status of a particular person can vary greatly and whether they are in violation of the federal immigration regulations, civilly or criminally, can be very difficult to determine without a special expertise.

The San Juan County Sheriff's Office provides law enforcement services and impartially enforces the laws of the County of San Juan, State of New Mexico, and the United States Constitution. While the investigations and enforcement of federal laws relating to illegal entry and residence in the United States is specifically assigned to ICE, the San Juan County Sheriff's Office commits to cooperating with ICE, DEA, FBI, ATF and others, to the extent permitted by law, on any criminal activity that threatens the safety and well-being of the community. This practice is consistent with the Sheriff's Office duty to ensure the safety and well-being of all persons, regardless of their immigration status.

### PURPOSE:

The purpose of this policy is to provide guidance for deputies to follow constitutional guidelines when encountering or arresting a foreign national. The policy is also set in place

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to establish trust with individuals living in San Juan County, regardless of their citizenship status.

### **DEFINITIONS:**

- **Arrest** – The taking of a person into custody by a legal authority.
- **Consul or Consular Officer** – An official of a foreign country authorized by that country and the United States to provide assistance on behalf of its citizens in the United States. Example: There is a Mexican consulate in Albuquerque, New Mexico.
- **Diplomatic Immunity** – Certain foreign government officials (issued special passports) are not subject to the jurisdiction of local courts and authorities.
- **Foreign Nationals** – For purpose of consular notification and access, a foreign national is a person in the United States who is not a U.S. citizen.

### **ARRESTS:**

Deputies shall be responsible for inquiring about the current immigration status of all persons arrested or taken into custody. Determining the immigration status of all persons will avoid profiling.

In enforcing the laws, deputies may legally stop, detain or arrest anyone when reasonable suspicion or probable cause exist that a crime has occurred. Deputies, however, shall not engage in biased based profiling, also referred to as “racial profiling”, when conducting stops, detentions, or arrests of any subject. The federal immigration laws will not be utilized as the “cause” or “reason” for stopping and/or detaining a person.

Adults, not including juveniles, who are arrested for committing a state or local crime, shall be asked about their immigration status. If a deputy develops probable cause that a suspect is in the United States unlawfully, the information shall be detailed in the probable cause statement and relayed to the detention center. The detention center is responsible for notifying a foreign consulate when a foreign national has been arrested as required by the VCCR. The detention center may rely on the United States Department of State website ([www.state.gov](http://www.state.gov)) for assistance regarding consular notification.

### **CITE AND RELEASE:**

If the person is being cited or warned and released for a state or local crime he or she may be asked about their immigration status. ICE may be contacted by the shift supervisor; however, contacting ICE should not prolong the time or scope of the stop. The focal point of questioning should focus on making sure the citation has the correct information and the suspect does not have active arrest warrants. It is the deputy’s duty to the best of his/her knowledge, to make sure that persons being cited are not using false credentials or another person’s identification.

If the deputy comes upon unsolicited information during the course of his/her enforcement

efforts regarding undocumented immigration status, of the persons(s) being investigated, the information may be forwarded to ICE. The shift supervisor may contact ICE in reference to the incident.

Since no criminal offense has been committed, and no reasonable suspicion exists to justify detention, a deputy shall not stop or detain a person solely on the grounds he or she may be a foreign national. An exception that justifies detention of an undocumented illegal alien occurs when there is a NCIC hit or the deputy has knowledge of a "previously deported felon", which is a federal criminal violation. A deputy shall confirm the status of the NCIC hit with United States Immigration and Customs Enforcement (ICE).

Consistent with our efforts to protect the safety and well-being of the community and to encourage the public to report criminal activity, deputies should not ask a person who is

- a victim of a crime,
- a witness to a crime,
- a juvenile,
- stopped and/or cited for a civil traffic violation with a valid driver's license or evidence of valid identity,
- seeking medical assistance,
- a victim of domestic violence incident, or
- community volunteers in police service (including but not limited to police service based programs such as neighborhood watch, community forums, or youth programs.)

about his or her immigration status.

Deputies will however not let this policy hinder their investigative efforts while in the lawful discharge of their duties. Deputies will focus on the safety of citizens by conducting complete investigations which may include asking about immigrations status under the above circumstances. However, Sheriff's Office investigations will not focus on immigrations status.

#### **GUIDELINES:**

The following situations may be encountered by a deputy and are a few reasons for contacting ICE.

- Foreign nationals that are suspects of a criminal investigation.
- A traffic stop with a large number of undocumented aliens.
- Circumstances where ICE can be helpful in establishing the identity of a suspect or offender.
- If a deputy is previously aware of his or her immigration status.

#### **FOREIGN NATIONALS WITH DIPLOMATIC IMMUNITY:**

Some foreign nationals have been granted diplomatic immunity and are immune from

arrest. A supervisor shall be contacted when a person asserts diplomatic immunity. Questions regarding diplomatic immunity may be answered by contacting the United States Department of State or its website. If a person claims diplomatic immunity when arrested or detained, the burden of proof shall be on the individual to provide proper identification. Once an individual's status of diplomatic immunity has been confirmed, he or she shall be released immediately. Consular notification procedures shall be followed for persons asserting diplomatic immunity.

**CONCLUSION:**

The San Juan County Sheriff's Office recognizes its role in the community to fight crime and protect persons and their rights by implementing strategies and utilizing all available tools to do so. This commitment to the Sheriff's Office mission extends to all persons that are victims of crimes or persons that are engaged in criminal activity within the county, irrespective of their immigration status.