



DEPARTMENTAL  
GENERAL  
ORDER

New Order  
Effective Date  
15 Nov 04

M-19

Index as:

Bias-Based Policing  
Prohibitions Regarding Racial Profiling  
and Other Bias-Based Policing  
Racial Profiling

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**PROHIBITIONS REGARDING RACIAL PROFILING AND  
OTHER BIAS-BASED POLICING**

**I. PURPOSE**

- A. The purpose of this policy is to reaffirm the Oakland Police Department's commitment to providing service and enforcing laws in a fair and equitable manner, and to establish a relationship with the community based on trust and respect. Whenever our practices are, or are perceived to be, biased, unfair, or disrespectful, we lose public trust and support and diminish our effectiveness.
- B. The Department recognizes that there has been a growing national perception that law enforcement action is too often based on racial stereotypes ("racial profiling") or other bias-based policing – whether it is against African Americans, Latinos, Asians, Middle Easterners, South Asians, or any other race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability. In Oakland, there is concern within our communities that some members may engage in this behavior. Whether individual members agree or not, we, as an organization, must recognize that this concern exists and be responsive to it.
- C. California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This Department policy explicitly prohibits racial profiling and other bias-based policing. It also states the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in making law enforcement decisions and actions.

## **II. DEFINITION OF RACIAL PROFILING**

The use of race, ethnicity, or national origin in determining reasonable suspicion, probable cause or the focus or scope of any police action that directly or indirectly imposes on the freedoms or free movement of any person, unless the use of race, ethnicity, or national origin is used as part of a specific suspect description.

## **III. POLICY**

- A. Investigative detentions, traffic stops, arrests, searches and property seizures by officers shall be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution.
- B. Members shall articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, pedestrian, bicycle, or vehicle stops, arrests, non-consensual searches and property seizures.
- C. Members shall not consider actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in establishing either reasonable suspicion or probable cause or when carrying out law enforcement activities EXCEPT when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity.

Members seeking one or more specific persons who have been identified or described in part by any of the above listed characteristics may rely on these characteristics in part and only in combination with other appropriate factors.

## **IV. CONSENT SEARCHES**

- A. A consent search refers to searches conducted not based on probable cause, incident to arrest or pursuant to a search warrant, but based on permission granted from the person being searched.
- B. Consent searches are permissible law enforcement tools; however, their use shall not be:

1. Arbitrary. In other words, the request to conduct a consent search must be reasonable and members should be able to articulate the suspicion that formed the basis for the request.
  2. Based on actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability.
- C. Members shall complete a Field Contact Report (836-314) for each consent search conducted articulating the reason for the search.
- D. Pursuant to Report Writing Manual Insert R-2, members shall complete a Stop-Data Collection Form (Scantron) for each consent search conducted.
- E. Members shall advise individuals of their right to refuse a consent search.

#### **V. CONDUCTING STOPS**

In conducting pedestrian, bicycle, or vehicle stops, members shall:

- A. be courteous, respectful, polite and professional.
- B. explain the reason for the stop while asking for identification, unless impractical.
- C. identify yourself.
- D. ensure the length of the detention is no longer than necessary to take appropriate action for the known or suspected offense, and explain the reason for any delays.
- E. answer questions the person may have regarding the stop and explain the disposition of the stop.
- F. apologize for the inconvenience when appropriate.
- G. if asked, provide the procedures for filing a complaint about police services or conduct outlined in DGO M-3 COMPLAINTS AGAINST DEPARTMENTAL PERSONNEL OR PROCEDURES.

## VI. EXAMPLES OF RACIAL PROFILING

A. Examples of racial profiling include but are not limited to the following:

1. Example #1

While on patrol an officer observes a black male driving a new, expensive Mercedes Benz in a low-income neighborhood. The vehicle is not listed on the “hot sheet” nor is it entered in the Stolen Vehicle System (SVS). The officer decides to stop the vehicle to further investigate because he feels the car may be stolen because it appears too expensive for the driver and the neighborhood.

Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess a specific model of vehicle is prohibited.

In this particular example, the officer had neither reasonable suspicion nor probable cause to detain the vehicle. Absent additional information or observations that would lead a “reasonable” officer to believe the vehicle was stolen, such as a smashed window or signs that the vehicle was hot-wired, the officer’s stop constitutes racial profiling.

2. Example #2

An officer is assigned to a predominately “white” residential neighborhood. While on patrol, the officer observes a Hispanic male driving a truck late at night. The officer knows most of the residents in the area and does not recognize the Hispanic driver. Recently there have been burglaries in that area. Based on the fact that there have been burglaries in the area, and the driver is Hispanic and the residents in the area are white, the officer stops the vehicle to further investigate.

Detaining the driver of a vehicle based on the determination a person of that race, ethnicity or national origin does not belong in a particular part of town constitutes racial profiling and is prohibited.

In this particular example, the officer’s knowledge of the residents and the driver’s race, even though the race differs from most of the residents in that area, does not provide reasonable suspicion. The

fact that there have been burglaries in the area may raise an officer's suspicion to vehicles driving late at night; however, even when this information is considered with the other factors discussed, it is an insufficient basis for a detention.

## **VII. STOP-DATA COLLECTION**

Pursuant to Department Report Writing Manual Insert R-2, members shall:

- A. complete a Stop-Data Collection Form for every vehicle, walking, and bicycle stop conducted during their shift. Members shall also complete a Stop-Data Collection Form for every consent search conducted.
- B. print his/her name and serial number at the bottom of every Stop-Data Collection Form completed.
- C. submit completed Stop-Data Collection forms to their assigned supervisor or, in the absence of the assigned supervisor, an available field sergeant or Watch Commander for review and approval.
- D. deposit all completed (and approved) forms in the report writing receptacle at the end of their shift.

## **VIII. MEMBER RESPONSIBILITIES**

Members shall:

- A. not engage in, ignore, or condone racial profiling or other bias-based policing.
- B. be responsible for knowing and complying with this policy.
- C. report incidents of racial profiling as defined in this policy.
- D. be subject to disciplinary action if deemed not in compliance with this order.

## **IX. COMPLAINTS**

Complaints of racial profiling and other bias-based policing against members shall be:

- A. considered complaints of discrimination (Class 1 violation as defined in DGO M-3) and, as such, immediately forwarded to the Internal Affairs Department.
- B. immediately referred to the member's supervisor, or if the officer's supervisor is not available, to the Watch Commander.

## **X. TRAINING**

- A. Pursuant to California Penal Code Section 13519.4, each member shall:
  - 1. attend POST racial profiling training; and
  - 2. complete an approved refresher course every five (5) years, or sooner if deemed necessary, in order to keep current with changing racial and cultural trends.
- B. The Racial Profiling Program Manager shall ensure line-up training on racial profiling and this policy is provided to sworn personnel at least once annually. This training may also be provided to non-sworn personnel.

## **XI. SUPERVISORY RESPONSIBILITIES**

Supervisors shall:

- A. not engage in, ignore, or condone racial profiling or other bias-based policing.
- B. be responsible for knowing and complying with this policy.
- C. ensure that subordinates under their command know and understand the content and application of this policy.
- D. periodically monitor subordinates under their supervision to ensure compliance with this policy.
- E. review all forms submitted by members to ensure the forms are completed in accordance with this order and Report Writing Manual Insert R-2.

- F. print his/her name and serial number in the appropriate boxes signifying the form has been reviewed and approved, and return the form to the appropriate member.
- G. conduct periodic audits to ensure compliance with this order.

Supervisors and commanders who fail to comply with this order shall be subject to disciplinary action.

If it is determined that members assigned to a supervisor and/or commander failed to comply with this order and the supervisor and/or commander knew of said violation, or should have reasonably known, the supervisors and/or commander shall be subject to disciplinary action.

## **XII. BUREAU OF FIELD OPERATIONS**

The Bureau of Field Operations (BFO) is responsible for data collection processing. Accordingly, BFO shall:

- A. ensure Stop-Data Collection Forms are available in the Patrol Line-up Room.
- B. enter the Stop-Data Collection Forms into the SCANTRON system within five working days of receipt.
- C. retain completed and scanned forms for period of not less than three years unless otherwise instructed by the Chief of Police.
- D. conduct periodic audits to ensure members comply with the provisions of this order and RWM Insert R-2.

## **XIII. OFFICE OF INSPECTOR GENERAL (OIG)**

Pursuant to the provisions of DGO N-12, Departmental Audits and Inspections, the OIG shall conduct annual reviews and audits of the Department's data collection efforts to ensure compliance with the Settlement Agreement. The OIG shall report all findings to the Chief of Police and the Program Manager.

#### **XIV. RACIAL PROFILING PROGRAM MANAGER**

- A. The Racial Profiling Program Manager is responsible for the following:
1. Racial profiling grant management;
  2. Coordination of stop-data collection and analysis;
  3. Completion of all reports pertaining to racial profiling; and
  4. Coordination with the OIG to ensure compliance with the Settlement Agreement.
- B. The Racial Profiling Program Manager shall:
1. produce a written report to the Chief of Police at least twice per year that includes an analysis of the data collected, and appropriate policy recommendations.
  2. periodically meet with the Oakland Racial Profiling Task Force, which is comprised of representatives of the following organizations:
    - a. Oakland Police Officers' Association (OPOA);
    - b. Citizens' Police Review Board (CPRB);
    - c. American Civil Liberties Union (ACLU);
    - d. National Association for the Advancement of Colored People (NAACP); and
    - e. People United for a Better Oakland (PUEBLO).

By order of

Richard L. Word  
Chief of Police

Date Signed: 26 Oct 04