

Washington Association of Sheriffs and Police Chiefs MODEL POLICY

Revised November 15, 2001

Title: Preventing Biased Policing and Perceptions of Biased Policing

Purpose: The purpose of this policy is to reaffirm this department's commitment to unbiased policing and to reinforce procedures that serve to ensure the public that we are providing service and enforcing laws in a fair and equitable manner.

Policy:
Impartial Policing

1. No person shall be singled out or treated differently as a consequence of his/her race, age, ethnicity or national origin.
2. All investigative detentions, traffic stops, arrests, searches and seizures of property by officers will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution and Article I, Section 7 of the Washington State Constitution. Officers must be able to articulate specific facts, circumstances and conclusions which support probable cause for arrest or reasonable suspicion for the traffic stop or investigative detention.

Except as provided below, officers shall not consider race, ethnicity, age, sex, or national origin in establishing either reasonable suspicion or probable cause.

Officers may, however, take into account the reported race, ethnicity, age, sex, or national origin of a specific suspect or suspects based on credible or reliable information that links specific suspected unlawful activity to a particular individual or group of associated individuals of a particular race, ethnicity or nationality, in the same way they would use specific information regarding age, height, weight, etc. about specific suspects.

Preventing Perceptions of Biased Policing

1. In an effort to prevent perceptions of biased law enforcement, officers shall utilize the following strategies when conducting investigative detentions, traffic stops, arrests, searches and seizures of property:
 - √ Be courteous, polite, and professional.
 - √ Introduce themselves and explain to the person the reason for the stop as soon as practical, unless providing this information will compromise the investigation of the safety of officers or other persons.

- √ Ensure that the length of the detention is no longer than necessary to take appropriate action for the known or suspected offense.
- √ Answer any questions the person may have, including explaining options for the disposition of the traffic citation, if relevant.
- √ Provide your name and badge number when requested, in writing or on a business card.

Compliance:

Any reported violations of this policy will be investigated and may result in disciplinary action as set forth in the Department's applicable rules and regulations.

Supervision and Accountability:

Supervisors shall ensure all personnel of their command are familiar with the content of this policy and are operating in compliance.

COMMENTARY

Background:

In the context of state and national events related to “racial profiling,” many departments have adopted policies that reaffirm their commitment to impartial law enforcement. Indeed, most of these “new policies” do not change department procedures and, in fact, most “prohibit” behaviors that are already a violation of other agency policies (including Rules of Conduct), state statutes constitutions, and/or federal statutes/constitutions. The purpose of most of these policies, therefore, is not to set forth new procedures for law enforcement to follow, but rather to emphasize to both department personnel and to the public the agencies’ commitment to provide service and to enforce the laws in an unbiased manner. In fact, although we recommend the attached policy as part of our set of guidelines, we acknowledge that other ways to communicate this commitment to impartial policing might be equally effective. For instance, department executives might issue a departmental memo and, as recommended elsewhere in this document, provide department-wide training that highlights the existing policies and laws that address impartial policing. Further, as discussed further below, an executive might - instead of adopting the new proposed policy - insert the basic provisions reflected in the proposed policy into existing policies, such as those addressing field interrogation and vehicle stop policies.

We have chosen to avoid the term “racial profiling” in the policy for several reasons. First and foremost, we believe that the term has most frequently been defined in a manner that is so restrictive that it does not fully capture the concerns of both law enforcement practitioners and the people they serve. A key to the most frequently used definition is the word “solely”; for instance, racial profiling is frequently defined as law enforcement activities (e.g., “detentions, arrests, searches”) that are initiated solely on the basis of race. In the realm of potential discriminatory actions, this likely references a very small portion. Even a racially prejudiced officer likely uses more than the single factor of race when conducting his biased law enforcement. For instance, he may make his decisions based on the neighborhood context plus the race of the person; the age of a car and the race of the person; the gender and race of the person. His activities, based on these sample pairs of factors, are not encompassed by the most commonly used definition of racial profiling.

Further, the “solely” terminology in the most common definition of racial profiling does not cover the potential abuses of officers who might be making discriminatory stops that are, in fact, based on reasonable suspicion or probable cause. For instance, an officer might ignore the criminal or traffic violations of Caucasians to attend only to those violations of ethnic minorities. Or similarly, an officer might conduct “Whren” (pretext) stops only of minority persons and not of Caucasians. This type of disparate law enforcement would not be encompassed by a policy that prohibits law enforcement action based solely on race, for these officers are making stops on the basis of reasonable suspicion or probable cause--as well as race.

Secondly, using the word “profiling” semantically limits the potential abuse to those instances where an officer might be using race as a proxy for criminal activity. While, indeed, this is a

major concern and likely where the greatest potential for abuse lies, departments wish to prohibit biased law enforcement that is based--not just on stereotypes regarding the link between race and criminal behavior--but biased law enforcement based on other negative attitudes regarding race. "Bias" is defined as a mental leaning, partiality, prejudice or bent. For instance, an officer may be prejudiced against ethnic minorities and stop them for purposes of harassment, independent of any notion that their race is a proxy for criminal activity. These instances have been encompassed in some department policies that prohibit law enforcement activities "motivated" by the race of the individual.

The Proposed Policy

The reasons above for avoiding the term "racial profiling" also provide the rationale for the particular policy that we propose, which at its core prohibits differential treatment of persons based on race. Or more specifically, the policy prohibits law enforcement behavior that targets certain persons because of their race when that characteristic is unrelated to the specific reason for the law enforcement intervention. The policy also attempts to reduce perceptions of biased policing by promoting respect, courtesy and the provision of information during stops of persons.

Impartial Policing

Section One: Affirming Standards of Proof:

One key aspect of ensuring the equal treatment of people is the application of the standards of reasonable suspicion and probable cause to the appropriate law enforcement interventions. This proposed policy affirms these Constitutional requirements and emphasizes their application to all detentions (i.e., traffic, vehicle investigative, pedestrian investigative) and arrests.

Having emphasized the need for reasonable suspicion and probable cause, the policy goes on to prohibit - with one key exception - the consideration of race, ethnicity or national origin in establishing either. This component of the policy reflects the middle ground between two general types of policies that have been adopted nationally. Based on our review, it appears that a majority of policies adopted in the wake of racial profiling events are those that prohibit law enforcement activity based solely on the basis of race (or other characteristics such as gender, age). As we indicated above, these prohibit a relatively narrow type of biased policing. A much smaller group of departments have adopted policies that prohibit the use of race (and sometimes other factors) as even one factor among several to establish either reasonable suspicion or probable cause. That is, these departments prohibit the use of race in making any law enforcement decision, absent a specific link of race to a suspect sought for a particular crime (e.g., in a BOLO). An example is the following provision:

In the absence of a specific report, race or ethnicity of an individual shall not be a factor in determining the existence of probable cause to detain or arrest an individual, or in constituting a reasonable or articulated suspicion that an offense has been or is being committed so as to justify the detention of an individual, or the investigative stop of a motor vehicle. (Davenport, IL Police Department)

Thus, a major difference between the two major types of new policies is whether or not race can be used as one factor among several in establishing reasonable suspicion or probable cause (absent a specific report of race linked to a suspect). The “solely” policies do not prohibit the use of race as one factor in a set of factors in establishing reasonable suspicion or probable cause. Some policies make no explicit mention of this issue and others specifically note that race (and other characteristics) *can* be used as one factor in a set of factors. By definition, the other group of policies (which we shall refer to as “no-race-consideration policies”) specify that race shall not be used as a factor in establishing reasonable suspicion or probable cause.

The middle-ground of these policies can be found in the “suspect-exception” provisions provided in the no-race-consideration policies. That is, in this type of policy, an exception is made when race is a descriptor of a specific suspect being sought for a particular crime. Thus, for instance, a policy might read:

In the absence of a specific report of criminal activity where the race, ethnicity or national origin of a suspect is included, race, ethnicity or national origin will not be a factor in establishing reasonable suspicion or probable cause.

As with the example above, most of these “suspect-exception” provisions make reference to a single suspect being sought for a particular crime. For instance, one policy prohibits the consideration of race or ethnicity in law enforcement decisions “unless the officer is seeking to detain, apprehend, or otherwise be on the lookout for a specific suspect sought in connection with a specific crime who has been identified or described in part by race or ethnicity ...” This version of the policy would, on its face, disallow the use of race or ethnicity to establish reasonable suspicion even if there were reliable intelligence that certain ongoing criminal activities were being committed locally by a group of individuals of a common race or ethnicity.

For instance, in this version of the policy, an officer who knew that a particular ethnic gang was heavily involved in the illegal drug trade in a certain area of the city would not be able to use that intelligence regarding ethnicity as *even one factor* in a set of factors to establish cause for a detention.

Thus the policy we propose, while it prohibits the use of race as a *general* proxy for criminal behavior, allows officers to use this identifying characteristic as a basis for making law enforcement decisions in particular situations. A challenging aspect of this policy is finding and articulating the line somewhere on the continuum represented by the following two end points: using race as a general proxy for criminal behavior and using race as a factor in response to a BOLO that specifies the race of the suspect. Clearly, the first would be prohibited by the policy and the second allowed; but a grey area exists in between. While not claiming to have shed all ambiguity, the policy we propose indicates that the information regarding race that might be relevant to establishing reasonable suspicion or probable cause should have the following characteristics:

- ◆ **Be credible and reliable:** This standard is the same one that officers should and presumably do apply to any information that they use to establish reasonable suspicion or probable cause.

- ◆ **Be locally based:** This criteria, requires that the information linking race to crime be based on local conditions. That is, officers could not rely on widely held stereotypes or even the fact that in many areas of the country a certain race is linked to a certain crime. Officers would have to have local information that supports the link between race and specific criminal activity.

This credible, reliable, locally based information would need to link *specific suspected unlawful activity* to a the particular individual or group of individuals. The key word is “specific” which, again, attempts to prohibit the use of race as a general proxy for criminal activity. This means that the information must pertain to a specific type of crime (e.g., commercial robberies) or set of crimes (e.g., related to drug production distribution). To allow officers to use race to establish reasonable suspicion or probable cause based on the fact that most crimes in their jurisdiction are committed by Hispanics, would allow officers too much latitude to treat an entire segment of the population as potential suspects.

Section Two: Impartiality: The first part of the policy, described above, focuses on whether and how race can be used to establish reasonable suspicion and probable cause. It does not, however, prevent officers from selectively, and partially *acting upon* reasonable suspicion or probable cause. That is, the policy above is insufficient to stand alone as it does not prohibit officers from disproportionately targeting certain ethnic or racial groups that commit violations. For instance, executives and persons would not want officers to pull over only ethnic minority speeders and not Caucasian speeders or conduct Whren (pretext) stops only of a particular racial group and not others. Nor would these stakeholders support officers regularly conducting informal inquiries (e.g., including requests for identification) of one racial group and not another, when this distinction was not supported by legitimate factors. Thus, Part 2 re-commits the department to a policy of complete impartiality in all aspects of its work.

Reducing Perceptions of Biased Policing

A number of ethnic minority citizens who participated in our focus groups acknowledged that they are much more likely to suspect a racial motivation to their detention if they are either treated discourteously or not informed of why they are being detained. Some of the agency “racial profiling” policies reflected this, by including provisions emphasizing the need to prevent misperceptions of racial bias. Part B of our proposed policy includes some of these directives.

Complaints and Discipline

Some people who complain to law enforcement executives about police behavior are concerned about retaliation by police officers. Law enforcement agencies should have a clear, written policy statement that retaliation will not be tolerated. There also must be a policy statement about the commitment to fair and appropriate discipline. These policies are essential to assure the officers and the people they serve that they both will be treated fairly.

**PROFILE STOPS IN WASHINGTON STATE
A LAW ENFORCEMENT RESPONSE
Washington Association of Sheriffs and Police Chiefs
November 16, 2000**

BACKGROUND

Racial profiling is the illegal use of race or ethnicity as a factor in deciding to stop and question, take enforcement action, arrest or search a person or vehicle with or without a legal basis under the United States or Washington Constitutions.

Members of minority communities believe that some police decisions are race-based. The crux of this issue is that no one can know what is in a police officer's heart and mind when he/she makes a stop. There may be a legal reason, for example, a traffic violation, but the officer may really be biased towards a minority group. Unless the officer either admits his/her bias or gives other evidence through behavior or speech, there is no way to know whether bias was the real reason.

As law enforcement executives, we support only the lawful exercise of police power. Officers are trained to make legal stops and to base their decisions on the facts and the behavior, not on the race of the person involved. Officers swear an oath to support and defend the Constitution of the United States and of the State of Washington. This means equal treatment under the law for all citizens. The vast majority of officers honor that oath. If a few individuals violate their oath and the law, then they deserve the civil and criminal penalties provided by law.

LAW ENFORCEMENT RESPONSE

As law enforcement executives, we are willing to address the racial profiling issue right now. We know that real and perceived race bias are issues in Washington State. We are committed to community policing and that means that any community concern is an issue we must address. This is true regardless of what the data might show. Many of our agencies have taken steps to begin to address this issue.

We are committed to eliminating race-based decisions in law enforcement. There are several positive steps law enforcement can take to address the concerns about racial profiling.

1. **Meet with community groups.** Law enforcement exists to serve all the people and to treat everyone equally under the law. Community meetings can be used to learn about the nature and extent of the concerns in that community. Each community must define and address its own issues.
2. **Leadership begins at the top.** The police chiefs and sheriffs of this state will take a strong stand against any form of bias or race-based decisions in law enforcement. We will do it by making strong public statements in each of our own communities about our commitment to fair and impartial law enforcement. We will do it by insuring our policies are known in our agencies and in our communities. We will do it by holding officers and their supervisors accountable if they do not follow the policies.
3. **Provide more training to police officers.** Law enforcement training has spent considerable time on the legalities of the stop and on officer safety. Considerably less time has been spent on the human side of the contact. Officers can do their job with skill and safety and still be sensitive to the impacts of their work on others.
4. **Provide adequate supervision.** If an officer is inappropriately targeting minorities, his/her supervisor should be aware of it and take corrective action. The first line supervisor is in the best position to observe officers as they go about their work. He/she is in the best position to take immediate corrective action on bias issues.
5. **Insure complaint procedures are open and act on sustained complaints.** Community confidence in the police requires openness and integrity in the complaint process. We understand that if we fail to address issues in our own departments, then someone outside the department will address them for us.
6. **Use WASPC to share lessons learned and best practices.** We have a long history of using our professional association (WASPC) to share our experiences and develop improved standards for performance. For example, panels and workshops on success stories could be presented at our semi-annual conferences. The best practices can be incorporated in future training for our officers.
7. **Use other resources available to us.** One of these is the Washington Criminal Justice Training Commission which trains officers, supervisors and executives. Another is the Community Relations Service of the United States Department of Justice. This agency helps communities work through tough issues like racial profiling. Another resource is the Western Regional Institute for Community Oriented Policing (WRICOPS). The mission of this agency is to help local law enforcement agencies deal successfully with community issues.

SUMMARY

Law enforcement executives are willing to address bias issues right now; we do not have to collect data to convince us to address issues in our communities. There are ways to address the legitimate concerns of minority groups and support the lawful efforts of the police. It begins with every law enforcement officer treating every person they contact with dignity and respect. Law enforcement officers can do a better job of communicating with the people they stop about the reasons for the stop. Local law enforcement should be building partnerships with all the people in their communities. This is an opportunity for law enforcement to walk their talk about community policing.

Washington communities are quite different, not only in their racial mix, but also in the nature and amount of crime and in the relationship which exists between the people and their local law enforcement agency. If problems are to be resolved, every local law enforcement agency needs to work with the minority groups in their community to appropriately address the issue of racial profiling.

WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

RESOLUTION

WHEREAS, the members of the Washington Association of Sheriffs and Police Chiefs are assembled in annual Fall Conference at the Westcoast Yakima Center Hotel, in Yakima, Washington, November 16, 2000; and

WHEREAS, racial and ethnic descriptions may be essential to identification of victims and suspects and, thus, important to proper and legal police work; and

WHEREAS, racial profiling is the illegal use of race or ethnicity as a factor in deciding to stop and question, take enforcement action, arrest or search a person or vehicle with or without a legal basis under the United States or Washington Constitutions; and

WHEREAS, the question and debate concerning racial profiling, real or perceived, is part of a symptom causing people to question their public trust in law enforcement; and

WHEREAS, the National Organization of Black Law Enforcement Executives passed a resolution on July 20, 1998 denouncing racial profiling and supporting U.S. legislation calling for collection of traffic stop data; and

WHEREAS, on June 9, 1999 President Clinton issued an Executive Order stating that stopping or searching individuals on the basis of race is not an effective law enforcement policy, that it is inconsistent with our democratic ideals, especially our commitment to equal protection under the law for all persons, and that it is neither legitimate nor defensible as a strategy for public protection, and instructing the law enforcement agencies within the Departments of Justice, Treasury, and Interior to collect race, ethnicity and gender data on the people they stop or arrest; and

WHEREAS, the International Association of Chiefs of Police passed two resolutions in November 1999 condemning racial profiling and urging all law enforcement agencies to implement a variety of community policing steps; and

WHEREAS, on February 5, 2000, the Washington State Legislature passed Senate Bill 6683 addressing the practice of targeting certain racial groups for stops, ordered demographic data collection by the Washington State Patrol, and encouraged other local law enforcement agencies to voluntarily gather data; and

WHEREAS, the Washington State Supreme Court has ruled that traffic stops on the basis of race are illegal; and

WHEREAS, Washington Law Enforcement Agencies are committed to ensuring the public safety and the protection of civil liberties; and to policing procedures that are fair, equitable, and constitutional; and

WHEREAS, Washington Law Enforcement Agencies prohibit discrimination by police officers in the conduct of their duties and require them to protect the constitutional rights of citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS, THAT:

1. The illegal use of race or ethnicity as a factor in deciding to stop and question, arrest or search a person without a legal basis under the United States and Washington Constitutions is illegal, reprehensible, and should not be tolerated.
2. Law enforcement agencies should adopt a written policy designed to condemn and prevent racial profiling.
3. Law enforcement agencies should review and audit their existing procedures, practices and training to ensure that they do not enable or foster the practice of racial profiling.
4. Law enforcement agencies should continue training to address the issues related to racial profiling. Officers will be trained in how to better interact with persons that they stop so that legitimate police actions are not misperceived as racial profiling.
5. WASPC will coordinate with the Criminal Justice Training Commission to ensure that issues related to racial profiling are addressed in Basic Law Enforcement Training and offered in regional training for in-service law enforcement officers at all levels.
6. If data is to be collected, the Legislature must provide the funds for a valid research design, for data collection, and for analysis. Law enforcement and their communities must participate in the research design. The decision to collect data is voluntary with local agencies.
7. Law enforcement agencies will ensure that they have in place a citizen complaint review process that can adequately address instances of racial profiling. The process must be accessible to citizens and must be fair. Officers found to be engaged in racial profiling must be held accountable through the appropriate disciplinary procedures within each department.
8. Washington communities are quite different, not only in their racial mix, but also in the nature and amount of crime and in the relationship which exists between the people and their law enforcement agency. If problems are to be resolved, every local law enforcement agency needs to work with the minority groups in their community to appropriately address the issue of racial profiling.

Adopted by the Washington Association of Sheriffs and Police Chiefs (WASPC) this 16th day of November, 2000.