



POLICY & PROCEDURE

ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **BIASED-BASED POLICING**

SCOPE: All Department Personnel
DISTRIBUTION: Policy & Procedure Manual

REFERENCE:

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INDEX AS: Biased-Based Policing
Race-Based Generalizations
Racial Epithets
Racial Profiling

PURPOSE: The purpose of this Policy & Procedure is to define biased-based policing or racial profiling and to clearly mandate a prohibition on racial profiling by members of the Elkhart Lake Police Department. This Policy & Procedure also defines supervisory responsibility in the investigation of alleged violations.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. BACKGROUND
- III. DEFINITIONS
- IV. PROCEDURES

I. POLICY

- A. The Elkhart Lake Police Department does not condone, nor will it tolerate race-based generalizations and acts, racial profiling, or racial epithets. Therefore, it is the policy of the Department to prohibit any employee from using race or ethnicity as the basis for investigation or selective enforcement of any law, ordinance, or rule.

II. BACKGROUND

- A. A fundamental right guaranteed by the Constitution of the United States is equal protection under the law. In addition to this right to equal protection, the fundamental right to be free from unreasonable searches and seizures by government agents is guaranteed by the Fourth Amendment.
- B. Citizens are free to walk and drive our streets, highways, and other public places without police interference so long as they obey the law. They also are entitled to be free from crime, and from the acts of criminals, and to drive and walk our public ways safe from the actions of reckless and careless drivers.
- C. The Elkhart Lake Police Department is charged with protecting these rights, for all, regardless of race, color, ethnicity, national origin, or sexual orientation. Police action, which is biased, is illegal and violates the equal protection clause and the Fourth Amendment of the Constitution. It also alienates citizens, fosters distrust of police, and undermines legitimate law enforcement efforts.

III. DEFINITIONS

- A. Biased Based Policing, also known as Racial Profiling: Any police-initiated action which relies upon race, ethnicity, national origin, or gender of an individual rather than the behavior of that individual, or information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

Two corollary principles follow from adopting this definition of racial profiling:

1. Sworn officers and police personnel may not use racial or ethnic stereotypes as factors in selecting whom to stop and whom to search.
 2. Sworn officers and police personnel may use race or ethnicity to determine whether a person matches a description of a particular suspect.
- B. RACE-BASED GENERALIZATIONS: Broad, stereotypical conclusions about a person based on race or ethnicity.
 - C. RACIAL EPITHETS: Derogatory phrases and terms, which are used to describe a person's race or ethnicity.
 - D. PROACTIVE PATROL: To aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws, while insisting that citizens will only be stopped or detained when there exists reasonable suspicion to believe they have committed, are committing, or are about to commit, an infraction of the law.
 - E. CRIMINAL PROFILING: An investigative method in which an officer, through observation of activities and environment, identifies suspicious behavior by individuals and develops a legal basis, consistent with the Fourth Amendment, to

stop them for questioning.

- F. **REASONABLE SUSPICION:** Also known as articulable suspicion. Suspicion that is more than a mere hunch, but is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that an infraction of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. This can be based on the observations of a police officer combined with his or her training and experience, and/or reliable information received from credible outside sources.
- G. **SELF-INITIATED ACTIVITY:** Assignments/Stops are where the officer has a high amount of discretion. (i.e. traffic stops)
- H. **NON-DISCRETIONARY ACTIVITY:** Assignments/Stops where the officer was called to service by an assignment from dispatch, shift supervisor, commanding officer and/or fellow officer.
- I. **ACTIVITY REPORT:** The following are considered a form of activity report: Event number/update, Incident report, DWI report, Motor Vehicle Crash report, Uniform Traffic citations, Municipal citations and/or warning citations.
- J. **POSITIVE CONTACT:** An initiative by the Elkhart Lake Police Department encouraging officers to develop a rapport with its citizens and visitors by random contacts. These random contacts occur during an officer's tour of duty and while he/she is conducting patrol activities.

IV. PROCEDURES

A. Fair and Equal Treatment

1. Bias-based policing is prohibited both in enforcement of the law and the delivery of police services.
2. Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a policy of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, arrests nonconsensual searches, and property seizures.
3. Officers may not use race, ethnic background, gender, gender identity, sexual orientation, religion, economic status, age, or cultural group as the sole criteria for determining when or how to take enforcement action or provide police services.
4. Officers must be able to articulate specific facts and inferences drawn from those facts that establish reasonable suspicion or probable cause to take any enforcement action.

5. Officers shall take equivalent enforcement actions and provide equivalent services to all persons in the same or similar circumstances.
6. Officers who cannot make objective judgments uninfluenced by prejudicial views or attitudes, intolerance to or preference for certain individuals that are unrelated to the situation at hand shall, as soon as reasonably possible, request that another officer assume responsibility for the matter.
7. Nothing in this policy prohibits officers from using the traits and characteristics of persons, such as race, ethnicity, or national origin in *combination* with other facts to assist in establishing reasonable suspicion or probable cause in the same manner that officers would use hair color, height, weight, or gender for such purposes.

B. Criminal Profiling

1. The nature of our business requires law enforcement officers to be observant, to identify unusual occurrences and law violations, and to act upon them. Proactive enforcement keeps our citizens free from crime and our streets and highways safe to drive upon.
2. Criminal profiling is a legitimate tool in the fight against crime. Criminal profiling is an investigative method in which an officer, through observation of activities and environment, identifies suspicious behavior by individuals and develops a legal basis, consistent with the Fourth Amendment, to stop them for questioning.
3. However, illegal profiling refers to a decision by an officer to stop, detain, interdict, or search an individual based on the race, color, ethnicity, national origin, or sexual orientation. This Department prohibits illegal profiling as a law enforcement tactic and will not tolerate or condone its use by any of our members.
4. It is the Elkhart Lake Police Department's philosophy to assist law enforcement in accomplishing this total mission in a way that respects the dignity of all persons and yet sends a strong message to actual and potential lawbreakers that if they break the law, that behavior will not be tolerated and they will likely encounter the police.

C. Officer Responsibilities

1. Traffic stops and proactive patrols are vital law enforcement tools. In addition to deterring motor vehicle violations, they provide law enforcement visibility and deter more serious crimes. An officer may stop a motor vehicle upon a reasonable suspicion that the driver or an occupant committed a motor vehicle violation or other offense. Such stops shall conform to Department Policies and Directives.

2. Each time a motorist / pedestrian is stopped; the officer will radio to the dispatch center the location of the stop and other pertinent information.
3. In an effort to prevent inappropriate perceptions of biased law enforcement, each officer shall do the following when conducting pedestrian and vehicle stops:
 - a) Be courteous and professional.
 - b) Introduce him- or herself to the citizen (providing name and agency affiliation), and state the reason for the stop as soon as practical, unless providing this information will compromise officer or public safety. In vehicle stops, the officer shall provide this information before asking the driver for his or her license and registration.
 - c) Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the citizen understands the purpose of reasonable delays.
 - d) Answer any questions the citizen may have, including explaining options for traffic citation disposition, if relevant.
 - e) Provide his or her name and badge number when requested, in writing or on a business card.
 - f) Apologize and/or explain if he or she determines that the reasonable suspicion was unfounded (e.g., after an investigatory stop).
4. No motorist or pedestrian, once cited or warned, shall be detained beyond the point where there exists no reasonable suspicion of further criminal activity or other legal or factual basis for detention. No person or vehicle shall be searched in the absence of a search or arrest warrant, a legally recognized exception to the warrant requirement, or a person's voluntary consent.
5. Officers are encouraged and expected to stop and help motorists in apparent need of assistance (e.g., occupied, disabled vehicles, moving vehicles with items on the roof, vehicles leaking substances, etc).
6. Whenever there is a stop or search of a vehicle or individual and the individual alleges the stop or search was made because of "racial or illegal profiling," the officer shall immediately notify his/her supervisor.
7. Upon completion of the stop or search of a vehicle or individual, the officer will submit a report to his/her commanding officer. A copy of the report will be submitted to the Chief of Police. The report shall contain the facts, circumstances, and conclusions, which support the traffic, stop, detention, and/or search.

8. Officers shall not deliberately record misleading information related to the race, color, ethnicity, national origin, or sexual orientation of a person stopped for investigative or enforcement purposes.

D. Supervisor Responsibilities

1. Supervisors should ensure that all officers under their supervision are familiar with the spirit and intent of this policy in dealing professionally, ethically and respectfully with the public, and officers are complying with this policy.
2. Supervisors should monitor activity reports for evidence of improper practices and patterns.
3. Traffic enforcement will be accompanied by consistent, ongoing supervisory oversight to ensure that officers do not go beyond the parameters of reasonableness in conducting such activities.
4. Supervisors should conduct spot-checks and regular sampling of radio transmissions, and in-car computer and central communications records to determine if both formal and informal communications are professional and free from racial bias and other disrespect.
5. A road supervisor or higher-ranking officer shall promptly respond when advised that a person is making a complaint alleging, "illegal or racial" profiling.
6. The road supervisor or higher-ranking officer shall discuss the incident with the complainant.
7. Supervisors shall be particularly alert to any pattern or practice of possible discriminatory treatment by individual officers or squads and take appropriate action.
8. Supervisors shall review profiling complaints and respond at random to observe officers on vehicle and person stops.

E. Complaints

1. Officers who witness or who are aware of instances of bias-based policing shall report the incident to their supervisor.
2. The Department takes seriously allegations of bias-based policing. All such complaints shall be forwarded to the Chief of Police for investigation.
3. The Chief of Police shall maintain data relating specifically to complaints of biased policing. Information shall be provided to the Chief of Police in a manner most suitable for administrative review, problem identification, and development of appropriate corrective actions.

4. Any employee who believes there is, or is made aware of; any violation of this Policy & Procedure shall immediately contact their supervisor.

F. Training

1. All officers will receive basic and in-service training and, where deemed necessary, remedial training on subjects related to police ethics, cultural diversity, police citizen interaction, policies of conduct, conducting motor vehicle stops, and related topics suitable for preventing incidents of biased policing.
2. Training programs will emphasize the need to respect the rights of all citizens to be free from unreasonable government intrusion or police action.
3. Training staff should pay particular attention to the assignment of probationary officers or officers undergoing field training to ensure they are partnered with experienced officers known to operate within this policy.
4. Training can be accomplished in the following formats:
 - New Officer Training Program
 - Field Training Program
 - In-service Programs
 - Shift Briefing Training Program
 - Training Newsletters
 - Legal Update Newsletters
 - Staff Meetings
 - On-Site Training Programs (Vehicle Contacts)

G. Annual Review

1. Annually, the Chief of Police shall prepare a summary report to disseminate to the Protection of Persons and Property Committee.
2. The annual summary report shall include but not be limited to:
 - Listing each complaint
 - Explaining any action(s) taken
 - Recommending training needs
 - Recommending policy changes

Michael Meeusen
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

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