

Memorandum



DATE: February 10, 2017

TO: Honorable Members of the Public Safety Committee:
Adam Medrano (Chair), B. Adam McGough (Vice Chair), Sandy Greyson, Tiffinni A. Young,
Jennifer S. Gates, Philip T. Kingston

SUBJECT: **Administrative Report – 2016 Marshal's Office Annual Traffic Contact Data Report**

Pursuant to Senate Bill 1074, the Dallas Marshal's Office has reviewed statistical data and policies to ensure compliance with applicable law and our commitment to the community. No racial profiling complaints have been received in the last 6 years, including 2016.

The 2016 Dallas Marshal's Office Annual Traffic Contact Data Report is attached for your review.

Please contact me if you have any questions or need additional information.



Eric D. Campbell
Assistant City Manager

[Attachment]

cc: Honorable Mayor and Members of the City Council
T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel F. Solis, Administrative Judge
Mark McDaniel, Acting First Assistant City Manager

Jill A. Jordan, P.E., Assistant City Manager
Joey Zapata, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Sana Syed, Public Information Officer
Elsa Cantu, Assistant to the City Manager – Mayor & Council
Directors and Assistant Directors



2016 Annual Traffic Contact Data Report

Dallas Marshal's Office

**City of Dallas
February 13, 2017**

Table of Contents

- I. Executive Summary
- II. Background
- III. Response to the Texas Racial Profiling Law
- IV. Traffic Contact Data
- V. Racial Profiling Complaints
- VI. Conclusion
- VII. Appendix

Executive Summary

The 2016 Dallas Marshal's Office Traffic Contact Data (Tier 2) report provides a summary of all traffic contacts as required by Senate Bill 1074, subsequent House Bills, the Texas Commission on Law Enforcement (TCOLE) and the Texas Code of Criminal Procedures.

The Dallas Marshal's Office routinely conducts motor vehicle stops and was required to submit the more in-depth Tier 2 report as enforcement vehicles were not equipped with in-car video systems the full calendar year. As of April 2016, all enforcement vehicles have been equipped with video systems and policies adopted to comply with standards.

Two enforcement vehicles are equipped with License Plate Recognition (LPR) systems to identify vehicles associated with outstanding warrants.

The Dallas Marshal's Office was awarded a State Body Camera Grant to equip all enforcement personnel and the purchase is pending. The policy has been drafted and is consistent with the Dallas Police Department practice and policy.

All personnel are prohibited from engaging in racial profiling. The Dallas Marshal's Office is committed to the professional, fair and unbiased service to the community and all citizens. This is supported by the actions of our dedicated marshals and evidenced by no racial profiling complaints being submitted in 2016 or the prior 5 years.

The 2016 Traffic Contact Data report has been electronically submitted to TCOLE as required (Appendix A).

Background

Texas Commission on Law Enforcement - Racial Profiling Reports

Texas Occupations Code 1701.164 specifies that TCOLE collect incident-based data in accordance with the Code of Criminal Procedure Article 2.131 – 2.138 . Chief administrators of law enforcement agencies that meet the criteria must submit racial profiling reports to their governing body, as well as TCOLE.

Each agency must file an annual online report by selecting and completing the reporting option that applies to their particular situation. Reports are filed online through the TCOLE Department Reporting System (DRS) . The reporting period for the previous year begins on January 1 of the current year and ends on March 31 of the current year.

The Reporting options are:

1. **Exempt** - Agencies that do not routinely make motor vehicle stops should fill out the 1 page online exempt status form. The exempt status report contains agency general public contact information for questions about its racial profiling filing status. Some agencies are not required to file annual reports.
2. **Partial Exemption** - Agencies that routinely perform traffic stops or motor vehicle stops and have the vehicles that routinely perform these stops equipped with video and audio equipment must file by an online report. The online report requires the completion of agency general public contact information and the completion of one of the following options:
 - a. online form about the numbers of motor vehicles stops made or uploading an agency developed report in PDF format that contains all information of the one page online form (Tier 1 Reporting).
3. **Full Reporting** - Agencies that routinely perform traffic stops or motor vehicle stops and do not equip the vehicles that routinely perform these stops with video or audio equipment must file by online report. The online report requires the completion of agency general public contact information and requires completion of both:
 - a. online form about the numbers of motor vehicles stops made and uploading a separate PDF document containing a statistical analysis of its motor vehicle stops compared to the gender and ethnic population of the agency's reporting area. The second document must also contain a statement as to if racial profiling complaints were made against the agency and if so, a listing of all racial profile complaints and the corresponding resolutions (Tier 2 Reporting).

CODE OF CRIMINAL PROCEDURE

TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 2. GENERAL DUTIES OF OFFICERS

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:

(A) the race or ethnicity of the individual detained;

(B) whether a search was conducted and, if so, whether the individual detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) the Texas Commission on Law Enforcement; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

(g) On a finding by the Texas Commission on Law Enforcement that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 25, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.05, eff. May 18, 2013.

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS. (a) In this article, "race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;

- (5) the reason for the search, including whether:
 - (A) any contraband or other evidence was in plain view;
 - (B) any probable cause or reasonable suspicion existed to perform the search; or
 - (C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;
- (6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
- (7) the street address or approximate location of the stop; and
- (8) whether the officer issued a written warning or a citation as a result of the stop.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 26, eff. September 1, 2009.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED. (a) In this article:

- (1) "Motor vehicle stop" has the meaning assigned by Article 2.132(a).
- (2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).
- (b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the previous calendar year to the Texas Commission on Law Enforcement and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency.
- (c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:
 - (1) a comparative analysis of the information compiled under Article 2.133 to:
 - (A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; and
 - (B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and
 - (2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.
- (d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).
- (e) The Texas Commission on Law Enforcement, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required

by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(g) On a finding by the Texas Commission on Law Enforcement that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 27, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.06, eff. May 18, 2013.

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 28, eff. September 1, 2009.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney

general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 29, eff. September 1, 2009.

Response to the Texas Racial Profiling Law
The Dallas Marshal's Office Philosophy Statement

Dallas Marshal's Office Racial Profiling Philosophy Statement

- **It is the goal of the Dallas Marshal's Office to provide public safety service that is both effective and fair.**
- **To achieve this goal, racial profiling is strictly forbidden and will never be tolerated in the Dallas Marshal's Office.**
- **The reality and the perception by all citizens must be that sworn deputies do not stop, detain, or take enforcement action based solely upon race, color, or ethnicity.**
- **Racial profiling incurs the cost of eroding the trust between officers and citizens, thus undermining the legitimacy of law enforcement actions.**
- **Through determination, vigilance, and training, the Dallas Marshal's Office will foster and maintain the confidence of all citizens in the integrity and professionalism of its Deputy Marshal's.**
- **All citizens must believe that the administration of justice is applied fairly and that racial profiling is never used as a means of enforcement.**
- **They must also believe that they will be judged solely on their own conduct and never on racial generalizations.**
- **The Dallas Marshal's Office is committed to protecting the rights of all citizens. This commitment extends to maintaining the trust and confidence of citizens through fair application of the law.**



**Mary Lynn Morris
Assistant Director/City Marshal**

Response to the Texas Racial Profiling Law
Current Racial Profiling Policy

DALLAS MARSHAL'S OFFICE POLICIES AND PROCEDURE DEPARTMENT OF COURT AND DETENTION SERVICES

Policy: Racial Profiling and Gender, Age, or Sexual Orientation Profiling

No. 00-005

Purpose: To provide guidelines and procedures to all sworn members of the Dallas Marshal's Office as they pertain to the definition of Racial, Gender, Age or Sexual Orientation Profiling. These procedures and guidelines will serve to strictly prohibit any sworn member of the Dallas Marshal's Office from utilizing racial profiling as a means to determine probable cause to arrest and/or reasonable suspicion to detain any person based solely on race, gender, age or sexual orientation.

100.01 Definitions

1. "Racial Profiling" is defined as stopping, detaining, and/or taking enforcement action on a person solely because of race, ethnicity, or color including individuals of Middle Eastern descent. "Gender, Age, or Sexual Orientation profiling" is defined as stopping, detaining, and/or taking enforcement action on a person solely because of gender, age, or sexual orientation.
2. The definition of "Racial Profiling" and "Gender, Age, or Sexual Orientation Profiling" also applies to searching the body of the person, the immediate premises around the person, or a vehicle occupied by the person solely for the above stated reasons. These acts are strictly prohibited.
3. "Pedestrian Stop" is defined as an interaction between a Peace Officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

100.02 Prohibitions

"Racial Profiling" and "Gender, Age, or Sexual Orientation Profiling" is strictly prohibited. At no time will any sworn employee of the Dallas Marshal's Office rely solely upon racial, gender, age, or sexual orientation profiling as the determination of probable cause to arrest and/or reasonable suspicion to detain any person.

100.03 Supervisory Responsibility

Supervisors have the responsibility of monitoring the activities of subordinates to ensure that "Racial Profiling" and "Gender, Age, or Sexual Orientation Profiling" are not practiced. Supervisors shall take immediate corrective actions if these activities are observed and/or discovered.

100.4 Complaint Process

1. Any person who believes that a peace officer employed by the Dallas Marshal's Office has engaged in racial profiling with respect to that person may file a complaint with the Dallas Marshal's Office, and no person shall be discouraged, intimidated, or coerced from filing such a complaint, or be discriminated against because they have filed such a complaint.
2. The Dallas Marshal's Office shall accept and investigate citizen complaints alleging racial profiling by sworn members of the Dallas Marshal's Office. Such complaints must be in writing, and should include the time, place, and details of the incident of alleged racial profiling, the identity or description of the peace officer or officers involved, and the identity and manner of contacting the complainant.

3. Any peace officer or Marshal's Office employee who receives a citizen complaint alleging racial profiling shall forward the complaint to the City Marshal within 24 hours of receipt of the complaint. Receipt of each complaint shall be acknowledged to the complainant in writing, all such complaints shall be reviewed and investigated by the Internal Affairs Division within a reasonable period of time, and the results of the investigator's review and investigation shall be filed with the City Marshal and the final conclusion reported to the complainant.
4. In investigating a complaint alleging racial profiling, the Dallas Marshal's Office shall seek to determine if the officer who is the subject of the complaint has engaged in a pattern of racial profiling that includes multiple acts constituting racial profiling for which there is no reasonable, credible explanation based on established police and law enforcement procedures.

100.05 Public Education

The Dallas City Marshal's Office will provide education to the public concerning the agency's racial profiling complaint process. Upon request, copies of this policy shall be made readily available to the requesting party at no cost.

100.06 Exceptions

An exception to this policy is contact made with persons suspected of a violation in which the person's age may determine probable cause to arrest and/or reasonable suspicion to detain the person. Examples of these violations include, but are not limited to, truancy, curfew, and minor in possession of alcohol Ordinances and Laws.

100.07 Administrative Option

The City Marshal may revise any of the above provisions contained within this Procedure No. 00-005, as warranted.

Violation(s) of any part of this directive may result in disciplinary action.

This Policy is Effective: January 1, 2002

Revised: August 10, 2009



Mary Lynn Morris, Assistant Director/ City Marshal

Response to the Texas Racial Profiling Law
Data Collection Form

**Dallas Marshal's Office
Racial Profiling Data Collection**

VEHICLE / PEDESTRAIN STOP INFORMATION

DATE TIME
MM DD YY

01. LOCATION OF TRAFFIC OR PEDESTRAIN STOP

02. VIOLATION RESULTING IN STOP *(all that apply)*

MOVING EQUIPMENT LICENSE INVESTIGATIVE
(not type of violation)

03. RESULT OF STOP *(all that apply)*

CITATION WARNING NO ACTION OTHER (ARREST)

04. CITATION NUMBER:

-

05. WAS PERSON ARRESTED? YES NO

06. ARREST NUMBER:

-

07. IF ARREST MADE, CRIME/VIOLATION ALLEGED

(all that apply)
 OUTSTANDING WARRANT ENVIRONMENTAL CRIME
 RESISTING ARREST OFFENSE AGAINST PERSON
 PROPERTY CRIME TRAFFIC VIOLATION
 DRUG VIOLATION *OTHER LIST VIOLATION

08. PERSON'S RACE/MINORITY STATUS

(based only on visual observation)
 WHITE BLACK/AFRICAN-AMERICAN HISPANIC/LATINO
 AMERICAN INDIAN/ALASKA NATIVE ASIAN

09. WAS THE RACE/ETHNICITY OF THE SUBJECT EVIDENT PRIOR TO THE STOP? YES NO

10. PERSON'S AGE UNDER 18 18-29 30-39 40+

11. PERSON'S GENDER MALE FEMALE

12. WAS A SEARCH INITIATED? YES NO

(If YES, probable cause/authority for search) *(all that apply)*
 CONSENT INVENTORY DRUG/ALCOHOL/ORDR
 INCIDENT TO ARREST PLAIN VIEW CONTRABAND OTHER
 REASONABLE SUSPICION-WEAPON (TERRY STOP)

13. WHAT WAS SEARCHED?

PERSON ONLY PROPERTY ONLY PERSON AND PROPERTY

14. DURATION OF SEARCH

0-15 MINUTES 16-30 MIN. 31+ MIN.

15. WAS CONTRABAND DISCOVERED? YES NO

If YES, type of contraband *(all that apply)*
 DRUGS/ALCOHOL/PARAPHERNALIA CURRENCY
 WEAPON STOLEN PROPERTY OTHER

DIVISION OF THE MARSHAL'S OFFICE

FIELD OPERATIONS ILLEGAL DUMP TEAM CDC JUDICIARY

DEPUTY NAME & BADGE NUMBER _____

REVIEWING SUPERVISOR NAME & BADGE NUMBER _____

CHIEF DEPUTY MARSHAL SIGNATURE _____

Response to the Texas Racial Profiling Law
In-Car Digital Video System Policy

DALLAS MARSHAL'S OFFICE				
SPECIAL ORDER				
ORDER NO#	TITLE	ISSUED BY	EFFECTIVE DATE	SUSPENSE DATE
#16-006	IN-CAR VIDEO/AUDIO RECORDING SYSTEM	Ron Everett A.D. / Marshal	2/26/2016 1201 AM	This order will be incorporated in departmental policy at a later date

TABLE OF CONTENTS

S.O. 16-006.00 PURPOSE

S.O. 16-006.01 EFFECTIVE DATE

S.O. 16-006.02 APPLICATION

S.O. 16-006.03 DEFINITIONS

S.O. 16-006.04 GENERAL PROCEDURES

S.O. 16-006.05 USE OF THE DIGITAL VIDEO RECORDING SYSTEM

S.O. 16-006.06 HANDLING, DUPLICATION, AND STORAGE OF VIDEOS

S.O. 16-006.07 RETENTION OF RECORDING AND LOGS

S.O. 16-006.00 PURPOSE

- A. It is the intention of the Dallas Marshal's Office (DMO) to utilize Digital Video Recorder systems in a manner that is fair and equitable toward staff members and citizens.

- B. The DMO has adopted the use of in-car video/audio recording systems in order to accomplish several objectives. These objectives include, but are not limited to:
 - 1. Enhancement of staff member's safety,
 - 2. Enhancement of staff member's reporting, evidence collection, and court testimony,
 - 3. Protection from false claims of impropriety,
 - 4. Staff member's evaluation and training, and
 - 5. Compliance with Texas State Law regarding Racial Profiling data collection.

S.O. 16-006.01 EFFECTIVE DATE

This special order will become effective at 12:01 AM on February 29, 2016, and supersedes any existing policies. This special order will be permanently incorporated in departmental policy at a later date.

S.O. 16-006.02 APPLICATION

This special order applies to all employees of the Dallas City Marshal's Office.

S.O. 16-006.03 DEFINITIONS

- A. DVR: Digital Video Recorder system provided by the DMO.
- B. DMO DVR Administrator: The Supervisor of the Office of Professional Standards, assigned the primary responsibility for the DVR program at the DMO.
- C. DVR Resource Manual: The DMO's Standard Operating Procedure for the DVR program.
- D. Division: When used in this General Order includes any Division, Section, or Unit, operating DVR systems.
- E. Enforcement Activity: Law Enforcement activity including; issuing a citation or giving a warning, questioning, arresting, detaining, frisking, or searching a person or vehicle.
- F. DVR Review Team: Assigned by the Supervisor of the Office of Professional Standards to conduct strategically selected reviews of in-car video.
- G. PC: Personal Computer

S.O. 16-006.04 GENERAL PROCEDURES

- A. The DMO DVR Resource Manual will be used as the Standard Operating Procedure (SOP) by all Divisions operating DVR systems. If a discrepancy exists between the DVR Resource Manual and this Special Order, the Special Order shall take precedence. The Supervisor of the Office of Professional Standards, in cooperation with the Marshal, will update the DVR Resource Manual as needed.
- B. Office of Professional Standards Responsibility:
 - 1. The Supervisor of Office of Professional Standards is responsible for the overall operation of the DMO DVR program. This supervisor, or their designee, has primary responsibility for DVR security, operation, video handling, and training.
 - 2. The Supervisor of Office of Professional Standards, or their designee, will be responsible for maintaining DVR security, reporting malfunctioning equipment, transferring video to writeable compact disks, and providing training to DVR users.
 - 3. In-car video will be uploaded and retained on DVR servers located at 1600 Chestnut.
 - 4. All video will be maintained for a minimum of 90 days in accordance with TX77RSB 1074. If the video has not been identified as one which is to be retained it will automatically be deleted from the server after 90 days.

C. Staff Member's Responsibilities:

1. Staff members will obtain training on the use of DVR systems, and will request additional instruction from a supervisor if they are unsure of the proper operation of the DVR equipment.
2. At the beginning of each shift, staff members operating a DVR equipped vehicle will determine whether the DVR equipment is working properly. Staff members will ensure:
 - a. The DVR is powered on and is positioned and adjusted to record events,
 - b. All previously recorded video has been uploaded,
 - c. The wireless microphone and receiver are working properly in order to provide audio recording, and
 - d. The wireless microphone is properly worn and the power switch is turned on.
3. At the beginning of each shift, staff members will perform an equipment check. The staff member will start the "Record" mode by turning on the vehicle's red lights and will leave them on to record an audio/video sample for one minute. After one minute, the "Time Remaining" display will show the remaining time in hours and minutes. Stop recording by pushing the Stop button.
 - a. In the "tagging dialog" box, the badge number of the staff member performing the function check will be entered into the "officer i.d." field.
 - b. Staff members will type the words "Equipment Check" into the "Incident number" field.
 - c. Staff members will note the time remaining on the Vehicle Operations Checklist (CTS-FRM-834).
4. Staff members will verify that the video and audio sample was successfully recorded by clicking on the "Locate File" or "Playback" button, selecting the last recorded file and clicking the Play button. Any problem with the DVR equipment at this or any other time during the shift will be immediately reported to a supervisor.
5. Supervisors will review videos regularly to ensure that the beginning of shift audio/video sample test procedure is properly conducted.
6. Throughout the shift, the staff member(s) will monitor the operation of the DVR system to ensure it continues to work properly. Staff members using DVR equipped vehicles are responsible for the proper use and security of the systems.

7. One staff member in each DVR equipped vehicle will wear the wireless microphone and ensure that the receiver is working properly during the shift.
8. When interacting only with other police personnel, outside of the presence of civilians, staff members will inform other police personnel if a DVR system is recording.
9. One Staff member will enter their badge number into the "officer i.d." field at the conclusion of all recorded citizen interactions.

D. Field Enforcement Commander Responsibilities:

1. The Field Enforcement Commander will designate one or more supervisors to be responsible for conducting random DVR reviews/audits of staff members assigned to their division as required by TX77RSB 1074. Field Enforcement Commanders will ensure that at least two DVR reviews are conducted each year for all patrol officers under their command by the designated supervisors.
 - a. The primary purpose of these reviews is to ensure DMO accountability and promote staff member safety. Observed violations should be brought to the officer's attention and discussed with a focus and emphasis on training. Significant and/or repeated violations may result in disciplinary action.
 - b. In all cases, violations, and the action taken, will be documented to the Division Commander.
2. Supervisors may request the DVR Team audit videos on a case by case basis through their Division Commander.

E. DVR Review Team Responsibilities:

1. Review and audit video from all vehicle pursuits and any other videos at the request of a Division Commander. These reviews will be conducted to ensure DMO accountability by identifying conduct that might bring discredit to the DMO, seek training opportunities for improvement, development of field training procedures, as well as reporting observances of commendable behavior.

S.O. 16-006.05 USE OF THE DIGITAL VIDEO RECORDING SYSTEM

A. General use of equipment:

1. DVR systems are programmed to record automatically when the vehicle's emergency lights or siren are turned on.

2. DVR equipment may be manually activated by pushing the "Record" button on the control panel, or by pushing the remote Record button on the top of the wireless microphone.
3. Staff members assigned to prisoner transfers will manually activate the DVR equipment upon pickup of the transfer prisoner.
4. Only pushing the "Stop" button on the laptop software interface can stop the recording phase.
5. Under no circumstances are staff members to erase, reuse, or in any manner alter DVR recording. Such activities may subject staff members to disciplinary action and criminal sanctions as these recordings may be considered evidence and/or government records.
6. Staff members will not duplicate DVR video recordings without authorization or tamper with DVR equipment or settings.
7. Only authorized personnel may service (program, repair, adjust, dismantle, or relocate) DVR equipment. Specific service procedures are contained in the DVR Resource Manual.
8. The "On/Off" slide switch on the side of the wireless microphone will serve as a temporary mute button during recording.

B. DVR equipment will be used:

1. When interacting with citizens during traffic/pedestrian stops normally requiring the use of emergency lights,
2. During pursuits and Code-3 operation, and
3. During other activity normally requiring activation of the vehicle's emergency equipment except when deactivation of the DVR systems is authorized.

C. DVR equipment may be used:

1. To record probable cause/suspicious activity prior to activating the vehicle's emergency lights.
2. To record the actions of individuals during calls for service or other contacts.
3. To document crime scenes or other incidents where documentation of actions or events may be essential for court.

D. DVR equipment deactivation (Stop recording):

1. DVR recording may be stopped when authorized by a supervisor who determines that continued recording is not required to meet the objectives of the DVR program, or
2. DVR recordings may be stopped by a staff members during non-enforcement activities with limited citizen interaction, such as; when protecting a crime scene or motor vehicle collision scene or waiting for a wrecker to impound a vehicle.
3. Staff members may stop DVR recordings of a Traffic/Pedestrian stop only after contact with the citizen has ended.
4. Staff members may temporarily deactivate the Audio portion of DVR recordings from the wireless microphone only, by engaging the "On/Off" slide switch on the side of the wireless transmitter, under the following circumstances when no citizen contact is taking place:
 - a. To exchange NCIC/TCIC, DPS, or other law enforcement sensitive data either in person or via the police radio or MDC,
 - b. To facilitate the discussion of training issues or to discuss operational strategy,
 - c. To share information that is not subject to the Public Information Act, telephone numbers, or to exchange personal information (telephone number, home address, etc.) with another staff member or police officer, and
 - d. To discuss an issue with a supervisor or investigator.
5. Staff members will not deactivate DVR equipment (including the DVR wireless microphone or receiver) at any time during the recording of enforcement activity for which recording has begun.
6. Once activated for any reason while a pursuit or assist officer is occurring, the DVR will not be deactivated until the incident has been completed.

S.O. 16-006.06 HANDLING, DUPLICATION, AND STORAGE OF VIDEOS

- A. Uploading video from vehicles – The DVR Resource Manual will outline specific operational procedures to be followed.
 1. Video will be uploaded at the end of every shift by the individual staff member.
 2. If a staff member cannot upload the DVR due to a Download Port failure, the staff member will notify a supervisor immediately.
 3. The Supervisor of Office of Professional Standards, or their designee, will conduct semi-monthly checks to ensure the Download Ports and cables are working properly.

4. If the Supervisor of Office of Professional Standards, or their designee, is unable to correct the Download Port problem, he/she will notify the City HELP desk at (214) 670-1234 for repair.
5. The handling of DVR video will be done in accordance with instructions contained in the DVR Resource Manual.
6. All offense and arrest actions recorded with a DMO DVR will be documented either in an offense, arrest or miscellaneous incident report.
7. The DMO squad car number capturing the video recorded incident and all additional DVR equipped vehicles will be referenced in all related reports.

S.O. 16-006.06 HANDLING, DUPLICATION, AND STORAGE OF VIDEOS

B. Duplication and handling of DVR recordings:

1. If a recording documents a police incident involving serious injury or death, or if the Marshal or the Supervisor of the Office of Professional Standards (DMO), or the DPD Special Investigations Unit (SIU)/Crimes Against Persons Division, DPD Public Integrity Section, DPD Internal Affairs Division, or the DPD Crime Scene Response Unit requests that a video be seized immediately:
 - a. As soon as it is practical, the vehicle will be brought to 1600 Chestnut and the Supervisor of Office of Professional Standards, or their designee, will upload the video to the DVR server.
 - b. The Supervisor of Office of Professional Standards, or their designee, will provide a copy of the requested video.
 - c. A PC converted video or portion of the video will be made. The PC converted copy will be transferred to a compact disk and provided to, and be maintained by the Supervisor of the Office of Professional Standards for the required 90-day retention period. The PC converted copy will be produced utilizing the appropriate media source.
 - c. The Supervisor of the Office of Professional Standards, or their designee, will then search for the incident and "mark for non-deletion."
 - e. The request to release a hold must be submitted to the Supervisor of the Office of Professional Standards when it is determined that the original video recording is no longer needed.

- f. The PC converted copy will be labeled and handled as outlined in the DVR Resource Manual.
 2. If a video recording documents an offense or arrest, the original video recording will be marked for non-deletion and documented in the appropriate offense/incident or supplemental report.
 3. Staff members will submit a Vehicle Evidence Request form (CTS-FRM-868) to a supervisor under the following conditions:
 - a. To request a video recording be marked for non-deletion.
 - b. To request a PC converted copy of the video recording for court or administrative investigations.
 - c. Copies of video will not be distributed to or maintained by staff members.
 4. If a recording documents an incident for which a copy is requested, the procedure to be followed is outlined section 328.06 (Public Information Act) of this order and in the DVR Resource Manual.
 5. Original recordings are not to leave the possession of the Dallas Marshal's Office unless authorized by the Marshal.
 6. The Supervisor of the Office of Professional Standards, or any other person designated by the Marshal, is responsible for the proper conversion or reproduction of DVR recordings.
- C. Staff members who believe that a DVR recording contains usable evidence or important information will notify their supervisor by submitting a Video Evidence Request form (CTS-FRM-868). Supervisors will follow the procedures set out in the DVR Resource Manual for obtaining PC converted copies of recordings.
- D. DVR recordings will be duplicated only for official reasons, including the following:
1. Criminal evidence.
 2. Public Information Act (Open Records) requests.
 3. Office of Professional Standards.
 4. Training Section requests.
 5. Other if approved by the Division Commander.
- E. DVR recordings will not be provided to anyone outside of the Dallas Marshal's Office unless the recording is requested through the proper Public Information Act request process or through a Criminal Justice request received on a completed and approved Request for DVR Video Duplication/ Review form.

- F. As required by Texas Senate Bill 1074 – On the commencement of an internal investigation of a complaint described by SB 1074, Subsection (b) (3) (related to Racial Profiling) in which a video or audio recording of the occurrence on which the complaint is based was made, a copy of the recording shall be provided to the peace officer who is the subject of the complaint upon written request by the officer. This duplicate video shall be requested by the person conducting the investigation who shall document compliance with SB 1074.
- G. During any internal investigation not covered by Senate Bill 1074, the person conducting the investigation shall inquire as to whether the incident was documented by a DVR system. If audio or video documentation exists, the person conducting the investigation will review it and, if the incident is documented by the recording, obtain a copy of the incident for the investigation. Upon written request, they will provide a copy to the accused staff member and document compliance with this policy.
- H. Copies of recordings not involving pending criminal action, civil litigation, or internal investigations may be used for training purposes with the approval of the Marshal or his designee.

S.O. 16-006.07 RETENTION OF RECORDING AND LOGS

- A. DVR recordings will be maintained for a minimum period of 90 days before automatic deletion from the respective server. (Required by TX77RSB 1074).
- B. DVR recordings are subject to Public Information Act requests as any other DMO record.
 - 1. The Supervisor of the Office of Professional Standards is designated as the custodian of record for the video recordings residing on the DMO respective DVR server(s).
 - 2. Only a PC converted copy of the material requested will be transferred onto compact disk, and forwarded to the supervisor of the Office of Professional Standards.
 - 3. Public Information Act requests for videos will be handled in accordance with Chapter 552 of the Texas Government Code and departmental procedures.
 - 4. The Supervisor of the Office of Professional Standards will set charges for duplication of videos for Public Information Act requests.

Response to the Texas Racial Profiling Law Training Requirements

All current Marshals are in compliance with mandated Texas Commission on Law Enforcement (TCOLE) and the Law Enforcement Management Institute of Texas (LEMIT) training as specified in the Texas Racial Profiling Law.

The Dallas Police Department continues to permit Marshals to attend their Core Curriculum training program every two years and share relevant training bulletins.

The Dallas Marshal's Office only hires TCOLE certified peace officers and verifies that all TCOLE training standards have been completed as required. Additionally, the Office provides instruction of the mandated TCOLE Racial Profiling course #3256 (Appendix B).

Response to the Texas Racial Profiling Law
Racial Profiling Complaints

The Dallas Marshal's Office received no complaints from the 1033 documented traffic contacts in 2016.

There have been no racial profiling complaints for the preceding five (5) years.

Procedures and policies are established for accepting complaints at the Dallas Marshal's Office and information is available on the website and 24/7 public lobby.

There were no external formal complaints received in 2016 based on employee actions.

Traffic Contact Data

2016 Traffic Contact Data Report

Race	Traffic Contacts		Searches From Contacts		Consensual Searches		Custody Arrests	
	Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total
White	153	14.8%	16	8.0%	0	0.0%	7	3.9%
African American	421	40.7%	120	60.0%	5	55.6%	112	62.2%
Hispanic	452	43.8%	64	32.0%	4	44.4%	61	33.9%
Asian	5	0.5%	0	0.0%	0	0.0%	0	0.0%
Native American	2	0.2%	0	0.0%	0	0.0%	0	0.0%
Middle Eastern	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Other	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Total	1033	100%	200	100%	9	100%	180	100%

*Race or ethnicity known prior to stop: 9.7%



Year to Year Comparison

	2015 Traffic Contacts	2015 Searches	2015 Arrests	2016 Traffic Contacts	2016 Searches	2016 Arrests
	Number	% of Total	% of Total	Number	% of Total	% of Total
White	115	8.3%	6.5%	153	8.0%	3.9%
African American	246	55.6%	61.3%	421	60.0%	62.2%
Hispanic	350	33.3%	29.0%	452	32.0%	33.9%
Asian	6	0.0%	0.0%	5	0.0%	0.0%
Native American	3	2.8%	3.2%	2	0.0%	0.0%
Middle Eastern	0	0.0%	0.0%	0	0.0%	0.0%
Other	0	0.0%	0.0%	0	0.0%	0.0%
Total	720	100%	100%	1033	100%	100.0%

*Traffic contacts increased by 43% in 2016

Conclusion

The analysis of the report and supplemental information indicates that the Dallas Marshal's Office is in compliance with applicable laws and does not support a pattern of racial profiling. It should be noted that fourteen (14) new marshals were field trained during 2016, generating a significant increase in traffic contacts and arrests. Data supports that 176 out of the 200 searches were based on a warrant arrest at the time of the contact.

The data showed that in a large number of instances, officers did not know the race or ethnicity of individuals before they were detained. Findings related to searches indicate a smaller percentage of searches for White drivers and higher for African American and Hispanic drivers. Updated policies which mirror Dallas Police Department policies related to consensual searches and the use of video/audio technology will be implemented in the next 30 days. Additional requirements have been implemented requiring supervisors and the Professional Standards Unit to review in-car video related to contacts and searches to provide greater analysis and evaluation.

We continually seek to use technology, supervisory review and update procedures and policies to ensure professional and unbiased service to the community.

Appendix A

Racial Profiling Report | Tier two

Agency Name:	Dallas City Marshal's Office
Reporting Date:	01/31/2017
TCOLE Agency Number:	113608
Chief Administrator:	City Marshal Ronald Everett
Agency Contact Information:	
Phone:	214-670-6804
Email:	paul.hansen@dallascityhall.com
Mailing Address:	1600 Chestnut Street Dallas Texas 75226

This Agency filed a full report because:
Our agency has no motor vehicle or audio equipment.

Certification to This Report 2.132 (Tier 2), Full Report

Article 2.132(b) CCP Law Enforcement Policy on Racial Profiling

Dallas City Marshal's Office has adopted a detailed written policy on racial profiling. Our policy:

- 1.) clearly defines acts constituting racial profiling;
- 2.) strictly prohibit peace officers employed by the Dallas City Marshal's Office from engaging in racial profiling;
- 3.) implements a process by which an individual may file a complaint with the Dallas City Marshal's Office if the individual believes that a peace officer employed by the Dallas City Marshal's Office has engaged in racial profiling with respect to the individual;
- 4.) provides public education relating to the agency's complaint process;
- 5.) requires appropriate corrective action to be taken against a peace officer employed by the Dallas City Marshal's Office who, after an investigation, is shown to have engaged in racial profiling in violation of the Dallas City Marshal's Office's policy adopted under this article;
- 6.) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
 - a.) the race or ethnicity of the individual detained;

b.) whether a search was conducted and, if so, whether the individual detained consented to the search; and

c.) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

7.) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision(6) to:

a.) the Commission on Law Enforcement; and

b.) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

Executed by: City Marshal Ronald Everett

Chief Administrator

Dallas City Marshal's Office

Date: 01/31/2017

Dallas City Marshal's Office Motor Vehicle Racial Profiling Information

Total stops: 1033

Gender

Female: 275

Male: 758

Race or ethnicity

African: 421

Asian: 5

Caucasian: 153

Hispanic: 452

Middle eastern: 0

Native american: 2

Was race or ethnicity known prior to stop?

Yes: 100

No: 933

Reason for stop?

Violation of law: 102

Pre existing knowledge: 132

Moving traffic violation: 449

Vehicle traffic violation: 350

Was a search conducted?

Yes: 200

No: 833

Reason for Search?

Consent: 9

Contraband: 6

Probable cause: 5

Inventory: 4

Incident to arrest: 176

Was Contraband discovered?

Yes: 15

No: 185

Description of contraband

Drugs: 13

Currency: 0

Weapons: 0

Alcohol: 1

Stolen property: 0

Other: 1

Stop resulted in arrest

Yes: 180

No: 853

Arrest based on

Violation of Penal Code: 0

Violation of Traffic Law: 0

Violation of City Ordinance: 0

Outstanding Warrant 180

Street address or approximate location of the stop

City street: 954

City street: 954

US highway: 75

County road: 0

Private property or other: 4

Written warning or a citation as a result of the stop

Yes: 700

No: 333

Submitted electronically to the



Appendix B

Racial Profiling



Course Number 3256

Texas Commission on Law Enforcement

September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

- Target Population:** Licensed law enforcement personnel in Texas
- Prerequisites:** Experience as a law enforcement officer
- Length of Course:** A suggested instructional time of 4 hours
- Material Requirements:** Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations
- Instructor Qualifications:** Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 **UNIT GOAL:** The student will be able to identify the legal aspects of racial profiling.

1.1.1 **LEARNING OBJECTIVE:** The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling	CCP 3.05
Racial profiling prohibited	CCP 2.131
Law enforcement policy on racial profiling	CCP 2.132
Reports required for traffic and pedestrian stops	CCP 2.133
Liability	CCP 2.136
Racial profiling education for police chiefs	Education Code 96.641
Training program	Occupations Code 1701.253
Training required for intermediate certificate	Occupations Code 1701.402
Definition of "race or ethnicity" for form	Transportation Code 543.202

- A. Written departmental policies
 - 1. Definition of what constitutes racial profiling
 - 2. Prohibition of racial profiling
 - 3. Complaint process
 - 4. Public education
 - 5. Corrective action
 - 6. Collection of traffic-stop statistics
 - 7. Annual reports
- B. Not prima facie evidence
- C. Feasibility of use of video equipment
- D. Data does not identify officer
- E. Copy of complaint-related video evidence to officer in question
- F. Vehicle stop report
 - 1. Physical description of detainees: gender, race or ethnicity
 - 2. Alleged violation
 - 3. Consent to search
 - 4. Contraband
 - 5. Facts supporting probable cause
 - 6. Arrest
 - 7. Warning or citation issued
- G. Compilation and analysis of data
- H. Exemption from reporting – audio/video equipment
- I. Officer non-liability

- J. Funding
- K. Required training in racial profiling
 1. Police chiefs
 2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074

1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

- A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)
 1. Motor vehicle search exemption
 2. Traffic violation acceptable as pretext for further investigation
 3. Selective enforcement can be challenged
- B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)
 1. Stop & Frisk doctrine
 2. Stopping and briefly detaining a person
 3. Frisk and pat down
- C. Other cases
 1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
 2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
 3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
 4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
 5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
 6. New York v. Belton, 453 U.S. 454 (1981)

2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

- A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism
- B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole
- C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers

- D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop
- E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 **UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.**

3.1.1 **LEARNING OBJECTIVE: The student will be able to identify elements of a racially-motivated traffic stop.**

- A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements
- B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)
- C. A typical traffic stop resulting from racial profiling
 1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
 2. The driver and passengers are questioned about things that do not relate to the traffic violation
 3. The driver and passengers are ordered out of the vehicle
 4. The officers visually check all observable parts of the vehicle
 5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
 6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)

3.1.2 **LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.**

- A. Drug courier profile (adapted from a profile developed by the DEA)
 1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
 2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
 3. Vehicle is rented
 4. Driver is a young male, 20-35

5. No visible luggage, even though driver is traveling
 6. Driver was over-reckless or over-cautious in driving and responding to signals
 7. Use of air fresheners
- B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

- A. Thinking about the totality of circumstances in a vehicle stop
- B. Vehicle exterior
1. Non-standard repainting (esp. on a new vehicle)
 2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
 3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
 4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)
- C. Pre-stop indicators
1. Not consistent with traffic flow
 2. Driver is overly cautious, or driver/passengers repeatedly look at police car
 3. Driver begins using a car- or cell-phone when signaled to stop
 4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)
- D. Vehicle interior
1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
 2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074:

<http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

Appendix A

Maryland Training Unit on Proactive Field Stops

Law Enforcement Training Course

TRAINING UNIT
PROACTIVE FIELD STOPS

INSTRUCTOR GUIDE



Developed by the
Maryland Police and Correctional
Training Commissions

NOTICE

Due to the dynamic nature of law enforcement and the impact of court decisions and statutory changes on police and correctional operations, it is important that each department review this information to verify that it is consistent with current federal, state and local law and regulations, and with departmental policy and procedure. This information is not intended to substitute for the advice of legal counsel. You should speak with your legal advisor about the sufficiency of your department's manual, policy, curriculum, and training program. This material should not be used as the sole basis for compliance with any law or regulation, and departments should not rely on this material as a legal defense in any civil or criminal action. The Police & Correctional Training Commissions have compiled and distributed this information as a guide for the individual departments, and are not responsible for the content and delivery of this material by other departments

TRAINING UNIT
Proactive Field Stops

TRAINING OBJECTIVES:

Examine the phenomenon of alleged racial profiling by law enforcement, particularly the tactic of using traffic stops as a pretext to investigate suspected criminal activity.

Review the constitutional issues surrounding the use of police field stops to deter crime and apprehend known criminal offenders, including relevant US Supreme Court and Maryland decisions.

Discuss effective techniques for conducting lawful field stops of suspects operating motor vehicles and suspects on the street.

MPTC OBJECTIVES:

None identified at this time.

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TABLE OF CONTENTS

I.	RACIAL PROFILING - A BACKGROUND	Page 7
II.	LAW ENFORCEMENT PROFILING - PRO AND CON	Page 11
III.	CONSTITUTIONAL ISSUES	Page 13
IV.	INTERPERSONAL COMMUNICATION: THE KEY INGREDIENT	Page 19
V.	PROACTIVE FIELD STOPS - MOTOR VEHICLES	Page 22
VI.	PROACTIVE FIELD STOPS - STREET INTERVIEWS	Page 25
VII.	CONDUCTING EFFECTIVE VEHICLE STOPS	Page 27

TRAINING UNIT
Proactive Field Stops

I. Racial Profiling – A Background

“To stop and search an individual simply because of his race, gender, or economic level is unlawful as well as *unconstitutional, and should not be tolerated in any police organization.*”

Superintendent David Mitchell
Maryland State Police

- A. In its broadest sense, racial profiling by law enforcement officers is the practice of some officers to stop, search, and investigate minorities, both on the street and while traveling in vehicles, based solely on their racial or ethnic background, rather than on their actions.
- B. The perceived police practice of stopping and searching vehicles operated by African Americans, especially those that are suspected of being drug couriers, had been termed “Driving While Black,” or “DWB.”
- C. “DWB” has likewise been expanded to mean “Driving While Brown,” —the ethnic profiling of Hispanic-Americans.
- D. This perception by some African Americans that they are unfairly and unjustly singled out by police as criminal suspects has been widely publicized by the national and local media.
- E. Racial profiling is any police street or traffic stop, based solely on racial or ethnic stereotypes that has the end result of treating minorities significantly differently than non-minority citizens. This volatile issue can effectively polarize police agencies and the communities they serve.
- F. The majority of complaints alleging racial profiling follow vehicle stops by police.
- G. These vehicle stops are usually the result of police drug interdiction efforts and they occur typically along interstate highways that are considered to be major drug transport corridors.

- H. In the Mid-Atlantic area, Interstate-95 has been the source of the majority of complaints about this practice, particularly those sections of I-95 in Maryland.
- I. Typically, the traffic stop is for a traffic violation, which is actually a pretext for the purpose of conducting a search of the vehicle for drugs or other narcotic-related contraband.
- J. Allegations of racial profiling during a vehicle stop may roughly follow this pattern:
1. On the basis of a real or contrived traffic violation, the suspect vehicle is stopped by the police.
 2. The driver and occupants are subjected to verbal inquiries that are not necessarily related or pertinent to the purported traffic violation that was the basis for the stop.
 3. The driver and other occupants are ordered out of the vehicle.
 4. The police will visually check all observable areas of the interior of the vehicle.
 5. Based on their questioning of the occupants and their visual observation of the vehicle, the police, acting on their perception of a drug courier profile—which is actually an investigative template—may detain the driver and occupants by the roadside for further investigation.
 6. The driver is requested to accede to a consent search of the vehicle.
 7. If consent to search the vehicle is denied, the police will usually conduct a peripheral investigative (and delaying) tactic, such as summoning a drug-detection dog to the scene, or conducting time-consuming wanted and criminal record checks on the vehicle and all occupants.
 8. The key element in this process is the consent search, since this is the means by which the police will successfully accomplish a drug interdiction effort.
 9. If the driver refuses to consent to a search of the vehicle, intimidation may be applied. The police may threaten to detain the driver (for several hours) until they obtain a search warrant, or otherwise allude to some other delaying or harassing action, even intimating the arrest of occupants and the towing and impounding of the vehicle.

K. Drug courier profiles originated with the Drug Enforcement Administration (DEA) in the early 1970's, and were originally used at airports, train stations, and bus depots. The characteristics of DEA courier profiles were behavioral-based:

- Unusual nervousness of suspect
- Payment of ticket in cash
- Traveling to or from a drug-suspect destination
- Traveling under an alias
- Carrying little or no luggage
- Immediate use of telephone after destination arrival
- Leaving a false call-back phone number with ticket agent
- Excessive travel to drug-source or distribution locales

L. In 1986, the DEA instituted "Operation Pipeline," a highway drug interdiction program, which has since trained state and local police agencies in the use of pretext traffic stops in order to find drugs in vehicles. The techniques suggested by the DEA include the following clues, or indicators of highway drug smuggling:

- Use of car air fresheners to discourage drug-sniffing canines
- Overt signs of driving long hours without stop, such as food wrappers and beverage cans in the car, days-old facial beards, and disheveled clothing
- Use of rental vehicles
- Driver is a young male, usually 20-35 years; the age group which experience has shown to be the most likely drug courier.
- No visible luggage in the vehicle
- Driver attempted to avoid or elude the police by operating either recklessly, or even overly-cautiously
- Unusual driver nervousness and anxiety

M. The DEA and local police agencies vigorously deny that race or ethnicity is a factor in drug courier profiles. These agencies say they neither teach nor condone racial profiling. If and when it does occur, they infer it is the result of over-zealous or errant officers, the proverbial "bad apples" or "rogue cop" cliché.

N. Various national civil rights organizations have claimed otherwise. The American Civil Liberties Union (ACLU), has taken the lead in combating alleged racially-biased traffic stops by instituting civil litigation against suspect police agencies, sometimes successfully.

O. According to the ACLU, pretextual stops are legal deceptions because the alleged traffic violation is not the real reason the officer stopped the car. They note that this becomes obvious when the officer begins to question the occupants and requests consent to search the vehicle. If the stop was really for a traffic violation, they argue, there would be no need for a roadside interrogation or a search.

- P. Pretextual stops that are presumably based solely on the race or ethnicity of the driver and/or passengers, are problematic and are the center of the controversy.
- Q. The US Supreme Court, in *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769 (1996), has approved the use of pretextual traffic stops when the officer has observed a traffic violation or has probable cause to believe that criminal activity has been, or is, taking place.
- R. There is an increase in law enforcement agencies being confronted with civil litigation alleging bias traffic stops by their officers, i.e., that their officers are acting primarily in response to a citizen's race or ethnicity, rather than the citizen's actions.
- S. While it is appropriate to use race as an identifying characteristic, such as in a description of a wanted suspect, police cannot utilize a criminal profile based solely on race or ethnicity, nor can police use race or ethnicity as the sole basis for a traffic or street stop. To do so is the crux of racial profiling.
- T. Simply put, racial or ethnic bias has no place in progressive law enforcement, regardless of past practices. Traffic stops and street field inquiries must always be performed in a totally impartial, fair-minded, and professional manner. Police cannot effect a pretextual traffic stop solely on the basis of the race of the driver or occupants.

Police cannot ascribe certain behavior traits to a person or a group merely on the basis of their race or ethnic background. If police action is taken, it must be because the person in question has violated a law, not because he or she is of a particular race, ethnicity, or gender. Police can only intervene on the basis of what people do, not on what they look like.

II. Law Enforcement Profiling – Viewpoints

- A. The alleged practice of racial profiling in law enforcement assumes that most drug offenses, particularly distribution and sales, are committed by minorities—predominantly African Americans and Hispanics. It follows, that when police specifically look for drug violations among African Americans and Hispanics, they'll find them in disproportionate numbers.
- B. On the other hand, civil rights activists challenge the claim that criminal profiling is disproportionately committed by young minority males. They rationalize that because police concentrate aggressive crime suppression tactics primarily in minority communities, they will, as expected, stop, investigate, and arrest a disproportionate number of minority men.

- C. Despite this unintended “targeting” effect of profiling, profiling itself is not necessarily a biased concept. Everyone “profiles,” although some might call it stereotyping. We profile when we make a major purchase, pick our friends, or select a school for our kids. Arguably, profiling can be considered an intrinsic part of the human experience.
- D. A profile is a set of characteristics which we arbitrarily ascribe to human behavior or to a social situation, and by which we judge, evaluate, and categorize people, places, and things. These characteristics are derived from our life experiences, and are applied either consciously or subconsciously.
- E. Profiling, as a criminal investigation tool, is naturally derived from our work experiences as law enforcement officers. We intuitively form insights regarding people we professionally interact with, particularly the criminal element. From these associations, we develop a mental profile of certain characteristics that are habitually associated with specific acts of criminal behavior.
- F. Essentially, MO, or methods of operation, and criminal profiles are closely related concepts. Based on a criminal’s MO, an experienced and insightful investigator, particularly a specialist, can usually formulate a reasonably accurate profile of the perpetrator.
- G. The heart of the subject controversy is whether law enforcement agencies can legitimately use race, either exclusively, or as one of several factors in devising criminal profiles for suppression of street crime, and particularly, for drug courier interdiction on highways.
- H. Law enforcement officials, including some African American police chiefs in big cities, defend such tactics as an effective way to target their limited resources on likely lawbreakers. They maintain that profiling is based not on prejudice, but probabilities—the statistical reality that young minority men are disproportionately likely to commit (and be the victim of) crimes.¹
- I. Bernard Parks, Chief, Los Angeles, CA PD, argues that racial profiling is rooted in statistical reality, not racism. Chief Parks, who is African American, vigorously defends the idea that police can legitimately factor-in race when building a profile of a criminal suspect.²
- J. Reuben Greenberg, Chief, Charleston, SC PD, who is also Black, sees the problem as “...white cops who are so dumb that they can’t make a distinction between a middle-

¹ Jeffrey Goldberg, “What Cops Talk About When They Talk About Race,” *The New York Time Magazine*, 20 June 1999, p. 50-57, 64-65, 88.

² *Ibid.*

class Black and an under-class Black, between someone breaking the law and someone just walking down the street. Black cops too.”³

- K. The International Association of Chiefs of Police (IACP) maintains that proactive police traffic stops, based on legitimately-observed and articulable violations will:
- Reduce motor vehicle accidents
 - Identify and deter drunk drivers
 - Prevent and abate criminal activity
- L. The IACP notes that studies have shown that more illegal guns are seized through traffic stops than any other enforcement action and that the DEA estimates that 40% of all drug arrests result from traffic stops.
- M. The problem with racial profiling, is that it is not only capricious, it is also inaccurate. It randomly targets all minority men, the innocent as well as the criminal, including many middle-class professionals, based solely on their race or ethnic origin, who are arbitrarily stopped, detained, questioned, and humiliated by this practice, often repeatedly.
- N. Whatever gains law enforcement derives from profiling are vastly outweighed by the negative social costs incurred, principally the erosion of trust and confidence in the criminal justice system in this country by minorities.

III. Constitutional Issues

A. Two U.S. Supreme Court decisions impact proactive field stops. *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769 (1996) for traffic stops, and *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968) for street field interviews.

B. *Whren v. United States*

1. In *Carroll v. United States*, 267 U.S. 132,153 (1925), the Supreme Court established the motor vehicle search exception to the warrant requirement. This decision permitted police to search a vehicle without a warrant when they had probable cause to believe it contained contraband or evidence of a crime. The mobility of a motor vehicle was a factor in this decision.
2. In 1996, the US Supreme Court held unanimously in *Whren v. United States*, that as a general matter, the decision to stop a motor vehicle is reasonable when the police have probable cause to believe that a traffic violation has occurred.

³ Ibid.

3. The Court noted in *Whren*, that the constitutional reasonableness of the stop does not depend on “ulterior motives,” “actual motivations,” or “subjective intentions” of the officer making the stop.
4. In effect, the United States Supreme Court approved the practice of police using a traffic violation to justify a traffic stop, even when the purpose of the police was to conduct an investigation into suspected criminal activity not necessarily related to the traffic violation.
5. The Court, while declaring that such stops do not violate the Fourth Amendment, did allow that allegations of unlawful selective enforcement (stops based solely on race or ethnicity) could be challenged civilly under the equal protection clause of the 14th Amendment.

C. *Terry v. Ohio*

1. *Terry v. Ohio* was a landmark Supreme Court case that established the Stop & Frisk doctrine, and outlined the Supreme Court’s guidelines for investigative stops.
 2. The Court held that police may, in certain circumstances, approach and stop a person for the purpose of investigating possible criminal behavior, even when there is not enough probable cause to make an arrest.
 3. Under *Terry*, a police officer may stop and briefly detain a person only if the officer has a reasonable suspicion, supported by articulable facts, that the individual may be involved in criminal activity.
 4. The Court also held that under certain circumstances, the person stopped could also be “frisked,” in that the police could conduct a limited search, or “pat down”, of the individual’s outer clothing to discover the presence of any weapons.
- D. These decisions permitted a wide latitude of individual police discretion in stopping and investigating citizens operating motor vehicles, standing on a corner, or walking down the street.
- E. Obviously, discretion is a critical part of the police task and police work grants front-line officers an enormous amount of autonomy in decision-making. In this sense, police discretion can be defined as making judgmental decisions based on several factors, such as:
- Laws and ordinances

- Agency policies and procedures
 - Training
 - Job knowledge and experience
 - Personal values and beliefs
 - Work group norms
 - Community mores and customs
- F. Police work, by its very nature, however, can be driven by a single-minded determination to just getting the job done; an ends justify the means attitude. This is personified by the old cop adage: “Do something—take some kind of action—even if it’s the wrong thing.”
- G. When this macho, action-oriented mindset is coupled with wide-ranging autonomous and loosely-supervised discretion, the potential for police abuse of power is considerably magnified.
- H. For some officers, the ends, or objectives, have become so important to them, that they will resort to using borderline means or risky shortcuts to accomplish what *they* think is right and proper, regardless of what the law requires or what their agency policies dictate.
- I. In time, this “ends justify the means” outlook evolves into an “us versus them” approach to law enforcement; a cynical, and self-serving personal assessment of the officer’s relationship to the citizenry he or she is sworn to protect.
- J. Whatever the individual police officer may personally think about crime, criminals, and the law, he or she must perform their duty in a competent and fair-minded manner.
- K. Competence and fairness are the keys to professional police work, especially in confronting citizens in proactive field stops; anything less is ethically and professionally unacceptable.
- L. To validate and justify a traffic stop or a street field interview, you must be capable of reasonably and intelligently articulating, verbally and in writing, the basis for the stop. In order to stop a vehicle, for instance, a police officer must be able to explain that a traffic violation or a criminal act had occurred.
- M. Articulating simply means you must be able to persuasively explain or demonstrate to a court that you had probable cause to stop the vehicle or person in the first place, and that you had reasonable suspicion for any further detaining or investigative actions you conducted following the stop.
- N. Reasonable suspicion is something less than probable cause, but is more than a vague suspicion, an unexplainable hunch, or a “gut feeling.” If you can’t articulate the

reason(s) for the stop, you probably don't have grounds for a legal stop in the first place.

O. Other Significant Cases:

1. *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977) A US Supreme Court decision which allows an officer to order the driver out of a vehicle following a lawful traffic stop. The Court decided this case on the basis of officer safety, and cited a study that revealed 30% of police shootings occurred when officers approached suspects in vehicles.
2. *Maryland v. Wilson*, 117 S.Ct. 882 (1997) This US Supreme Court decision permits officers to order passengers out of a vehicle following a lawful traffic stop pending the completion of the stop.
3. *Graham v. State*, 119 MdApp 444, 705 A.2d 82 (1998) Passenger is "seized" for purposes of the 4th Amendment when he is ordered to remain in a car stopped for speeding while officer checks the driver's license and registration. Continued detention of passenger *after* purpose of stop is accomplished is unreasonable, unless there is reasonable, articulable suspicion to justify continuing the detention. (driver's license proved invalid, driver was arrested, yet passenger ordered to remain in the car after driver's arrest to wait 25 minute for a K-9 unit).
4. *Pryor v. State*, 122 Md.App. 671 (1997), *cert. denied* 352 Md. 312, 721 A.2d 990 (1998) (other citations omitted) The 4th Amendment permits the warrantless search of an automobile when there is probable cause to believe that the automobile contains contraband or evidence of criminal activity.. Note: there is no separate "exigency requirement" for the automobile exception to apply; probable cause alone satisfies the automobile exception to the 4th Amendment's warrant requirement. *Maryland v. Dyson*, 527 U.S. 465, 119 S.Ct. 2013 (1999)(*per curiam*).
5. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999) The officer's purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning. Once the initial purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention. Once the underlying basis for the initial traffic stop has concluded, a police-driver encounter which implicates the 4th Amendment is constitutionally permissible only if (1) the driver consents to the continuing intrusion; *or* (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999). For example:

Officer stopped driver stopped for suspected violations of motor vehicle laws, and continued to briefly detain him after learning that the license and registration were in order. Court found that officer harbored no more than a “hunch” that the driver possessed drugs, and that the continued detention was not independently supported by reasonable suspicion of criminal activity. Therefore, drugs subsequently found in the vehicle were suppressed. *Munaf v. State*, 105 Md.App. 662, 660 A.2d 1068 (1995).

Trooper issued driver a traffic citation, returned driver’s license and registration documents, and then asked driver if he would mind exiting his vehicle and stepping to the rear to answer a few questions. After several questions, driver admitted to smoking and possessing pot. Pot was suppressed because court found trooper had insufficient reason to justify continuing the encounter after issuing citation. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999).

In meeting the reasonable articulable suspicion standard, it is not enough for officers to articulate reasons why they stopped someone if those reasons are not probative of behavior in which few innocent people would engage. The factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied; officers’ assertions that a criminal activity is indicated by “garden variety nervousness” must be treated with caution. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999) (other citations omitted).

6. *New York v. Belton*, 453 U.S. 454 (1981) Allowed that police may conduct a full search of a vehicle’s passenger compartment incidental to a custodial arrest of an occupant. A full search would not, however, be permitted in those situations where the officer merely issued a citation.

P. Consent Searches:

1. The two prerequisites for a valid consent search of a vehicle (or anything else) are:
 - a. The consent must be given voluntarily, and
 - b. The consent must be given by a person with authority.
2. Because consent is a critical exception to the search by warrant requirement, the State (the police officer) bears the burden of proving both these prerequisites.
3. The consent given be must be free and voluntary. Any appearance of coercion may void the search. A arrestee in custody is seen by the courts to be

susceptible to duress and coercion and the courts will closely examine the voluntariness of any consent given by an arrested person.

4. Numerous officers on the scene may be perceived as a coercive situation to the average person.
5. Similarly, the person consenting to the search must have the legal authority to grant the consent. Again, it is the investigating officer's responsibility to determine authority. From a legal perspective, control and access count for more than ownership.
6. The consent search of a vehicle:
 - a. Will usually include all containers in the vehicle unless the consenting person exempted consent for those specific items or areas.
 - b. The search must be restricted in scope to the area where consent was given. In other words, a person may consent to a search of the passenger area, but not the trunk.
 - c. The request for consent must be in the form of a request, not a command.
 - d. The person must clearly understand what he or she is agreeing to when their consent is requested.
 - e. Police are not constitutionally required to inform citizens that they are free to leave before getting consent to search a motor vehicle, but by not doing so, the constitutional validity of any further investigation would be imperiled. *Ferris v. State*, 335 Md 356, 735 A.2d 491 (1999).
 - f. It is recommended, however, that the driver's license and registration be returned, along with any other documents, including a citation, if one was issued, before consent to search is requested, to dispel any impression on the driver's part that he or she is still detained.
 - g. The consent to search may be withdrawn at any time during the search.
7. Consent Form or Waiver:
 - a. Most law enforcement agencies have a pre-printed form with which a person can sign to indicate that they consented to a search of their vehicle, home, or possessions. Some consent forms are printed in multiple languages.
 - b. It would be very beneficial if officers can persuade the responsible individual to read and sign their agency consent form.
 - c. Note: It is not unusual for suspects to verbally agree to a consent search, but decline to sign a consent form. If incriminating evidence or contraband is later found, they can then deny that they ever verbally consented to a search.

- d. To preclude this scenario, officers should obtain the verbal consent on tape if an in-vehicle or tape recorder is available. Lacking that, have your back-up officer available to witness the verbal consent agreement.

NOTE: You cannot tape-record in Maryland with the knowledge, and consent, of the other person.

8. When conducting a consent search of a vehicle, always have a back-up officer on the scene for your own safety. You cannot conduct an effective vehicle search and keep an eye on someone at the same time.
9. The question always arises—why would anyone with something to hide, especially of an illegal nature, willingly allow the police to search their vehicle or possessions? Usually for the following reasons:
 - No. 1 Reason – They believe the stuff (drugs, weapons, stolen property, etc.) will be overlooked.
 - No. 2 Reason – They think their consent will be looked on favorably by the courts. They want to appear cooperative (!)
 - If anything incriminating is found, they feel like they can deny any knowledge or personal involvement with it, or otherwise explain it away.
 - They think they've been caught and simply give up.

IV. Interpersonal Communication: The Key Ingredient

- A. Effective communication skills can be a police officer's most important attribute. This is particularly so when engaged in a traffic stop or a field interview on the street. A few particulars...:

1. Approach the citizen in a open, friendly manner if at all possible. Keep your body language assertive, but non-hostile. If appropriate, introduce yourself.
2. Remember, the key elements in any stop are civility and caution. Sometimes it's difficult to be courteous, but you should always be civil.
3. Tell the citizen why you stopped him. Unless it's patently obvious, the citizen has a right to know and you are professionally obligated to inform him, without any hostility or posturing on your part.
4. Avoid any excessive small-talk or inappropriate questioning.

5. Be brief and to the point. Don't detain anyone beyond the time needed to effect the necessary enforcement action or otherwise clarify a situation.
6. Keep your physical, or non-verbal indicators friendly and neutral, such as your:
 - Eye contact
 - Stance
 - Position of hands
 - Facial expression
7. According to studies conducted in several states, the number one citizen complaint about police officers is the officer's *verbal conduct*. By comparison, only about one-fourth of the complaints filed against police officers dealt with excessive force issues.
8. Speak civilly and in a moderate tone. Citizens seem more concerned about *how* officers speak to them, than by what the officer actually says. Citizens are particularly aggrieved by what they perceive as an officer's gruff or condescending tone of voice.
9. Listen actively. Communication is a two-part process and listening is the other half. Regardless of the type of person you're dealing with, stay focused and concentrate on what they're saying (...or not saying).
10. Sgt. Larry E. Capps, of the Missouri City, Texas PD, has coined a police-citizen interaction dynamic, appropriate for this discussion, which he calls CPR, for:
 - a. Civility – A state of affairs characterized by tolerance, kindness, consideration, and understanding. Civility can be expressed by positive action, or even inaction, as when police officers refrain from over-reacting to verbal outbursts from angry citizens.
 - b. Professionalism – In a broad sense, a concept of excellence or a continual striving for excellence. Its core elements include technical knowledge, moral judgements, a client-oriented practice, considerable discretion given to practitioners, and most importantly, an acknowledgement that policing is a “moral call” profession, in which members are duty bound to respond, whenever and wherever called, regardless of who calls them.

⁴ Larry E. Capps, "CPR: Career-Saving Advice for Police Officers," *FBI Law enforcement Bulletin*, July, 1988, Washington, DC, p. 14-18.

- c. Restraint – The self-control exercised by officers and their selection of the least intrusive means of accomplishing a legitimate police objective.

11. Some officer best-practices for vehicle stops:

- a. Always inform the driver of the reason for the stop. Speak slowly and clearly.
- b. Describe the violation in terms of what the vehicle is doing, not what the driver did. This non-accusatory approach can often enhance officer-driver rapport.
- c. Ask the driver for the reason for the violation; allow them to vent/offer a stress-reducing explanation.
- d. Provide instructions. After you obtain their license and registration, tell them that you are going back to your police vehicle to review their documents and advise them to remain in their vehicle.
- e. Calm any children in the stopped vehicle that may be visibly apprehensive of the presence of a police officer.

12. Again, it's worth repeating: Proactive traffic enforcement that is race or ethnic-based is neither legal: consistent with democratic ideals, values, and principles of American policing; nor in any way a legitimate and defensible public protection strategy.⁴

13. Use the *but/for* test to determine if a stop was based on racial profiling. Say to yourself, *But for this person's race, ethnic heritage, gender, religious or sexual preference, would this driver have had this encounter with me?* If the answer is that they would not, then this was a profile stop and most likely a violation of the person's Constitutional rights.⁵

V. Proactive Field Stops – Motor Vehicles

- A. You've heard it before; we'll say it again: "There's no such thing as a routine traffic stop." You, the cop, are at a distinct disadvantage during any traffic stop. The driver knows who you are, but you don't know who he is.
- B. All your survival skills and street instincts should be highly focused during a traffic stop, no matter how innocuous or minor it may seem.
- C. Again, you must be able to articulate that a traffic violation or criminal act has occurred in order to stop a vehicle. You cannot stop a car on a whim, or a hunch, or just because you're bored. Discretionary stops are violations of the Fourth

⁴ US Department of Justice, NHTSA, *Strengthening the Citizen and Police Partnership at the Traffic Stop: Professionalism is a Two-Way Street*, (Draft) Washington, DC, Aug. 14, 2000, p. 8.

⁵ *Ibid.*

Amendment and/or the Fourteenth Amendment because they are arbitrary, intrusive, and discriminatory.

- D. Unless it's an emergency situation, you should not attempt to stop a vehicle if you're in plainclothes and/or operating an unmarked vehicle. Always request a marked patrol vehicle to make the stop for you.

Note

Does this all sound like basic cop stuff you learned back at the Academy and at those dreary and redundant In-Service training sessions? Does a salty, veteran, street cop like yourself need to sit thru all this sermonizing again? Consider this, FBI stats indicate that vehicle stops, nationally, over a 10-year period, account for about 11 percent of all peace officers feloniously killed or assaulted. Are you fairly comfortable with one-in-ten odds, Officer, ...well, are you?

- E. It is not the purpose of this training unit section to tell you how to make a traffic stop. Traffic stop procedures and techniques constitute a training category all their own. We'll cover a few priority highlights that are particularly pertinent for a patrol officer working solo:

1. Select a stop location that will best allow you to deal safely and effectively with the motorist.
2. Position your police vehicle about 30-40 feet behind the stopped vehicle and aim your spotlight at the interior rear mirror of the stopped vehicle
3. Park your police vehicle at an angle to the stopped vehicle and position your vehicle engine block as cover, ...just in case.
4. Notify your dispatcher of the stop location, vehicle description and license—Always!
5. If doable, get a stolen check on the vehicle before approaching. You can obtain a vehicle registration listing later.
6. If circumstances are less than desirable, or if something seems suspicious or amiss, approach the vehicle from the right-hand, or passenger side, especially when:
 - You're working solo
 - You're in a rural or deserted area
 - During darkness or in a low-light area
 - More than one person is in the stopped vehicle

- You're on a high-traffic roadway
7. If the driver or occupants exit the stopped vehicle right after the stop, exit your police vehicle also, especially if they start walking toward you. Be the first out of your vehicle. You don't want to be behind your steering wheel and secured in your seat belt if a fire fight erupts.
 8. Remember: Your initial approach toward the vehicle and your first contact with the driver is the most dangerous stage of a traffic stop. Make your approach slowly and stop and push down on the trunk lid of the stopped vehicle to ensure it is locked. Ask the driver to turn on the dome light.
 9. Ask drivers where they keep their operator's permit and vehicle registration. This will allow you to anticipate the driver's movements and might decrease your reaction time in the event something goes wrong.
 10. Note: Push down on the trunk with your bare hand to mark and leave your handprint on the vehicle, in case the vehicle has to be identified at a later time (...and if you're not around to do it).
 11. Important: If something doesn't look or feel right, back-off and call for a back-up unit, and then wait for it. Trust your instincts.
 12. Never place yourself within arms-reach of the driver or any occupant of the stopped vehicle, and keep your gun hand free. Don't lean into an occupied vehicle for any reason.
 13. Don't walk or position yourself in front of or behind the stopped vehicle, or between your police vehicle and the stopped vehicle, and don't cross in front of your headlights when approaching the stopped vehicle.
 14. Don't allow any unknown suspect to sit in your patrol vehicle, certainly not without being searched. It's a bad practice; they can hear your radio transmissions and there are weapons within easy reach. Just don't do it!
 15. Don't turn your back to any of the occupants of a stopped vehicle, or otherwise allow yourself to be distracted and lose visual contact with a suspect. This is the cardinal rule governing any cop-suspect interaction.
 16. If you have to return to your police vehicle for any reason during a traffic stop, it may be preferable to sit in the right-front seat as this position will offer you greater bail-out options in the event something goes badly wrong.
 17. Be aware of the possibility that the vehicle you stopped was a "load" vehicle carrying valuable contraband and that there may be an "escort" vehicle

following or preceding the vehicle you have stopped. Be very observant of any vehicles that stop on the roadway in front of, or behind the vehicle you have stopped.

VI. Proactive Field Stops – Street Interviews

- A. Maryland has recently ruled that police accosting a citizen is a viable law enforcement tool, as long as the encounter remains voluntary, i.e., that the citizen feels free to walk away. However, a seizure occurs when police indicate that compliance with their requests is required, such that the reasonable person would no longer feel free to walk away. *Reynolds v. State*, 130 Md.App. 304, 746 A.2d 422 (1999), *cert. denied* __Md.__, __A.2d__ (April 13, 2000) (citizen accosted responded to officer's questions, answers yielded no reasonable articulable suspicion or probable cause; ensuing 5-minute wait - in silence - for results of warrant check was excessive and unreasonable because it was unsupported by reasonable suspicion or probable cause).
- B. The street field interview involves a police officer stopping a person or persons on the street, purposely to question, and sometimes to search them, because the officer has a reasonable suspicion that they may have been engaged in criminal activities.
- C. Like their companion traffic stops, however, street field interviews, particularly in high-crime, disadvantaged neighborhoods, have been the cause of minority-community complaints, alleging that the police are indifferent to, and abusive of the civil rights of minority citizens.
- D. Aggressive field stops and searches, especially by quasi-military, police tactical units in minority communities, have created a highly negative and unfavorable image in the media, as witness the recent NYPD street unit encounters with Amadou Diallo and Patrick Dorismond, which resulted in the shooting deaths of both men, under highly questionable circumstances.
- E. On the plus side, street field interviews are a proven and verifiable anti-crime tactic, in that they:
 - Are acceptable to the general public when conducted at moderate levels
 - Deter at-risk individuals from criminal and delinquent behavior
 - Identify and lead to the arrest of known criminal offenders
 - Identify possible witnesses and informants
 - Provide intelligence from both criminal and non-criminal sources
- F. Street field interviews should not be used to harass or intimidate citizens, regardless of their appearance, background, or perceived criminal propensity.
- G. The stop should be reasonably brief to clarify the situation.

- H. The person stopped should be addressed civilly and be advised of the reason for the stop and any subsequent questioning.
- I. The investigating officer may conduct a patting-down (Stop & Frisk) of the suspect's outer garments if the officer has reasonable suspicion to believe that the suspect has a weapon and may pose a physical danger to the officer or to other citizens.
- J. All street field stops should be minimally documented on the officer's note book, run sheet, or daily activity report. A Stop & Frisk should be permanently documented by a field report, accompanied by an agency complaint number.
- K. It is the policy of many departments to issue a receipt to the person being stopped that indicates the purpose and result of the stop.
- L. Appropriate targets for street field stops include, but are not necessarily limited to the following types:
- People who don't fit the surroundings
 - Known criminals and delinquent youths
 - Homeless and "street" people, including suspected addicts
 - Persons acting in a manner indicative of criminal or suspicious behavior
 - Unfamiliar juveniles and minors
 - Loiterers, individually or in groups
- M. Again, caution and civility are the guidelines for a street stop and field interview.
- N. As with traffic stops, the indiscriminate stopping and questioning of citizens is an abuse of police power and is a clear infringement on the personal liberty of citizen to move about freely.
- O. Unlike a traffic stop, probable cause is not required to effect a street stop, merely reasonable suspicion. Reasonable suspicion need not depend solely on the observed actions of the suspect, but the totality of circumstances, which may include the following elements:
- The surrounding neighborhood
 - The time of day
 - Prior knowledge of the individual
 - Information received from another source
- P. Again, the officer must be capable of articulating the elements that led to a valid presumption of reasonable suspicion in the officer's thinking.

- Q. A lawful stop does not alone justify a frisk. The investigating officer must have a reasonable belief that the stopped suspect has a weapon and poses a danger to the officer or to others. You must be able to independently justify the frisk.

VII. Conducting Effective Vehicle Stops

Note:

The preponderance of the material contained in this section was taken from the National Highway Traffic Safety Administration's manual titled: *Conducting Complete Traffic Stops*. This excellent law enforcement resource is available from the US Department of Transportation, 400 7th St. SW, Washington, DC, 20590. It is a highly recommended agency training resource.

A. Traffic and Criminal Enforcement Mutuality:

1. An aggressive and proactive traffic enforcement program can be a highly effective means to both deter and detect criminal activities.
2. Law enforcement doctrine, in many jurisdictions, traditionally regards traffic enforcement as separate from, and often of lesser importance than criminal enforcement, particularly in regard to allocation and prioritization of agency resources.
3. Recent experience in several jurisdictions, both large and small, however, indicates otherwise. Using a proactive approach, supported by intensive training and effective supervision, traffic enforcement has been found to provide a solid base upon which agencies may increase and enhance their criminal enforcement effort.
4. Traffic enforcement is every patrol officer's responsibility, even when there is a specialized agency traffic unit. Patrol officers who know how to properly conduct investigative stops may account for more arrests than specialized anti-crime units.
5. Traffic enforcement can have a meaningful impact against roadway-related crimes, such as:
 - Car thefts and car jacking offenses
 - Fugitives and wanted persons
 - Drivers under the influence of drugs and alcohol
 - Drug transporters
 - Transporting stolen property and contraband (untaxed cigarettes and alcoholic beverages, pirated videotapes)

B. Criminal-Activity Indicators:

1. The traffic stop must be based on a traffic violation or clear and articulable probable cause that the occupants of the subject vehicle are engaged in a criminal activity. Any traffic stop is a legal stop if there has been an observed violation of the law.
2. There are certain indicators, both verbal and non-verbal, that law enforcement officers, from experience, have identified as indicative or strongly suggestive of criminal activity by individuals operating vehicles. There are also vehicle appearance clues that suggest that the vehicle in question may be used in connection with unlawful purposes.
3. The mere presence of one or even a few indicators does not necessarily signify that the vehicle or the occupants are engaged in criminal behavior. They do, however, form part of the totality of circumstances on which the investigating officer can use as legal justification to further detain and investigate the vehicle and its occupant(s).

C. Pre-Stop Indicators:

1. Vehicle is conspicuously driven too fast or too slow; not operated consistent with surrounding traffic flow.
2. Driver operates vehicle excessively carefully and guardedly.
3. Driver has repetitious eye contact through mirror with the following police car.
4. Passengers in vehicle continually turn around to glance at the following police car.
5. Driver begins using a car or cell phone when signaled to stop.
6. Suspicious pull-over behavior. When signaled to stop, the driver pretends not to see emergency lights or hear siren. Takes too long to pull-over; exhibits stalling or hesitant behavior, apparently to decide whether to run or not run, hide contraband, or concoct an alibi with passengers. May execute a U-turn or turn into a side street rather than pulling off to the side of the roadway.
7. Immediately after stopping, driver quickly exits vehicle and approaches the police car even before the officer can exit.

C. Vehicle Exterior Indicators:

1. Car repainted in non-standard colors on specific models and signs of repainting, especially with a different color on a new vehicle.
2. Low rear end. May indicate a heavy cargo in trunk.
3. Windows won't roll down all the way. May indicate contraband secreted in door panels.
4. License plate light inoperable or very dark, tinted plastic covering the license plate.
5. Sticker and logo inconsistencies. School ID or business parking decals, etc. on vehicle don't coincide with occupants' appearance, background, and subsequent explanations.
6. License plates don't appear to go with the vehicle, e.g. clean vehicle, dirty plates. Fingerprints or dirt marks around plate, also, dead bugs on rear license plate, indicating the plate was once used on the front of a vehicle.
7. Pulling camper between 10 PM and 7 AM—they're probably not camping. Be aware of campers with kid's bikes but no kids.
8. Heavy duty air shocks, but no trailer hitch on the vehicle.
9. When approaching the vehicle, especially a van, following a stop, slide your hand along the rear fender to check for any vibration or movement indicative of suspects possibly hiding in the trunk or laying on the floor. Do this routinely on night stops, particularly if you noticed any suspicious or furtive movement in the passenger-area prior to the stop.

D. Vehicle Interior Indicators:

1. Look for signs of extended, uninterrupted travel and a lived-in appearance—pillows, blankets, fast food wrappers, and paper cups.
2. Observe if the rear seat is out of position or unsecured.
3. Spare tire on back floorboards or on rear seat. Also, loose tools on the floor or seat, such as pry bars, dent pullers, and car jacks.
4. Cover-up odors—using air fresheners, garlic pods, cedar shavings, mustard, or kitchen and bathroom spray deodorizers.

5. Missing or unmatched screws and fasteners from the dash, door and side panels.
6. Vehicle door and window cranks and knobs missing or laying on the floor or seats.
7. Non-manufacturer's ignition key, especially in a new car. Also, single key in ignition, no trunk key visible. This may indicate a valuable cargo in trunk.
8. Large amount of cash in vehicle which can be observed as driver searches for operator's permit and vehicle registration from wallet, glove box, purse, or luggage. Also, zip-lock money bags in plain view.
9. Maps in plain view in the vehicle that are inconsistent with the ensuing driver's explanation.
10. The Club™ anti-theft device on a rental vehicle.
11. Luggage that is inconsistent with driver and occupants' explanations. Can be too much or too little luggage considering the trip length; even no luggage is questionable on a long trip.
12. Luggage and the spare tire stored in the passenger area; be inquisitive of the trunk's contents

E. Driver and Occupant Indicators:

1. Request a criminal history and wanted check on the operator of a vehicle that appears suspicious or irregular—Always!
2. Always ask the driver to recite the information of the operator's permit and the vehicle registration back to you from memory. Don't just read it to them and ask for their confirmation.
3. If registered owner of the vehicle is not present, ask the driver for information about this individual, including a phone number. Also ask any passengers if they know the names and address of the owner.
4. Ascertain if the passengers' explanations conflict with the driver, or if the explanations sound rehearsed. Be suspicious of questions that are directed at the driver that are answered by a passenger (or vice-versa).
5. Be aware of overly nervous passengers. The usual behavior is indifference, but not undue nervousness. This can be an indicator of illegal activity.

Note: If you ask passengers to identify themselves, they have the right to refuse.

6. Note any lack of movement among passengers, i.e. staying in one body position without change. They may be trying to conceal a weapon or contraband on the seat or floor.
7. Use care when occupants of a stopped vehicle fail to follow directions or appear to make “target glances” looking for escape paths, location of secreted contraband, or ways and means to attack the officer.
8. Look for rental vehicle irregularities i. e., inconsistencies in driver’s explanation and the rental contract.

Note: In any situation with a suspicious person, observe if the suspect conducts concealed weapon movements, such as pulling shirt down or pants up to hide a weapon in his waistband. They will use their hands, forearms and elbows to “check” on a weapon location, usually after exiting from a vehicle or getting up from a sitting position (the same way police do when in plainclothes). Look for protrusions or bulges in clothing that may indicate a weapon.