



# CITY OF FAIRFAX POLICE DEPARTMENT

## GENERAL ORDER

Subject <b>CONTROL OF BIAS IN POLICE ACTIONS</b>		Number 4-30
Effective Date October 13, 2017	Rescinds General Order 4-30, dated 10-2-07	
Accreditation Standards Sixth Edition 1.2.9	Authority Colonel Carl R. Pardiny Chief of Police	

### PURPOSE

The purpose of this order is to provide general guidance on reducing the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions, and emphasize the importance of the constitutional guidelines within which we operate.

### DEFINITIONS:

Most of the following terms appear in this order. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

**BIAS:** Prejudice or partiality that may be based on preconceived ideas, a person's upbringing, culture, experience, or education.

**BIASED POLICING:** Stopping, detaining, searching, arresting, using force or attempting to stop, detain, search, arrest or use force against a person based upon his or her race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion in violation of constitutional safeguards.

**ETHNICITY:** A group of characteristics that may include race, but also includes cultural characteristics or traits that are shared by a group with a common experience or history.

**GENDER:** Unlike sex, gender is a psychological classification based on cultural characteristics or traits.

**OBJECTIVE REASONABLENESS:** The totality of the facts available to the officer at the moment of the seizure would compel a person of reasonable caution to conclude that the officer's actions were appropriate.

**PRETEXTUAL:** Refers to the officer's pretext or reason for making a stop.

**PROBABLE CAUSE:** Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.

**PROFILE:** A legitimate profile, sanctioned by the department, is a very specific attribute, or group of attributes or characteristics, that form the basis for reasonable suspicion of criminality. A profile is only valid for a limited time and under limited circumstances, most often for drug trafficking. These attributes or characteristics are established in writing based on considerable training and experience. A legitimate profile will not be based solely on a person's race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion.

RACE: A category of people based on common physical or genetic traits or characteristics. As distinct from ethnicity, race only refers to physical characteristics sufficiently distinctive to group people under a classification.

RACIAL PROFILING: The unlawful detention, interdiction, or other disparate treatment of any person on the basis of their racial or ethnic status or characteristics. "Racial Profiling" refers to practices prohibited by this department.

REASONABLE SUSPICION: Articulable, objective facts which lead an experienced officer to suspect that a person stopped has committed, is committing, or may be about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a citizen. Courts require that stops based on reasonable suspicion be "objectively reasonable."

SEX: A biological classification, male or female, based on physical and genetic characteristics.

## DISCUSSION

Police officers have a responsibility to actively patrol the community, to aggressively investigate suspicious persons, vehicles, circumstances and events that may be indicative of crime, and to enforce those laws for which the department has statutory authority. At the same time, all members of the Police Department have a legal, moral and ethical duty to adhere to the rule of law, to protect the Constitutional rights of all persons, and to respect the human dignity and worth of every person.

Biased-based profiling is a violation of the law and exposes members of the department and the City itself to potential civil and/or criminal liability. Even a single instance of biased-based profiling has the potential to invite media scrutiny, legislative action and judicial intervention. In addition, biased-based profiling undermines all legitimate law enforcement efforts by alienating a significant portion of the public and fostering widespread distrust of the police within the community. Biased-based profiling by any member of the department discredits all members and will not be condoned or tolerated.

## POLICY

We are committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect citizens observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, national origin, ethnicity, age, or religion. All people carry biases: in law enforcement, however, the failure to control our biases can lead to illegal arrests, searches, and detentions, thus thwarting the mission of our department. Most importantly, actions guided by bias destroy the trust and respect essential for our mission to succeed. We live and work in communities very diverse in population: respect for diversity and equitable enforcement of the law are essential to our mission.

It is the policy of this department to patrol in a proactive manner, aggressively investigate suspicious persons, vehicles, circumstances and events and to actively enforce the law. All enforcement actions, particularly stops of citizens (for traffic and other purposes), investigative detentions, arrests, searches and seizures of persons or property, shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and statutory authority. In all enforcement decisions, officers must be able to articulate specific facts, circumstances, and conclusions that support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of citizens. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement contacts between officers and citizens.

## PROCEDURES

### I. GENERAL REQUIREMENTS

- A. All police-initiated actions, including all investigative detentions, traffic stops, arrests, searches and seizures of persons and/or property will be based on the applicable standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution or other law. Officers must be able to articulate specific facts and circumstances that support probable cause or reasonable suspicion for the traffic stop, investigative detention, arrest or search.
- B. Officers are prohibited from stopping, detaining, searching or arresting anyone solely because of the person's race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion.
- C. Officers may take into account the race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion of a person or persons when that information is related to a specific, credible report containing a physical description of a suspect or suspects.
- D. As traffic stops and subject stops are a primary source of bias-related complaints, officers shall conduct such encounters professionally (see G.O. 4-18, Field Interrogations, and G.O. 6-4, Traffic Law Enforcement). Officers shall have a firm understanding of the warrantless searches allowed by law, particularly the proper use of consent. Officers shall not use the refusal or lack of cooperation to justify a search of the citizen's person or vehicle or to justify a prolonged detention once reasonable suspicion has been dispelled. Officers shall not use a person's race, sex, sexual orientation, national origin, ethnicity, age, or religion as a factor in deciding whether or not to exercise enforcement discretion.
- E. When feasible, officers shall identify themselves by name. When a citizen requests the information, officers shall give their departmental identification number, name of their immediate supervisor, and any other reasonable information.
- F. When feasible, officers shall offer explanations to citizens of the reasons for enforcement actions or other decisions that bear on citizens' well-being unless the explanation would undermine an investigation or jeopardize an officer's safety. When concluding an encounter with a citizen, officers are encouraged to thank the citizen for their cooperation.
- G. Occasionally officers may conduct a high-risk citizen stop or traffic stop only to determine that the citizen is not involved in the criminal activity being investigated. How an officer disengages from such a stop may be crucial to a citizen's perception of fairness or discrimination. To the extent possible, officers are encouraged to use the disengagement techniques known as D.E.A.L. (De-escalate and Defuse, Empathize and Explain, Apologize, and Leave in control) to effectively manage these situations.
- H. All members shall treat citizens with the same courtesy and respect that they would have citizens observe to department members. To this end, members are reminded that the exercise of courtesy and respect engenders a future willingness to support and cooperate with law enforcement.
- I. Unless required by law, a citizen's refusal to cooperate or provide information does not create any justification for further enforcement action. However, the refusals to sign a summons or the failure to obey the lawful order of an officer are examples of exceptions to this policy.

## II. MEMBER RESPONSIBILITIES

- A. All members shall courteously accept, document, and forward to the Chief of Police or Professional Standards Division any complaints made by citizens against the department. Further, members shall provide information on the complaint process to any citizen requesting such information.
- B. Any member having knowledge or suspecting a member of the department of engaging in biased policing is required to inform a supervisor. The supervisor shall inform the Professional Standards Division Commander and an investigation will be initiated. Sustained allegations of biased based policing will result in disciplinary action or termination in accordance with G.O. 1-9 of this manual.

### III. SUPERVISOR RESPONSIBILITIES

- A. Supervisors shall be mindful in managing the actions and performance of subordinates, while working to enhance community trust in law enforcement. Supervisors are expected to continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.
- B. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports include adequate documentation of reasonable suspicion and probable cause, if applicable.
- C. Supervisors shall provide reasonable oversight to ensure that subordinates respect and comply with all constitutional safeguards during the performance of their duties. Supervisors are expected to identify and take appropriate action to correct any instance of bias in the work of their subordinates.
- D. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with the order and the constitutional requirements of law enforcement. Supervisors will be required to account for their actions in correcting each instance of biased enforcement on the part of their subordinates.
- E. Any criminal profiling requires supervisory participation and oversight. Any criminal profiles used in enforcement shall be authorized by the Chief of Police via Special Order or Memorandum and shall be based on a detailed, written analysis. All criminal profiles shall be authorized in writing and shall be self-canceling after a specified date. Upon cancellation, supervisors shall prepare a report on the utility and results of the profile and submit it to the Chief of Police via the chain of command.
- F. Supervisors shall ensure that all enforcement actions are duly documented per department policy. Supervisors shall ensure that all reports include documentation of reasonable suspicion and probable cause, if applicable.
- G. Supervisors shall facilitate the filing of any citizen's complaint(s) about law enforcement service.

### IV. PRETEXTUAL TRAFFIC STOPS

- A. Pretextual traffic stops, or those in which the explanation to the citizen of the reason for the stop may not reflect all of the officer's actual reasons, are legal and in some circumstances a legitimate tool of effective police work.
- B. Note that the officer's subjective intent (pretext) is irrelevant when stopping a vehicle; the legitimacy of the stop will be gauged by its objective reasonableness. As long as an officer has at least one legal reason for stopping a vehicle (such as a minor traffic violation), then it is irrelevant that the officer had some suspicion unrelated to the traffic stop.

### V. TRAINING

- A. The Police Department will ensure that initial training and annual training is provided to all sworn members regarding biased-based profiling and related legal issues. This training shall be included in both basic and in-service training programs.

### VI. COMMAND OVERSIGHT

- A. The Professional Standards Division shall conduct a documented annual review of the department's efforts to prevent biased-based profiling, including a review of any citizen concerns. (1.2.9 d) The review will include the following:

1. A review of the profiling training conducted.
  2. A summary of administrative/citizen complaint investigations involving allegations of biased-based profiling.
  3. A review of the quarterly Community Concerns Reports to identify any concerns regarding biased based profiling.
  4. A review of the Citizen Satisfaction Surveys to identify concerns regarding biased-based profiling.
- B. In addition to identifying areas of concern, if any, the report will include recommendations for corrective action as needed. It will be forwarded by the Professional Standards Division Commander to the Chief of Police at the beginning of each calendar year.

---

Colonel Carl R. Pardiny / Chief of Police

Index as: Biased-Based Profiling  
Control of Bias in Police Actions  
Discrimination