



**P o l i c e   D e p a r t m e n t**  
**I n t e r - O f f i c e   C o r r e s p o n d e n c e**

**DATE:**       **March 1, 2018**

**TO:**           **Mayor Betsy Price and Members of the City Council**

**FROM:**       **Joel F. Fitzgerald, Chief of Police**

**SUBJECT:**   **2017 Racial Profiling Report**

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Racial profiling continues to be regarded as a prevalent theme among law enforcement agencies in the United States as well as with civil rights organizations within the State of Texas. In 2001, the Texas Legislature, in an attempt to address the issue of racial profiling in law enforcement, passed the Texas Racial Profiling law. On September 1, 2009, legislative revisions were made to the law including eliminating the requirement to complete checklists on pedestrians, adding Middle Eastern to the designation for race, and requiring submission of specific statistical data to the Texas Commission on Law Enforcement (TCOLE) beginning in 2011. The Fort Worth Police Department collects and reports data for the purpose of identifying and addressing any areas of concern regarding racial profiling.

This report, prepared by Dr. Alex del Carmen, contains an analysis of Tier One data. It also contains the attachments pertinent to the administration of the Texas Racial Profiling law and to the Fort Worth Police Department.

The Fort Worth Police Department collects data on all vehicle stops, not just those that result in a citation and/or arrest. This goes beyond what is required under the law, but it is a practice we view as more encompassing for an accurate accounting of persons stopped by our officers. As a note, TCOLE changed their reporting form last year and does not allow reporting on drivers who were not cited or arrested, nor does it permit the category of "other" for race and ethnicity which is an accepted category of the Department of Public Safety. Our department reported the limited data as required by TCOLE for their system; however, in the report prepared by Dr. del Carmen, data on all stops has been included.

The Fort Worth Police Department is committed to quality service in partnership with the community and review of applicable administrative policies and procedures to ensure all encountered situations are addressed in a fair and equitable manner. Our department is hopeful the findings in this report serve as evidence of the Fort Worth Police Department's commitment to comply with the Texas Racial Profiling Law.

Please contact me at 817-392-4210 about information contained in this report. The report will be posted to [www.fortworthpd.com](http://www.fortworthpd.com) after your review is complete.

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# The Fort Worth Police Department

## 2017

# Annual Contact Report

**PREPARED BY:**

Alex del Carmen, Ph.D.



January 28, 2018

Fort Worth City Council  
200 Taylor Street  
Fort Worth, Texas 76102

Dear Distinguished Members of the City Council,

The Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted in 2001 the Texas Racial Profiling Law. Since then, the Fort Worth Police Department, in accordance with the law, has collected and reported traffic and motor vehicle-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements were implemented. Moreover, in 2017, the Sandra Bland Act was passed and signed into law (along with HB 3051 which introduced new racial and ethnic designations). The Sandra Bland Law requires for all law enforcement agencies in the state to collect additional data and provide a more detailed analysis.

This particular report contains three sections with information on traffic and motor vehicle-related contact data. In addition, when appropriate, documentation is also a component of this report, aiming at demonstrating the manner in which the Fort Worth Police Department has complied with the Texas Racial Profiling Law. In section 1, you will find the table of contents in addition to the Texas Senate Bill (SB1074); which later became the Texas Racial Profiling Law. In addition, you will find the Texas HB 3389, which, in 2009, introduced new requirements relevant to racial profiling as well as the Sandra Bland Act. Also, in this section, a list of requirements relevant to the Racial Profiling Law as established by TCOLE (Texas Commission on Law Enforcement) is included. In addition, you will find, in sections 2 and 3 documentation which demonstrates compliance by the Fort Worth Police Department relevant to the requirements as established in the Texas Racial Profiling Law. That is, you will find documents relevant to the implementation of an institutional policy banning racial profiling, the incorporation of a racial profiling complaint process and the training administered to all law enforcement personnel.

The last section of this report provides statistical data relevant to contacts, made during the course of motor vehicle stops, between 1/1/17 and 12/31/17. In addition, this section contains the TCOLE Tier 1 form, which is required to be submitted to this particular organization by March 1<sup>st</sup> of each year. The data in this report has been analyzed and compared to data derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report. The findings in this report serve as evidence of the Fort Worth Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.  
Del Carmen Consulting, LLC

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# **Racial Profiling Report and Data - 2017**

## **Informing the Public on the Process of Filing a Racial Profiling Complaint with the Fort Worth Police Department**

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a racial profiling complaint. In an effort to comply with this particular component, the Fort Worth Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a complaint on a racial profiling violation by a Fort Worth Police officer. It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

### **Racial Profiling Training**

Since 2002, all Fort Worth Police officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Fort Worth Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Fort Worth has been included in this report.

It is important to recognize that the Chief of the Fort Worth Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Fort Worth Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

**Report on Complaints**

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/17---12/31/17, based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.

A check above indicates that the Fort Worth Police Department has not received any complaints, on any members of its police force, for having violated the Texas Racial Profiling Law during the time period of 1/1/17 ---- 12/31/17.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint No.	Alleged Violation			Disposition of the Case

**Additional Comments:**

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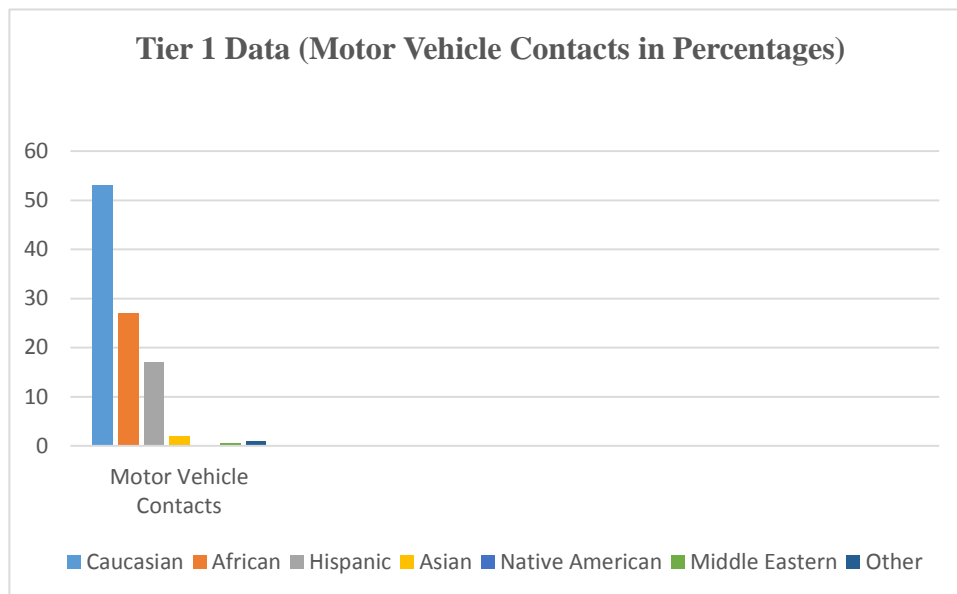
### Motor Vehicle-Related Contact Information (1/1/17—12/31/17)

Race/ Ethnicity*	Contacts		Searches		Consensual Searches		PC Searches		Custody Arrests	
	N	%	N	%	N	%	N	%	N	%
<b>Caucasian</b>	17,405	53	139	26	81	32	24	15	16	36
<b>African</b>	8,781	27	209	39	100	39	68	44	10	22
<b>Hispanic</b>	5,730	17	173	33	71	28	60	39	18	40
<b>Asian</b>	587	2	9	2	5	1	1	.6	0	0
<b>Native American</b>	17	.05	0	0	0	0	0	0	0	0
<b>Middle Eastern</b>	157	.5	1	.2	0	0	1	.6	0	0
<b>Other</b>	320	1	1	.2	0	0	1	.6	1	2
<b>Total</b>	32,997	100**	532	100**	257	100	155	100**	45	100

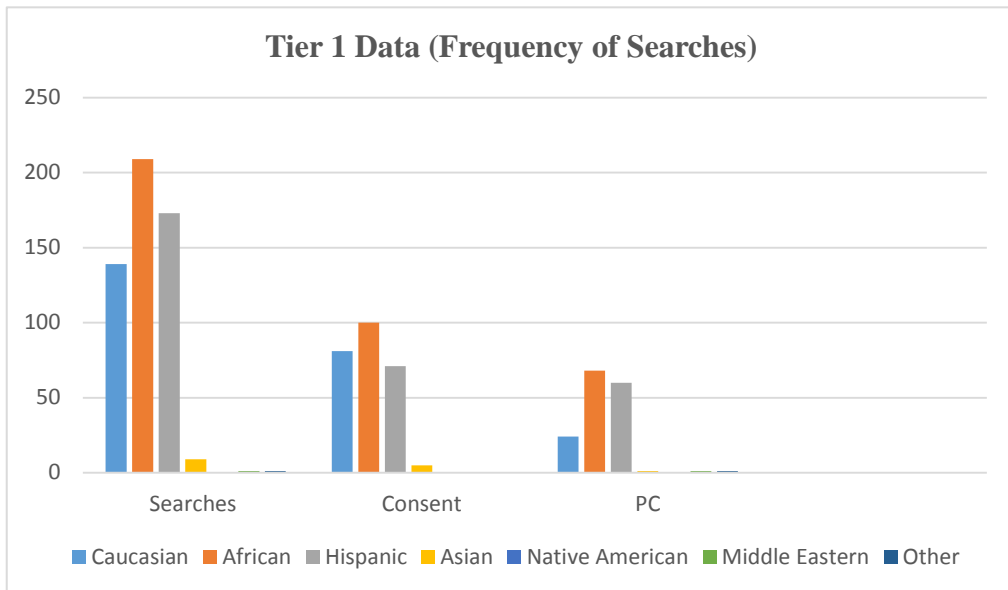
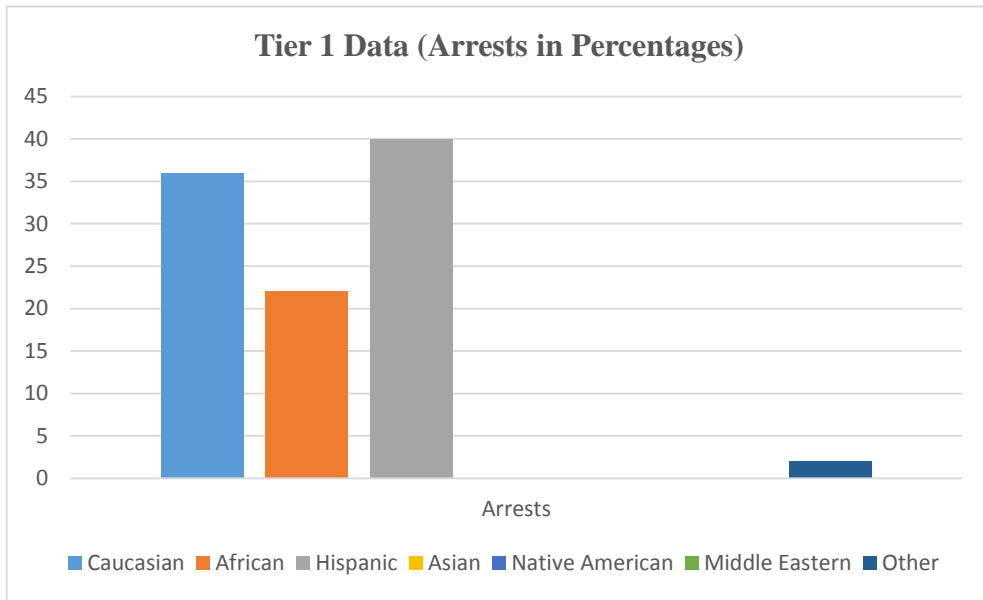
“N” represents “number” of traffic-related contacts

\* Race/Ethnicity is defined by Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American or Middle Eastern”.

\*\*Figure has been rounded







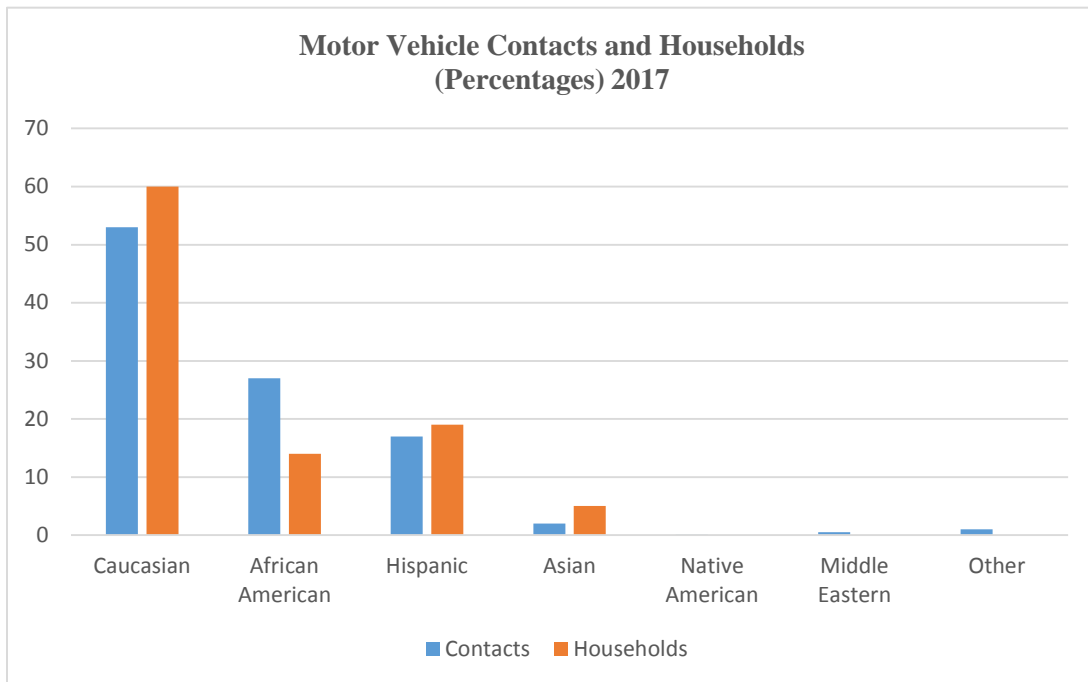
## Motor Vehicle-Contacts and Fair Roads Standard Comparison

Comparison of motor vehicle-related contacts with households in DFW that have vehicle access (in percentages). (1/1/17—12/31/17)

Race/Ethnicity*	Contacts (in percentages)	Households with vehicle access (in percentages)
<b>Caucasian</b>	53	60
<b>African American</b>	27	14
<b>Hispanic</b>	17	19
<b>Asian</b>	2	5
<b>Native American</b>	.05	N/A
<b>Middle Eastern</b>	.5	N/A
<b>Other</b>	1	N/A
<b>Total</b>	100	98**

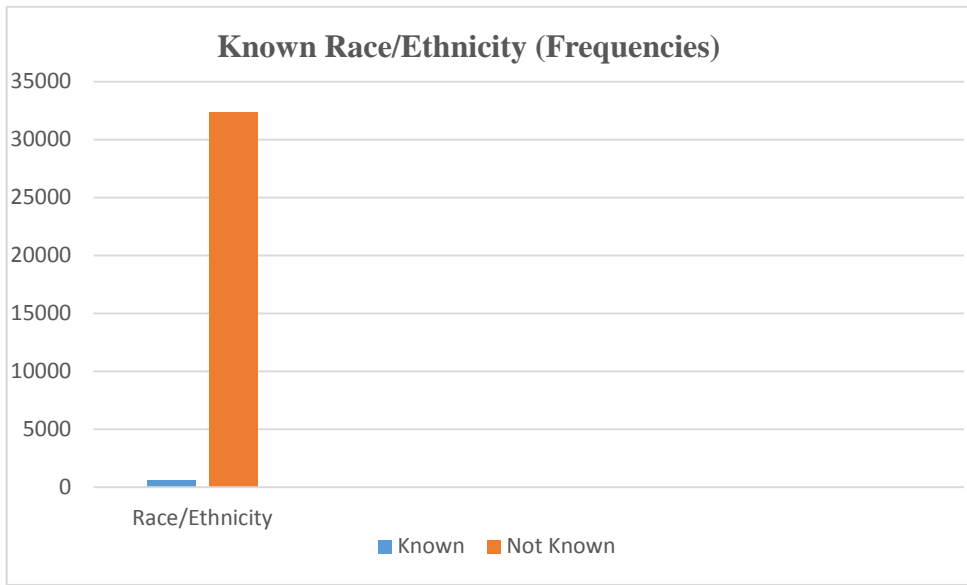
\* Race/Ethnicity are defined by Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American and Middle Eastern”.

\*\* Represents rounded figure



**Total Number of Instances where Officers Knew/did not Know Race/Ethnicity of Individuals Before Being Detained (1/1/17--12/31/17)**

<b>Total Number of Instances where Officers <u>Knew</u> Race and Ethnicity of Individuals Before Being Detained</b>	<b>Total Number of Instances where Officers <u>Did Not Know</u> the Race and Ethnicity of Individuals Before Being Detained</b>
617	32,380



# Racial Profiling Report | Tier one

<b>Agency Name:</b>	Fort Worth Police Department
<b>Reporting Date:</b>	01/31/2018
<b>TCOLE Agency Number:</b>	439214
<b>Chief Administrator:</b>	Chief Joel F Fitzgerald
<b>Agency Contact Information:</b>	
<b>Phone:</b>	817-392-4200
<b>Email:</b>	N/A
<b>Mailing Address:</b>	505 W Felix St Fort Worth Texas 76115

This Agency claims partial racial profiling report exemption because:

Our vehicles that conduct motor vehicle stops are equipped with video and audio equipment and we maintain videos for 90 days.

Certification to This Report 2.132 (Tier 1), Partial Exemption

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

Fort Worth Police Department has adopted a detailed written policy on racial profiling. Our policy:

- 1.) clearly defines acts constituting racial profiling;
- 2.) strictly prohibits peace officers employed by the Fort Worth Police Department from engaging in racial profiling;
- 3.) implements a process by which an individual may file a complaint with the Fort Worth Police Department if the individual believes that a peace officer employed by the Fort Worth Police Department 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 Fort Worth Police Department who, after an investigation, is shown to have engaged in racial profiling in violation of the Fort Worth Police Department'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:** Chief Joel F Fitzgerald

Chief Administrator

**Fort Worth Police Department**

**Date:** 01/31/2018

**Fort Worth Police Department Motor Vehicle Racial Profiling Information**

Total stops: 32997

Number of motor vehicle stops

**Citation only: 32735**

**Arrest only: 137**

**Both: 125**

Race or ethnicity

**African: 8867**

**Asian: 593**

**Caucasian: 17575**

**Hispanic: 5786**

**Middle eastern: 159**

**Native american: 17**

Was race known ethnicity known prior to stop?

**Yes: 617**

**No: 32380**

Was a search conducted

**Yes: 532**

**No: 32465**

Was search consented?

**Yes: 257**

**No: 275**

**Submitted electronically to the**



The Texas Commission on Law Enforcement



**Fort Worth Police Department  
2017 Partial Exemption Racial Profiling Reporting  
(Tier 1)**

Lines 4, 11, 14, 17 must be equal. Lines 15 and 20 must be equal

	Actual	TCOLE Reporting	
Number of Motor Vehicle Stops			
Citation Only	25,837	32,735	
Arrest Only	137	137	
Both	125	125	
Neither *	6,898		
<b>(4) Total</b>	<b>32,997</b>	<b>32,997</b>	

Race or Ethnicity			
African-American	8,781	8,867	
Asian	587	593	
Caucasian	17,405	17,575	
Hispanic	5,730	5,786	
Middle Eastern	157	159	
Native American	17	17	
Other *	320	0	
<b>(11) Total</b>	<b>32,997</b>	<b>32,997</b>	

Race or Ethnicity Known Prior to Stop			
Yes	617		
No	32,380		
Unknown			
<b>(14) Total</b>	<b>32,997</b>		

Search Conducted			
Yes	532		
No	32,465		
<b>(17) Total</b>	<b>32,997</b>		

Was Search Consented			
Yes	257		
No	275		
<b>(20) Total</b>	<b>532</b>		

\* The TCOLE Reporting system would not accept the category of "neither" for motor traffic stops disposition. Lt. Gary Connella of TCOLE/Racial Profiling stated we had to place the "neither" (which are actually a verbal warning) into the "citation" category since we generated a blue form for reporting a motor stop. They also would not accept "other" for race; therefore, the 320 "other" or unknown race was allocated in each category based on the percentage that race represented in the count.

**Racial Profiling Allocation**

	<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>	<u>Column 5</u>
	<b>Total (Before Alloc)</b>	<b>Alloc % (Col 1 / 32677)</b>	<b>Allocated Amt (320 X Col 2)</b>	<b>Total (After Alloc)</b>	<b>Column 4 (Rounded)</b>
Whites	17,405	53.26%	170.44	17,575.44	17,575
Blacks	8,781	26.87%	85.99	8,866.99	8,867
Hispanic	5,730	17.54%	56.11	5,786.11	5,786
Asian	587	1.80%	5.75	592.75	593
Middle Eastern	157	0.48%	1.54	158.54	159
Native American	17	0.05%	0.17	17.17	17
Other	320	N/A	N/A	N/A	N/A
	<b>32,997</b>	<b>100.00%</b>	<b>320.00</b>	<b>32,997.00</b>	<b>32,997</b>
Less Other	<b>(320)</b>				
	<b>32,677</b>				



## **Analysis**

In 2001, the Texas legislature passed Senate Bill 1074 which became the Texas Racial Profiling Law. That is, the law came into effect on January 1, 2002 and required all police departments in Texas, to collect traffic-related data and report this information to their local governing authority by March 1<sup>st</sup> of each year. In 2009, the racial profiling law was modified to include the collection and reporting of all motor vehicle related contacts where a citation was issued or arrest made. In addition, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individual before detaining them. Further, it is required that agencies report motor vehicle related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1st of each year. The purpose in collecting and presenting this information is to determine if police officers in a particular municipality are engaging in the practice of racially profiling minority motorists.

The Texas Racial Profiling Law also requires police departments to interpret motor vehicle-related data. Even though most researchers would probably agree with the fact that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is very difficult to determine if individual police officers are engaging in racial profiling, from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific “individual” racist behavior from aggregate-level “institutional” data on traffic or motor vehicle-related contacts.

As stated previously, in 2009, the Texas Legislature passed House Bill 3389, which modified the existing Racial Profiling Law by adding new requirements; this took effect on January 1st, 2010. These most recent changes include, but are not exclusive of, the re-definition of a contact to include motor vehicles where a citation was issued or an arrest made. In addition, it requires police officers to indicate if they knew the race or ethnicity of the individual before detaining them. Also, the 2009 law requires adding "middle eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1st of each year. I am pleased to inform you that these additional requirements have been addressed, since 2009, by the Fort Worth Police Department as it is demonstrated throughout this report.

In 2017, the Texas Legislators passed H.B. 3051 which removed the Middle Eastern data requirement but standardized the racial and ethnic categories relevant to the individuals that came in contact with the police. In addition, the Sandra Bland Act (S.B. 1849) was passed and became law. That is, the most significant legislative act in Texas history regarding future data requirements on law enforcement contacts, became law and effective January 1, 2018. All future reports will contain more extensive data entries and analysis as well as records regarding audits and the analysis of searches, as required by law.

In an effort to comply with The Texas Racial Profiling Law, the Fort Worth Police Department commissioned the analysis of its 2017 motor vehicle contact data. Thus, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2017 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Caucasians, African Americans, Hispanics, Asians, Native Americans, Middle

Easterners and individuals belonging to the “other” category, that came in contact with the police in the course of a motor vehicle related contact, and were either issued a citation or arrested. Further, the analysis included information relevant to the number and percentage of searches (table 1) while indicating the type of search performed (i.e., consensual or probable cause). Also, the data analysis included the number and percentage of individuals who, after they came in contact with the police for a motor vehicle-related reason, were arrested.

The additional data analysis performed was based on a comparison of the 2017 motor vehicle contact data with a specific baseline. When reviewing this particular analysis, it should be noted that there is disagreement, in the literature, regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Fort Worth Police Department opted to adopt, as a baseline measure, the Fair Roads Standard. This particular baseline is based on data obtained through the U.S. Census Bureau (2010) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It is clear that census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless of the fact they may or may not be among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only. Thus, excluding individuals who may have come in contact with the Fort Worth Police Department in 2017 but live outside city limits. In some cases, the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

Since 2002, several civil rights groups in Texas expressed their desire and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). This, in essence, constitutes a comparison that may result in ecological fallacy. Despite this, the Fort Worth Police Department made a decision that it would use this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to the Dallas Fort-Worth Metroplex (DFW).

#### Tier 1 (2017) Motor Vehicle-Related Contact Analysis

When analyzing the Tier 1 data collected in 2017, it was evident that most motor vehicle-related contacts were made with Caucasian drivers. This was followed by African American and Hispanic drivers. With respect to searches, most of them were performed on African American drivers. This was followed by Hispanics and Caucasians. It is important to note that the arrest data revealed that Hispanic drivers were arrested the most in motor vehicle-related contacts; this was followed by Caucasians and African Americans.

## Fair Roads Standard Analysis

The data analysis of motor vehicle contacts to the census data relevant to the number of “households” in DFW who indicated, in the 2010 census, that they had access to vehicles, produced interesting findings. Specifically, the percentage of individuals of African American descent that came in contact with the police was higher than the percentage of African American households in DFW that claimed, in the 2010 census, to have access to vehicles. With respect to Caucasians, Hispanics and Asians, a lower percentage of contacts were detected. That is, the percentage of Caucasian, Hispanic and Asian drivers that came in contact with the police in 2017 was the lower than the percentage of Caucasian, Hispanic and Asian households in DFW with access to vehicles.

## Summary of Findings

The comparison of motor vehicle contacts showed that the Fort Worth Police Department came in contact (in motor vehicle-related incidents) with a smaller percentage of Caucasian, Hispanic and Asian drivers than the percentage that resided in DFW and had access to vehicles. Further, the data suggested that the percentage of African American drivers that came in contact with the police in 2017 was higher than the percentage of African American households in DFW with access to vehicles. In addition, the data showed that in a large number of instances, officers did not know the race or ethnicity of individuals before detaining them, when compared to instances where officers knew the race/ethnicity of individuals before they were detained.

Overall, officers from the Fort Worth Police Department were more likely to come in contact with Caucasians, search African Americans, and arrest Hispanics in 2017. Of the searches performed, African Americans were more likely to consent to a search or be searched as a result of probable cause. When considering a comparison of contacts with the Fair Roads Standards data, it is clear that African Americans were more likely to come in contact with the police than the percentage of African American Households with access to vehicles in DFW.

These findings demonstrate the need for a more significant and in-depth analysis on the data in order to better understand patterns on those being stopped, searched and arrested. Although it is expected that the Sandra Bland Act and its requirements now in place, will allow for the police department to have more detailed and in-depth data to analyze in the coming year, it is strongly recommended that the 2017 data is further analyzed beyond the scope of the parameters required by the previous and current statues on data analysis.

In sum, while considering the findings made in this analysis, it is recommended that the Fort Worth Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected) which may prove to be useful when determining the nature of the contacts police officers are making with all individuals; particularly with African Americans. Although this additional data may not be required by state law, it is likely to provide insights regarding the nature and outcome of all motor vehicle contacts made with the public.

As part of this effort, the Fort Worth Police Department is now required by law to:

- 1) Perform an independent search analysis on the search data collected throughout 2018.
- 2) Commission data audits in 2017 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The Fort Worth Police Department has complied with the Texas Racial Profiling Law.

## Checklist

The following requirements **were** met by the Fort Worth Police Department in accordance with The Texas Racial Profiling Law:

- Clearly defined act or actions that constitute racial profiling
- Statement indicating prohibition of any peace officer employed by the Fort Worth Police Department from engaging in racial profiling
- Implement a process by which an individual may file a complaint regarding racial profiling violations
- Provide public education related to the complaint process
- Implement disciplinary guidelines for officer found in violation of the Texas Racial Profiling Law
- Collect data (Tier 1) that includes information on
  - a) Race and ethnicity of individual detained
  - b) Whether a search was conducted
  - c) If there was a search, whether it was a consent search or a probable cause search
  - d) Whether a custody arrest took place
- Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- Produce an annual report on police contacts (Tier 1) and present this to local governing body and TCOLE by March 1, 2018.
- Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation

## **Appendix – Supporting Documentation**

## Guidelines for Compiling and Reporting Data under Senate Bill 1074

### Background

Senate Bill 1074 of the 77<sup>th</sup> Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

### Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

### Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

### Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person’s race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer’s best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

**Commentary**

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “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 for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

**Standard 3**

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

**Commentary**

Senate Bill 1074 from the 77<sup>th</sup> Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide and analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 2) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);



- 3) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 4) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

#### **Standard 4**

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

#### **Commentary**

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

#### **Standard 5**

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

**Commentary**

None

**Standard 6**

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

**Commentary**

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

**Standard 7**

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

**Commentary**

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

**S.B. No. 1074**

AN ACT

relating to the prevention of racial profiling by certain peace officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

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

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 traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American 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 traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and  
(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) 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 traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic 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 traffic 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.

#### Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS.

(a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means 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.

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

(1) a physical description of each person 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 traffic law or ordinance alleged to have been violated or the suspected offense;

(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 was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED. (a) In this article, "pedestrian stop" means 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.

(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 local law enforcement agency shall submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; 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 traffic or pedestrian 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 Commission on Law Enforcement Officer Standards and Education 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.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency 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 traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian 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 traffic and pedestrian 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 traffic or pedestrian 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.

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.

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).

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

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

- (1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;
- (2) implementing laws and internal agency policies relating to preventing racial profiling; and
- (3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

- (1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;
- (2) the registration number of the vehicle involved;
- (3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;
- (4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;
- (5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;
- (6) whether a search of the vehicle was conducted and whether consent for the search was obtained;
- (7) the plea, the judgment, and whether bail was forfeited;
- (8) [~~7~~] the date of conviction; and
- (9) [~~8~~] the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by

Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.



**Amend CSHB 3389 (Senate committee report) as follows:**

(1) Strike the following SECTIONS of the bill:

(A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);

(B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);

(C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);

(D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsection (g) to read as follows:

(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 ~~[traffic]~~ 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, ~~[or]~~ 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 ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:

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

(B) whether a search was conducted and, if so, whether the individual ~~[person]~~ 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 [to the governing body of each county or municipality served by the agency] an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; 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.

(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 [traffic] stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle [traffic] 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 [traffic] 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).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education 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.

SECTION \_\_\_\_\_. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE [TRAFFIC AND PEDESTRIAN] STOPS. (a) In this article, "race":

(1) "Race" or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means 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.]

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

(1) a physical description of any [each] 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 [traffic law or ordinance alleged to have been violated or the suspected offense];

(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 [the type] of the contraband or evidence [discovered];

- (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 [existed and the facts supporting the existence of that probable cause];
- (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[; including a description of the warning or a statement of the violation charged].

SECTION \_\_\_\_\_. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[; -pedestrian] stop" has the meaning assigned by Article 2.132(a) [means 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].

(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 ~~local~~ law enforcement agency shall submit a report containing the incident-based data [information] compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education 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 [in a manner approved 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 [determine the prevalence of racial profiling by peace officers employed by the agency]; and

(B) examine the disposition of motor vehicle [traffic and pedestrian] 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 [the] 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 [traffic or pedestrian] 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 Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education 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.

SECTION \_\_\_\_\_. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

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 [~~traffic and pedestrian~~] stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle [~~traffic and pedestrian~~] 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 [~~traffic and pedestrian~~] 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 [~~traffic or pedestrian~~] 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).

SECTION \_\_\_\_\_. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

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.

SECTION \_\_\_\_\_. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION \_\_\_\_\_. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . .  
\$50 [~~\$5~~]; [~~and~~]

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION \_\_\_\_\_. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . .  
\$50 [~~\$5~~]; [~~and~~]

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION \_\_\_\_\_. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;

(7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~

(8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and

(9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION \_\_\_\_\_. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. **ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE.** The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION \_\_\_\_\_. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION \_\_\_\_\_. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

(1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure; or

(3) a commission rule.

SECTION \_\_\_\_\_. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.



**347.00 COMMUNITY POLICING STRATEGIES**

**347.02 RACIAL PROFILING** *(Revised 1/8/18)*

The guidelines in this General Order are intended to reaffirm the department's commitment to unbiased policing in all its encounters between an officer and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect officers from unwarranted accusations of misconduct when acting within the dictates of departmental policy and the law.

- A. Officers shall police in a proactive manner and investigate suspected violations of law. Officers shall actively enforce state and federal laws in a responsible and professional manner, without regard to race, ethnicity or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in this order. This order shall be applicable to officer's interactions with all persons, whether drivers, passengers or pedestrians.
- B. Officers shall conduct themselves in a respectful manner at all times when dealing with the public. Two of the fundamental rights guaranteed by both the United States and Texas constitutions are equal protection under the law and freedom from unreasonable searches and seizures by government agents. The right of all persons to be treated equally and to be free from unreasonable searches and seizures must be respected. Racial profiling is an unacceptable patrol tactic and is strictly prohibited.
- C. This order shall not preclude officers from offering assistance, such as upon observing a substance leaking from a vehicle, a flat tire, or someone who appears to be ill, lost or confused. Nor does this order prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.
- D. Definitions
  - 1. Racial Profiling – A law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.
    - a. Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants or other citizen contacts.
    - b. The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision. Race, ethnicity or national origin may be legitimate factors in a detention decision when used as part of an actual description of a specific suspect for whom an officer is searching. Detaining an individual and conducting an inquiry into that person's activities simply because of that individual's race, ethnicity or national origin is racial profiling. Examples of racial profiling include but are not limited to the following:
      - (1) Citing a driver who is speeding in a stream of traffic where most other drivers are speeding because of the cited driver's race, ethnicity or national origin.
      - (2) Stopping or detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess that specific make or model of vehicle.
      - (3) Stopping or detaining an individual based upon the determination that a person of that race, ethnicity or national origin does not belong in a specific part of town or a specific place.



## Fort Worth Police Department General Orders

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- c. A law enforcement agency can derive these principles from the adoption of this definition of racial profiling:
    - (1) That law enforcement officers may not use racial or ethnic stereotypes as factors in selecting whom to stop and search.
    - (2) Racial profiling is not relevant as it pertains to witnesses, etc.
    - (3) That police may not use racial or ethnic stereotypes as factors in selecting whom to stop and search, while police may consider race in conjunction with other known factors of the suspect.
  2. Race or Ethnicity – Of a particular decent, including White, Black, Hispanic or Latino, Asian or Pacific Islander, or Alaska Native or American Indian.
  3. Motor Vehicle Stop – A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic.
- E. Training
1. Officers are responsible for adhering to all Texas Commission on Law Enforcement (TCOLE) training as mandated by law.
  2. All officers shall complete a TCOLE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. A person who on September 1, 2001, held a TCOLE intermediate proficiency certificate, or who had held a peace officer license issued by TCOLE for at least two years, shall complete a TCOLE training and education program on racial profiling not later than September 1, 2003.
  3. The Chief of Police, as part of the initial training and continued education for such appointment, will be required to attend the LEMIT program on racial profiling.
  4. An individual appointed or elected as a police chief before the effective date of this Act shall complete the program on racial profiling established under Subsection (k), Section 96.641, Education Code.
- F. Complaint Investigation
1. The department shall accept complaints from any person who believes he or she has been stopped or searched based on racial, ethnic or national origin profiling. No person shall be discouraged, intimidated or coerced from filing a complaint, nor discriminated against because he or she filed such a complaint.
  2. If an officer initiating a stop receives an allegation of racial profiling, the officer shall provide their name and ID number to the individual with information on how to contact Internal Affairs or the officer's supervisor. Any employee contacted shall provide to that person information on the department's process for filing a complaint. All employees will report any allegation of racial profiling to their supervisor before the end of their shift.
    - a. Officers shall provide information, including telephone number, mailing address, and email address for contacting Internal Affairs to any individual who inquires about reporting an incident perceived to be racially motivated, or who wishes to generate a compliment.
    - b. Any supervisor/manager receiving a racial profiling complaint shall notify the Internal Affairs Division in a timely manner of the complaint and the action taken.



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- c. Supervisors shall monitor the adherence to the General Orders by all employees under their command and shall initiate an investigation into all alleged violations established under this General Order.
  3. All complaints will be acknowledged in writing to the complainant who will receive information regarding the disposition of such complaint within a reasonable period of time. The investigation shall be reduced to writing and any reviewer's comments or conclusions shall be sent through the chain of command to the Chief of Police or designee. When applicable, findings and/or recommendations for disciplinary action, retraining, or changes in policy shall be part of the recommendation to the Chief of Police or designee.
  4. Allegations of misconduct and disciplinary action shall follow the procedures as outlined in General Order 410.00. Officers shall be subject to disciplinary action up to and including indefinite suspension for engaging in racial profiling.
  5. If there is a departmental video or audio recording of the events upon which a complaint of racial profiling is based, upon commencement of an investigation into the complaint and written request of the officer made the subject of the complaint, this department shall promptly provide a copy of the recording to that officer.
- G. Public Education

The police department will inform the public of its guidelines against racial profiling and the compliment and complaint process. Methods that may be utilized to inform the public of the process are news media, radio, service or civic presentations, the Internet, as well as governing board meetings. With respect to each ticket, citation, or warning issued by an officer, the telephone number, mailing address, and email address for Internal Affairs shall be provided either on the warning, ticket, or citation or by other methods directed by the department (i.e. business cards, flyers, stickers, etc). Additionally, information will be made available as appropriate in languages other than English.
- H. Data Collection and Reporting
  1. Data shall be collected on all motor vehicle stops. Information will be collected on the driver only. The officer shall promptly enter all data required by law into the Motor Vehicle Stop Checklist database before the end of the duty shift. The form may be found on the Fort Worth Police internal portal under Racial Profiling.
  2. Any vehicle equipped with video and/or audio capabilities shall retain the video and/or audio documentation in accordance with the division's standard operating procedures. Such documentation shall be retained for at least 180 days after the stop, or until disposition if a complaint has been made.
    - a. If a complaint has been made, the documentation shall be retained by the Internal Affairs Division until final disposition of the complaint, if not longer as required under other laws or policies.
  3. Internal Affairs shall be responsible for compiling the number of racial profiling complaints and forwarding this information to Policy Management at the end of the year.
  4. At the direction of the Chief of Police or designee, additional data may be collected by the department in an effort to monitor enforcement actions and to provide a overview of department compliance with this General Order.



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5. An annual report will be prepared or coordinated by Policy Management based on the data collection and in accordance with TCOLE guidelines and forwarded to the city manager within the prescribed time period for distribution to the City Council.
- I. Use of Video and Audio Equipment
1. Each traffic stop made by an officer that is capable of being recorded by video and/or audio shall be recorded.
  2. Data recorded will follow requirements of General Order 506.03, Officer-Worn Digital Recording Devices, and General Order 506.04, In-Car Recording System.



**347.00 COMMUNITY POLICING STRATEGIES**

**347.03 BIAS-FREE POLICING**

**A. Purpose and Scope**

1. It is the policy of the Fort Worth Police Department to treat all persons with dignity, respect and professionalism. The Fort Worth Police Department provides police services to the community in a nonpartisan, fair, equitable, and objective manner without consideration of race, color, gender, age, national origin, religion, disability, economic status, sexual orientation, gender expression, gender identity, transgender status, membership in a cultural group, or other individual characteristics or distinctions.
2. Equal treatment provides that persons, irrespective of race or other distinction shall be treated in the same basic manner under the same or similar circumstances. Equal treatment does not mean all persons in the same or similar circumstances can or must be treated identically in all cases. Reasonable considerations and/or accommodations may be made when dealing with individuals with physical or mental disabilities, infirmity, illnesses or similar conditions or when information about them necessitates different treatment.

**B. Definitions**

1. Biased Policing - Discrimination in the performance of duties, based on personal prejudices or partiality of officers, that interferes with their professional judgment, training or adherence to law. Biased policing includes, but is not limited to, making prejudicial decisions affecting individuals in classes protected by federal, state and local law.
2. Gender expression - Person's external characteristics and behaviors including, but not limited to, dress, grooming, mannerisms, speech patterns and social interactions that are socially identified with a particular gender.
3. Gender identity - Person's innate, deeply felt sense of gender, which may or may not correspond to the person's physical body or sex listed on their original birth certificate.
4. Sexual orientation - Heterosexuality, homosexuality or bisexuality or being identified with such orientation.
5. Transgender - Person who experiences and/or expresses their gender differently from conventional or cultural expectations including, but not limited to, those who express a gender that does not match the sex listed on their original birth certificate or who physically alter their sex.
  - a. Intersex individuals - Individuals who, because of their chromosomal make-up or other biological reasons are born with physical characteristics that make their biological sex ambiguous.
  - b. Cross-dressers - Individuals whose gender identity matches their birth-assigned sex, but who sometimes prefer to wear clothes not traditionally associated with their sex. Most individuals who consider themselves cross-dressers do not wear cross-gendered attire all of the time. The term "cross-dressers" should not be used to refer to individuals who are living as members of the opposite sex, in accordance with their gender identity.
  - c. Transsexual - An older term, that originated in the medical and psychological communities, and which is used to refer to individuals who wish to change, or have



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changed their birth-assigned sex, through hormones, surgery or other physical procedures. Just as many gay people prefer the term "gay" to the term "homosexual," many transgender people prefer "transgender" to "transsexual." Some transgender people, however, still prefer to use the medical term to describe themselves.

### C. Limitations

1. Bias-based policing is prohibited both in enforcement of the law and delivery of police services.
2. Officers shall not use race, color, gender, age, national origin, religion, disability, economic status, sexual orientation, gender expression, gender identity, transgender status, membership in a cultural group, or an individual's ability/inability to speak English as the criteria for determining when or how to take enforcement action or provide police services.
3. Nothing in this order prohibits officers from using the traits and characteristics of persons, such as race, ethnicity, or national origin, in combination with other facts, to assist in establishing reasonable suspicion or probable cause in the same manner that officers would use descriptions such as a specific hair color, height, gender or other identifying traits.
4. Officers shall not unreasonably endanger themselves or another person to conform to this General Order.

D. Any employee(s) who witness or are aware of instances of bias-based policing shall report the incident to their supervisor immediately.

### E. Gender Classification Guidelines for Transgender Individuals

#### 1. Officers shall:

- a. Consider a person transgender if the person identifies themselves as transgender or, if upon reasonable belief that person may be transgender, the officer asks and receives an affirmative response.
- b. Respectfully treat individuals in a manner appropriate to the individual's gender, or gender identity/expression when known,
- c. Use pronouns as requested by the individual ( e.g., "she, her, hers" for an individual who self-identifies as a female; "he, him, his" for an individual who self-identifies as a male). If officers are uncertain by which gender the individual wishes to be addressed, they will respectfully ask the individual for clarification,
- d. When requested, address the individual by the name based on their gender identity rather than that which is on their government issued identification, and
- e. Avoid unnecessary personal questions regarding an individual's anatomy, transition status or sexual history.

#### 2. Officers shall not:

- a. Stop, detain, frisk, or search any person for the sole purpose of determining that person's gender or in order to call attention to that person's gender identity/expression, unless following the established department procedures regarding the proper processing of arrestees,
- b. Except when legally necessary, such as processing an arrest, either require proof of an individual's gender or challenge an individual's gender identity/expression,



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- c. Use language that a reasonable person would consider demeaning or derogatory; in particular, language aimed at a person's actual or perceived gender, gender identity/expression, or sexual orientation,
- d. Disclose an individual's gender identity or sexual orientation to other arrestees, members of the public, or other governmental personnel, absent a proper law enforcement purpose,
- e. Make assumptions about an individual's sexual orientation based upon an individual's gender or gender identity/expression, or
- f. Use a person's gender or gender identity/expression alone as reasonable suspicion that the individual is or has engaged in a crime.



**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>

**313.00 FOREIGN NATIONALS AND UNDOCUMENTED PERSONS**

**313.01 ARREST /DETENTION OF FOREIGN NATIONALS AND UNDOCUMENTED PERSONS** *(Revised 8/28/17)*

A. Foreign Nationals

1. For the purpose of consular notification, a foreign national is any person who is not a U.S. citizen.
2. When an officer takes a person into custody and the officer is aware or has reason to suspect that the arrested person may be a foreign national, the officer shall inform the jail supervisor of this situation. The jail supervisor shall note this on the jail registration form.
3. The arresting officer shall deliver any documentation of foreign citizenship, which is not evidence, to the jail supervisor. It will be the responsibility of the Jail Division to maintain a file with all documentation concerning notification and any copies of documentation of citizenship found on a foreign national.
4. The jail supervisor shall be responsible for notification of the foreign embassy or consulate.
  - a. For foreign nationals whose country is on the list of mandatory notification countries:
    - (1) Notify the nearest consulate of the foreign national's country via fax immediately or as soon as reasonably possible, and in no case longer than the end of the booking shift. Notification must be made even if the foreign national does not want the notification.
    - (2) Document the notification in accordance with the U.S. State Department Guidelines.
  - b. For foreign nationals whose country is not on the list of mandatory notification countries:
    - (1) As soon after the arrest as reasonably possible, but no later than booking, inform the foreign national that notification can be made to consular officers if requested. If foreign national requests notification, notify the nearest consulate of the foreign national's country as soon as reasonably possible but no later than seventy-two (72) hours after arrest.
    - (2) Document the notification in accordance with the U.S. State Department Guidelines.
5. A list of foreign embassies and consulates, and countries with special treaties will be on permanent file with the jail supervisor.

B. Undocumented Persons

1. Definitions
  - a. An undocumented immigrant is a foreign-born person who is residing in the U.S. without legal immigration status, including persons who entered the U.S. without proper permission from the U.S. government and those who entered with a legal visa that is no longer valid.
  - b. ICE means the Immigration and Customs Enforcement branch of the federal government. The enforcement of immigration laws rests with the US Immigration and Customs Enforcement (ICE).



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- c. Proof of residency shall include, but is not limited to, a government issued photographic identification card or a document issued by the federal government indicating current legal immigrant status. It shall include, for these limited purposes, expired, revoked or suspended Texas driver's licenses.
  - d. Detainer request means a forty-eight (48) hour hold issued by ICE based upon probable cause that a person has violated immigration restrictions and is civil in nature.
  - e. Lawful detention means a detention based upon reasonable suspicion that the detainee has committed or is committing a criminal offense. For purposes of this directive the term lawful detention shall not include a detention of a person who is a victim or witness of an offense or is reporting a criminal offense.
  - f. Lawful arrest means an arrest based upon probable cause that the arrestee has committed a criminal offense.
2. State law mandates that officers shall not inquire into the immigration status of a detained individual when the individual is being detained solely because they are a witness to a crime and/or the person reports a criminal offense, unless:
    - a. The inquiry is necessary to investigate the offense; or
    - b. The officer is providing the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.
  3. Officers shall actively enforce state and federal laws in a responsible and professional manner, without regard to race, ethnicity or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in General Order 347.02, Racial Profiling.
  4. Officers may not stop a motor vehicle or conduct a search of a business or residence solely to enforce a federal law relating to immigrants or immigration unless the officer is acting:
    - a. At the request of, and providing assistance to, an appropriate federal law enforcement officer; or
    - b. Under the terms of an agreement between the police department and the federal government.
  5. Fort Worth police officers are prohibited from assisting or cooperating with federal immigration officers if the assistance/cooperation is occurring at a place of worship, i.e., church, mosque, synagogue.
  6. Officers shall use Signal 10-58 (Verified Immigration Status) when inquiring about a person's immigration status. Officers shall make sure their body-worn camera is activated, if not already activated, when they decide to inquire into immigration status of a detainee. Officers shall verify their body-worn camera is activated on an immigration status call.
    - a. If action is taken on the immigration verification only (i.e., ICE detainer, ICE referrals from the field, etc.), the officer shall initiate an incident report entitled "*Verification of Immigration Status Report.*"
      - (1) The officer should include relevant information in the narrative including, but not limited to: describing what occurred, which supervisor was contacted, whether ICE was contacted and by whom, vulnerable persons with detained person and how this was handled, number of officers required to assist, was vehicle towed, outcome of verification, arrival time of ICE if contacted, and time on call.



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- (2) A *Verification of Immigration Status Report* is not completed if an offense report is warranted; however, the officer will note the immigration verification in the offense report.
7. Lawful Detention
  - a. Officers may inquire into the immigration status of any individual who has been lawfully detained.
  - b. State law mandates that officers cannot require a person who is lawfully detained, but not arrested, to provide identification. Officers shall not arrest a person who refuses to identify themselves during a lawful detention, unless the officer has probable cause to arrest the person on another criminal violation. Officers may arrest a lawfully detained person if the person is untruthful about their identity
  - c. During a lawful detention officers may make inquiries via TCIC/NCIC to determine if the detainee is the subject of any ICE warrants or detainer requests. Officers are not prohibited from contacting ICE directly.
8. Lawful Arrest
  - a. An officer may arrest an undocumented person for a criminal offense only if the officer is acting under the authority granted under Chapter 2, Code of Criminal Procedure Article 2.13.
  - b. During a lawful arrest officers may inquire about the arrestee's immigration status.
  - c. If the arrestee is accompanied by a juvenile or a vulnerable person who is disabled, elderly, unable or incapable of arranging their own transportation, the arresting officer shall follow the guidelines in General Order 338.03, Vulnerable Person Accompanying Arrested Person.
  - d. Officers may not take an undocumented person into custody solely upon the suspicion that the individual has entered this country illegally.
  - e. Officers shall not use coercion or intimidation based on an individual's immigration status.
9. ICE Detainers
  - a. The department shall honor ICE detainers for a period no longer than forty-eight (48) hours after the point the arrested person has posted bond or is to be released on a personal bond.
  - b. If an arrested person produces proof of residency the department shall not honor a detainer request. The arrested person may be released following standard procedures. The employee or officer shall make photocopies of all documents establishing proof of residency.
  - c. Should an employee receive a writ or other court notice regarding the person in custody for an ICE detainer, the employee shall immediately notify the supervisor on duty. The supervisor on duty shall immediately notify the staff legal advisor to review the document and to advise on how to proceed.
  - d. All department personnel shall cooperate with immigration officials who are investigating immigration matters.
    - (1) Any officer or civilian staff who receives a request to assist in an (an ICE) enforcement action shall immediately contact the supervisor on duty and relay the request for further instruction and await further instruction from that supervisor.



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NOTE: The supervisor receiving the request shall not delay in providing guidance to the requesting officer; however, the supervisor shall notify the highest-ranking divisional supervisor or, if after hours, a night command/duty captain as soon as possible.

- (2) The department will provide assistance with federal immigration officers when reasonable or necessary as required by state and federal law.





## New Signals for Tracking Statistics Beginning in 2018

Department Administration has asked for the ability to track some new statistics on contacts officers are making in the community. To facilitate this, two new officer-initiated call types have been created.

*Positive Citizen Contact* – The signal 63C has been generated to better track the positive non-law enforcement encounters that our officers experience with our citizens and/or guests of Fort Worth. This call sign will be used when officers make contact with citizens/guests in any manner to assist in a non-police related manner (i.e. an officers gives a citizen a ride to get gas, changes a tire, or when an Officer/NPO welcomes a new business to their beat or to document compliments and praises for the department...etc.).

*School Check* – The signal 90S has been generated to build stronger relationships with the students in our FWISD schools while also providing a means to document our safety check as a service. This call sign will be used when officers (i.e. SROs, Beat Officers, and NPOs) conduct a physical walk through at a FWISD school and/or facility in their prospective areas.

**Inform Mobile - [Incident]**  
 Login/Logout | Queries | Messages | Drafts | Units | Calls | Status | Tools | Options | Help  
 Sector: **CENTRAL(CI) Unit:X302** Call: 180179102 Status: **On Scene**

BACK MY CALL NEW MSG CALLS UNITS STATUS TLETS FORMS MAP RMS SRCH RTRN MSGS

CASE#  
 NATURE: **POSITIVE CITIZEN CONTACT** MAP ADD COMMENT REFRESH  
 ADDRESS: **1500 West Fwy Sr Wb** APT# BLDG  
 CROSS: **SUMMIT AVE/W DAGGETT AVE** CITY: Fort Worth  
 CALL: 180179102 LOC:

INFO PRIORS CALLER HAZMAT CAUTION PREMISE TRANSPORT  
 PRIORITY: 4 BEAT: A16 Mapsco: 76G  
 SECTOR: CENTRAL TAC CHNL:  
 ASSIGN TIME: 02/26/2018 17:04 DIRECTIONS AUTO ZOOM CALL ZOOM  
 MOBILE UNITS: X302

Time/Date	Performed By	Conf	Comments	Details
17:04:...	275208C	Y	[Query] X302, NCIC Plate Check: TEST12,TX,PC	View
17:04:...	StatMon		X302 - On Scene	View

**Inform Mobile - [Incident]**  
 Login/Logout | Queries | Messages | Drafts | Units | Calls | Status | Tools | Options | Help  
 Sector: **SOUTH(CITY) Unit:X302** Call: 180178868 Status: **On Scene**

BACK MY CALL NEW MSG CALLS UNITS STATUS TLETS FORMS MAP RMS SRCH RTRN MSGS

CASE#  
 NATURE: **COMMUNITY SERVICE SCHOOL CHECK** MAP ADD COMMENT REFRESH  
 ADDRESS: **1401 W Seminary Dr** APT# BLDG  
 CROSS: **6TH AVE/JAMES AVE** CITY: Fort Worth  
 CALL: 180178868 LOC: Rosemont Elementar

INFO PRIORS CALLER HAZMAT CAUTION PREMISE TRANSPORT  
 PRIORITY: 4 BEAT: J11 Mapsco: 90M  
 SECTOR: SOUTH TAC CHNL:  
 ASSIGN TIME: 02/26/2018 15:56 DIRECTIONS AUTO ZOOM CALL ZOOM  
 MOBILE UNITS: X302

Time/Date	Performed By	Conf	Comments	Details
15:56:...	StatMon		X302 - On Scene	View

## **Contact Information**

For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting, LLC

817.681.7840

[www.texasracialprofiling.com](http://www.texasracialprofiling.com)

[www.delcarmenconsulting.com](http://www.delcarmenconsulting.com)

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