

	SAN MARCOS POLICE DEPARTMENT	
	Policy 2.2 Biased Based Policing	
	Effective Date: May 3, 2019	Replaces: 203
	Approved:	
	 _____ Chief of Police	
Reference: TBP 2.01		

I. POLICY

We are committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, sexual orientation, national origin, ethnicity, age, or religion. Respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and by statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions that support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, color, religion or creed, national origin or ancestry, sex, age, physical or mental disability, veteran status, genetic information, or citizenship.

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

II. PURPOSE

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

III. DEFINITIONS

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

- A. Arrest: To take or hold a suspected criminal with legal authority. An arrest may be made legally based on a warrant issued by a court after receiving a sworn statement of probable cause to believe there has been a crime committed by this person, for an apparent crime committed in the presence of the arresting officer, or upon probable cause to believe a crime has been committed by that person.

- B. Bias: Prejudice or partiality based on preconceived ideas, a person's upbringing, culture, experience, or education.
- C. Biased Policing: Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, color, religion or creed, national origin or ancestry, sex, age, physical or mental disability, veteran status, genetic information, or citizenship.
- D. Detention: Requiring an individual to remain with the officer for a brief period of time for the purpose of investigating the actions of the individual. In order to make the stop, the officer must have reasonable suspicion to believe that criminal activity is afoot and that the person to be detained or stopped is involved.
- E. Ethnicity: A cluster of characteristics that may include race but also cultural characteristics or traits that are shared by a group with a common experience or history.
- F. Gender: The state of being male or female; typically used with reference to social and cultural differences rather than biological ones.
- G. Probable Cause: Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.
- H. Race: A category of people of a particular descent, including Caucasian, African, Hispanic, Asian, Middle Eastern, or Native American descent. As distinct from ethnicity, race refers only to physical characteristics sufficiently distinctive to a group of people under a classification.
- I. 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.
- J. Reasonable Suspicion: Articulable, objective facts that lead a reasonable officer to suspect that a person has committed, is committing, or may be about to commit a crime. A reasonable suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be "objectively reasonable."
- K. Sex: A biological classification, male or female, based on physical and genetic characteristics.
- L. Stop: An investigative detention. The detention of a subject for a brief period of time, based on reasonable suspicion or probable cause.

IV. PROCEDURES

- A. General Responsibilities
 - 1. Officers are prohibited from engaging in bias-based profiling or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person's race, color, religion or creed, national origin or ancestry, sex, age, physical or mental disability, veteran

status, genetic information, or citizenship. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes. (TBP: 2.01)

2. Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, subject stops, arrests, nonconsensual searches, and property seizures. Except as provided in number 3 below, officers shall not consider race/ethnicity or national origin in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.
3. Officers may take into account the reported race/ethnicity or national origin of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity or national origin to a particular unlawful incident(s). Race/ethnicity or national origin can never be used as the sole basis for probable cause or reasonable suspicion. Except as provided above, reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall be subjected to stops, seizures, or detentions only upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.
4. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
 - a. As traffic stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. How the officer disengages from a traffic stop may be crucial to a person's perception of fairness or discrimination.
 - b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.
5. All employees shall treat everyone with the same courtesy and respect that they would have others observe to department employees. To this end, employees are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
6. Employees shall courteously accept, document, and forward to the appropriate supervisor any complaints made by an individual against the department. Further, employees shall provide information on the complaint process or direct them to the

front lobby or the city website for a copy of "How to Make a Complaint" when appropriate.

7. When feasible, employees shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual's circumstances unless the explanation would undermine an investigation or jeopardize an officer's safety.
8. When feasible, all employees shall identify themselves by name. When a person requests the information, employees shall give their badge number, name of the immediate supervisor, or any other reasonable information.

B. Supervisory Responsibilities

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.
2. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with this order and the constitutional requirements of law enforcement.
3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to maintaining community trust in law enforcement. Supervisors shall continually reinforce the value of impartial enforcement of the laws, and shall ensure that employees, by their actions, maintain the community's trust in law enforcement.
4. Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement, but increases safety risks to employees. Lack of control over bias also exposes the department to liability consequences.
5. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates.
6. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.
7. Supervisors shall facilitate the filing of any complaints about law enforcement service.
8. Supervisors will randomly review at least three videos per officer (either body camera and/or in-car camera video) per quarter. For this policy a "quarter" is defined as a 3-month period of time. Supervisors are not required to watch each incident of an entire shift; however, reviewing the footage in a manner intended to gain an understanding of that officer's performance and adherence to policy and law is required. Supervisors will document the random review of the video on the appropriate departmental form and any violations of policy or law will be addressed through the use of existing internal affairs policy. (TBP: 2.01)
9. Section 8 above applies only to first-line uniformed officers and their immediate supervisors. In the long-term absence of a first-line supervisor this responsibility will move to the patrol commander.

NOTE: This policy does require review of every first-line uniformed officer every

quarter which is a higher standard for video review than what is required of all employees in general with video as listed in general order 5.3 Computer and Electronics Equipment Usage and Data Security.

C. Disciplinary Consequences

Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

D. Training (TBP: 2.01)

Officers shall complete all training required by state law regarding bias-based profiling.

V. COMPLAINTS

A. The department shall publish “How to Make a Complaint” folders and make them available at the department, city hall and via the city website. The department’s complaint process and its bias-based profiling policy will be posted on the department’s website. Whenever possible, the media will be used to inform the public of the department’s policy and complaint process.

B. Complaints alleging incidents of bias-based profiling will be fully investigated as described under general order 2.4 Internal Investigation Process.

C. Complainants will be notified of the findings of the investigations when the investigation is completed.

VI. RECORD KEEPING

A. The department will maintain all required records on traffic stops where a citation or warning is issued or where an arrest is made subsequent to a traffic stop pursuant to state law.

B. The information collected above will be reported to the city council annually.

C. The information will also be reported to Texas Commission on Law Enforcement in the required format.