

POLICY AND ETHICS MANUAL

2.33 Biased-Based Profiling

The purpose of this policy is to state unequivocally, that law enforcement activities that are the result of bias-based profiling are not condoned, are unacceptable, and will not be tolerated by Hidalgo County Law Enforcement. Bias-based profiling is unethical and illegal, and serves to foster distrust of law enforcement by the community we serve. This policy will serve as a guideline for law enforcement personnel to prevent such occurrences and to protect our personnel, when they act within the provisions of the law and this policy, from unwarranted accusations.

2.33.01 Policy

Racial Profiling is defined as any pattern or practice, including but not limited to stopping, detaining, frisking, and searching, by deputies that is based upon a generalized belief that a person of a particular race, ethnicity, or national origin is more likely to commit certain types of crimes. Law enforcement action must be based upon credible information known to the deputy which leads him/her to believe that an individual is, has been or is about to be engaged in activity which is in violation of the law. Any other motivation for such actions is strictly prohibited. Race or ethnicity means a particular descent, including Caucasian, African, and Hispanic, Asian, Native American or unknown descent.

2.33.02 Definitions

Bias-based Profiling-the selection of individuals based solely on a trait common to a group for enforcement action. This includes, but is not limited to, race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.

Enforcement Activities- Activities both on and off-duty, undertaken by law enforcement personnel that arise from their authority related to employment, oath of office, State statute, Federal Law or County ordinance. Activities such as traffic contacts, field contacts, arrests, investigations, asset seizure and forfeiture, and general law enforcement contact with citizens.

Reasonable suspicion- Suspicion that is more than a mere hunch, but is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution into believing that a violation of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. This information can be based on observations, training and experience, and/or reliable information received from credible outside sources.

2.33.03 Procedures

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Traffic and Field Contacts

- A. A database entry will be made for every traffic stop or field contact. Traffic and field contacts between law enforcement officers and citizens will be conducted in a professional and courteous manner.
- B. Basic interpersonal communication protocol is as follows:
 - 1. Greet the person contacted in a respectful manner and identify yourself.
 - 2. State the reason for the traffic stop or temporary detention, focusing on the actions of the vehicle or circumstances rather than personalizing the violation.
 - 3. Ask the person if there was a reason for the violation, giving them the opportunity to establish a dialogue.
 - 4. Politely ask for identification and other required documents.
 - 5. Inform the driver or pedestrian as to what action is being taken and what actions, if any, the person must perform as a result of the enforcement action.
 - 6. Give a professional closing statement to end the contact. Refrain from using trite or colloquial expressions.
- C. Appropriate enforcement action shall always be completed and documented, generally in the form of written warning, citation, or an arrest.
- D. When enforcement action is taken, the appropriate law enforcement agency documentation will be completed as required by the specific type of enforcement action and the guiding written directives pertaining to such enforcement action. All enforcement action documentation will include gender, race, ethnicity of the person stopped or contacted, if this information can reasonably be ascertained by physical appearance or from the driver's license or other documents provided by the individual.
- E. No motorist, once cited or warned, will be detained beyond the point where there exists no reasonable suspicion of further criminal activity.
- F. No person or vehicle will be searched in the absence of a search warrant, or a legally recognized exception to the search warrant requirement, or the person's voluntary consent. Specific guidance pertaining to searches of vehicles, persons, or structures is provided in Search Procedures and Arrest Procedures.
- G. In the absence of a specific, credible report containing physical or vehicle description, a person's race, ethnicity, gender or sexual orientation or combination of these will not be a factor in determining probable cause for an arrest or reasonable suspicion for a stop.
- H. Deliberate recording of misleading information related to the actual or perceived race, ethnicity, gender or sexual orientation of a person stopped for investigative or enforcement purposes is prohibited, and is a cause for disciplinary action up to and including termination of employment.

2.33.04 Investigations

- A. Criminal profiling, in itself can be a useful tool to assist law enforcement officers in carrying out their duties to include the investigation of criminal activity and subsequent arrest as well as asset seizure and forfeiture efforts. Bias-based profiling, however, is the selection of individuals based solely on a common trait of a group defined in this policy.
- B. Hidalgo County law enforcement agencies do not condone and will not allow the use of bias-based profiling in the enforcement programs to include investigations

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both incidental and on-going as well as subsequent arrest and asset seizure and forfeiture.

- C. Law enforcement personnel will focus on a person's conduct or other specific suspect information supported by articulable facts which indicate that the person has committed a crime, is about to commit crime, or is presenting a threat to the safety of themselves or others.
- D. All law enforcement agency investigations will be carried out in accordance with established written directives.

2.33.05 Documentation Requirements (Video)

- A. All marked law enforcement vehicles used for law enforcement purposes may be equipped with a video camera capable of recording video and sound. The video camera will be activated prior to every traffic stop or citizen encounters to record behavior of the vehicle or the person. The video recorder will remain activated until the person and/or vehicle is released. Failure to activate the video camera sound prior to the traffic stop or citizen encounter may result in disciplinary action up to and including termination.
 - 1. The Fire Marshal shall appoint a Deputy who shall be responsible for maintaining a supply of video cartridges for their assigned personnel.
 - 2. At the beginning of each shift, each Deputy shall insert their video tape cartridge in the vehicle video recorder.
 - 3. The video cartridge will be labeled with the Deputy's name, badge, unit or ID number, shift, and date(s) coverage.
 - 4. At the end of the shift, the Deputy shall be responsible for removing the video cartridge and maintaining custody.
 - 5. The video cartridge shall be submitted to the patrol supervisor as needed but at the least on a weekly basis. The cartridge will include the dates of coverage on the label.
 - a. The Deputy shall enter their name, badge, unit or ID#, shift and dates of coverage into the logbook and place the video cartridge in the agency lock box.
 - b. The Deputy shall maintain custody and personally enter the information in the logbook. At no time will another person be permitted to submit a video cartridge for another employee.
 - c. Failure to submit the video cartridge in a timely manner and in accordance with this policy may result in disciplinary action up to and including termination.
 - d. A lock box and logbook shall be available for submission of video cartridges. The assigned Deputy or the designee shall be responsible for inventory of the video cartridges on a weekly basis.
 - e. Shall be activated in all situations as described under section 2.32 Recording Policy / Official Duty.
 - 6. The patrol supervisor shall ensure the secure storage of all submitted video cartridges.
 - a. All used cartridges shall be held for ninety (90) days before being recycled into use.

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- b. Whenever a complaint is received in which the incident was recorded, that video cartridge will be held for a minimum of one year.

2.33.06 Bias-based Profiling Complaints

- A. Any person may file a complaint with the law enforcement agency if they feel that they have been stopped, detained, or searched based solely on a bias-based profile.
- B. No person will be discouraged, intimidated, or coerced from filing such a complaint, or discriminated against because they have filed such a complaint.
- C. Any law enforcement personnel contacted by a person who wishes to file such a complaint will immediately contact a supervisor who will respond to the scene. The supervisor shall advise the complainant of the complaint process procedures and documentation complaint. All complaints will be forwarded to the agency representative who will review and process the complaint in accordance with the agency policy and procedures. All complaints of bias-based profiling, upon conclusion, will be forwarded to the agency department head and will contain findings, suggestions for disciplinary action, or changes in policy, training, or t tactics.
- D. Depending on the findings of each complaint as well as the specific factors involved, corrective measures will be taken to remedy violations of this policy. Corrective measures may include but are not limited to, training, counseling, policy review, and discipline up to and including termination of employment.
- E. On an annual basis, each law enforcement agency will compile a statistical summary of bias-based profiling complaints, which will include the findings as to whether each case was sustained, not sustained, or exonerated.

Supplemental statistical data may be obtained from a variety of sources to include logs and activity reports.

2.33.07 Supervisor Responsibilities

- A. Agency supervisors will be apprised of all bias-based profile complaints involving personnel under their command.
- B. It is the responsibility of the first line supervisors to monitor activities of their personnel and to identify potential bias-based profile activity.
- C. Agency supervisors will randomly review a sampling of in-car videotapes of traffic stops and citizen contacts as well as reports generated as a result of these incidents and activities. This review will be documented and forwarded to the agency department head with findings and recommendations.
- D. All supervisors will be particularly alert to potential patterns and practices of their personnel that may indicate bias-based profiling and treatment of individuals.

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2.33.08 Reporting Procedures

- A. Each Deputy shall maintain a database of information collected from traffic stops in which a citation is issued or arrest made (based on traffic stop). The data shall include:
 - 1. The race or ethnicity of the individual detained.
 - 2. Whether a search was conducted and, if so, whether the person detained consented to the search.
- B. Effective January 1, 2013, and annually thereafter, the Deputy shall submit a compilation of the data (as identified in this section) from the previous year to the Fire Marshal.
- C. Effective March 31, 2013, and annually thereafter, the Chief Deputy will direct the effort to produce an Annual Report (of the previous year) of information collected (as identified in this section) to be submitted to Commissioner's Court. This annual report will not include information that is specific to the identity of the Deputy(s) or the citizen(s) involved.

2.33.09 Training

- A. Training related to bias-based profiling will be provided to sworn personnel. This training will be provided in coordination with each agency's training officer and will include T.C.O.L.E. required curriculum involving:
 - 1. Annual legal update training
 - 2. Cultural Diversity
 - 3. Training as established by T.C.O.L.E.

GRIEVANCE & COMPLAINT

3.01 Department Grievance Procedure

Members feeling aggrieved in the treatment, orders, or neglect of duty of a superior officer, or having a grievance against any other member, policy, or procedure, shall reduce the matter to writing and direct the written grievance through official channels to the Fire Marshal.

In those rare instances a member feels that a specific grievance cannot be transmitted through the normal chain of command, the grievance or complaint may be initiated at whatever level in the chain of command consistent with the nature of the complaint.

Any member who feels that a grievance will not be dealt with fairly at any level in the chain of command may direct the grievance, in writing, to the Fire Marshal.

The intent of this policy is to allow every member a free flow of communication to the Fire Marshal without fear of retaliation.

It is anticipated that members of the Department, at whatever level in the chain of command, will understand the necessity for such a free flow of communication and will not abuse this policy or use it in any manner not consistent with the high professional standards of this Department.

3.02 Hidalgo County Grievance Procedure

The purpose of Hidalgo County's grievance system is to settle any grievance between the County and an employee as quickly as possible to assure efficient work operations and maintain employee morale. More specific written procedures may be obtained from your supervisor.

3.03 Receipt and Investigation

This Department will receive and pursue all complaints issued against Department Employees in a complete and impartial manner. All complaints and grievances will be received, reviewed and investigated in a manner consistent with the Department procedure for investigating Internal Affairs Complaints. These complaints will include violations of ordinance or statutes, as well as violations of Department regulations, policy, or procedures.

3.04 Appeals to Counseling/Disciplinary-Action

This directive prescribes the policy for the appeal of counseling and disciplinary actions on departmental personnel. Each employee shall be responsible to confirm this policy.

Verbal Counseling

- A. No appeal process

Counseling and Disciplinary Action

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- A. Any written counseling or disciplinary action may be appealed with 72 hours of receipt.
- B. All appeals shall be written.
- C. All appeals shall be forwarded to the immediate supervisor of the supervisor issuing the written disciplinary.

3.05 Suggestions for Improvement of Service

Members wishing to make suggestions for the improvement of the department's service shall reduce the suggestion to writing and direct the suggestion through official channels to the Fire Marshal.

3.06 Departmental Suggestions

All suggestions will be reviewed monthly by staff personnel. A response will be made to the originator of a suggestion concerning any decision. This information will be disseminated to department personnel. The final decision of any suggestion is the direct and complete responsibility of the Fire Marshal.

3.07 Complaint Procedure

FIRE MARSHAL EMPLOYEE COMPLAINT PROCEDURE

The Hidalgo County Fire Marshal's Office is dedicated to providing exceptional service to its employees and citizens through a problem solving approach and a commitment to excellence in the delivery of services. The Fire Marshal's employees are held to the highest standards and provided with the best training available.

WHEN YOU FEEL YOU NEED TO FILE A COMPLAINT

Unfortunately, not every contact with our Deputies or employees is always totally satisfactory, and a complaint may need to be made. Upon the receipt of a complaint, in most cases a written complaint, but with some exceptions upon a verbal complaint, an internal investigation may then be initiated. The purpose of the internal investigation is the pursuit of the truth. We are committed to that objective, recognizing that our agency's credibility depends upon the community's belief that we can police ourselves. With that in mind, we provide the following information regarding how you can file a complaint, how a complaint is investigated, and how it is disposed of.

HOW TO FILE COMPLAINTS

First, there are basically two types of complaints -- verbal and written. Verbal complaints are usually more minor in nature or the complainant does not desire to have the officer disciplined, but rather talked to about how they felt about their interaction. Written complaints are more formalized and usually involve a more serious complaint. The complaining person will be required to fill out a form and return it to this department; in person and sign the form in the presence of a Notary (We have a Notary at the Fire Marshal's Office). You may be required to supply additional information.

You may call Homero Garza, Fire Marshal, if you wish, by calling the numbers listed below. Please understand that the Fire Marshal may decide not to get involved in a written complaint so that he can remain fair and impartial. The Chief Deputy will conduct

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all portions of the investigation of written complaints and submit the documents to the Fire Marshal.

Once the complaint is received by this Office, the complaint will be logged into the internal affairs log, assigned to the Chief Deputy to investigate, and an acknowledgment letter will be sent to you. Normally, cases have a three (3) week process and you will be informed as to the outcome of the investigation, in writing.

The Fire Marshal may establish a Citizen Review Board (CRB) to investigate complaints involving Citizens and Deputies of this office. The CRB will review all documents, statements and reports. Their decision will be turned into the Fire Marshal.

THE PROCESS

1. Once a complaint is received, the officer/employee is notified in writing; and
2. Provided a copy of the complaint (excluding personal information as determined by the Fire Marshal); and
3. Required to provide a written response to the allegations, stating all facts and circumstances of the contact; and
4. You will be called in for a complete statement; and
5. Required to take polygraph, if the case warrants, only after complainant is requested to take a polygraph and makes a good faith effort to take one.
6. The Citizen Review Board will review all documents and submit a report to the Fire Marshal.
7. The Fire Marshal will conduct a final evaluation and notify the complainant of the action(s) taken.

POLYGRAPHS

During the course of the investigation, you may be requested to submit to a polygraph. Your submission to the polygraph is totally voluntary; however, an employee\Deputy cannot be required to take a polygraph unless the complainant is willing to do so.

SUBSTANTIATED COMPLAINTS

When the investigation reveals that the charges are true and depending on the severity of the infraction, the department may take any of the following actions on the involved employee:

1. Oral counseling
2. Written counseling
3. Written reprimand
4. Suspension (without pay, up to 15 days)
5. Suspension (without pay, up to 45 days in lieu of firing)
6. Indefinite suspension (termination)

According to Hidalgo County Civil Service Rules, a Deputy or employee has the right to appeal any level of discipline that falls above written reprimand.

COMPLAINT NOT SUSTAINED

If there is not sufficient evidence to support the allegation or it is proved that the officer or employee was acting within the established and accepted policies and/or procedures of the department, the investigation will be closed and no further action taken.

FALSE COMPLAINTS

Rarely, citizens will file a false complaint against police employees. Citizens should be aware that this is a violation of the Texas Penal Code and if found guilty is punishable by a fine of \$4,000 and or up to one year in jail.

Homero Garza, Fire Marshal, is sincerely interested in the welfare of all citizens and in taking action where its employees have acted or behaved in violation of the policies, procedures and practices of this department. If it becomes necessary for you to make a complaint, you can be assured that it will be given a fair and thorough investigation.

By the same token, if you have an occasion to see Deputies doing outstanding work, we encourage you to tell them and/or us about it. This Office is comprised of professionals dedicated to serving you and our community.