Office of Constable Clint C. Burgess
Tarrant County Precinct 7
1100 East Broad Street Suite 201
Mansfield, Texas 76063
817-473-5110
www.TexasConstable.com

L-C07-15-012

February 28, 2014

To: Texas Commission on Law Enforcement
From: Constable Clint C. Burgess
Subject: 2014 Racial Profiling Agency Supplied Report

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th 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 77th 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:

1) 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");
2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
3) 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 preceding 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.

Tarrant County Constables Office Precinct 7

Racial Profiling Policy

I. PURPOSE

The purpose of the policy is to reaffirm the Tarrant County Constables Office Precinct 7 commitment to unbiased policing in all its encounters between 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 our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

II. POLICY

It is the policy of this department to police in a proactive manner and, to aggressively 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 policy. This policy shall be applicable to all persons, whether drivers, passengers or pedestrians.

Officers shall conduct themselves in a dignified and 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 will not be condoned.

This policy 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 policy prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.

III. DEFINITIONS

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.

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.

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. 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. 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.

A law enforcement agency can derive at two principles from the adoption of this definition of racial profiling:

1. Police may not use racial or ethnic stereotypes as factors in selecting whom to stop and search, while police may use race in conjunction with other known factors of the suspect.

2. Law enforcement officers may not use racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling is not relevant as it pertains to witnesses, etc.

Race or Ethnicity – Of a particular decent, including Caucasian, African, Hispanic, Asian, or Native American.

Pedestrian Stop – 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.

Traffic Stop – A peace officer that stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic.

IV. CITATION DATA COLLECTION & REPORTING

An officer is required to collect information relating to traffic stops in which a citation is issued. On the citation officers must include:

1. the violators race or ethnicity;

2. whether a search was conducted;

3. was the search consensual; and

4. arrest for this cited violation or any other violation.

By March of each year, the department shall submit a report to their governing board that includes the information gathered by the citations. The report will include:

1. a breakdown of citations by race or ethnicity;

2. number of citations that resulted in a search;

3. number of searches that were consensual; and

4. number of citations that resulted in custodial arrest for this cited violation or any other violation.

Not later than March 1st of each year, this department shall submit a report to our governing body containing this information from the preceding calendar year.

2.02 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 Tarrant County Constable's Office. 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.

2.35.02 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 of a particular descent, including Caucasian, African, Hispanic, Asian, Native American or Unknown descent.

2.35.021 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 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.

2.35.03 Procedures for Daily Operations

Civil, Traffic and Field Contacts

A. The Dispatcher will be notified and a CAD entry made for every civil stop, traffic stop, field contact or break/lunch. Any time a Deputy is wearing a uniform or on duty, the conversations between law enforcement officers and citizens will be conducted in a professional and courteous manner.

B. If the computer is inoperable or the CAD system is down, a Deputy must check in/out on the radio. If out of the car, every Deputy will be shown checked out. Every Deputy will monitor channel 19 (Constable Channel) at all times.

C. 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. Do not use the statement "have a nice day".

D. Appropriate enforcement action shall always be completed and documented, generally in the form of a written warning, citation, or an arrest.

E. When enforcement action is taken, the appropriate law enforcement agency documentation will be completed as required by the specific type of enforcement

F. action and the guiding written directives pertaining to such enforcement action. All enforcement action documentation will include the gender, race or ethnicity of the person stopped or contacted, if this information can reasonable be ascertained by physical appearance or from the driver's license or other documents provided by the individual.

G. No motorist, once cited or warned, will be detained beyond the point where there exists no reasonable suspicion of further criminal activity.

H. 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.

I. In the absence of a specific, credible report containing a 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.

J. Deliberate recording of any 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.

K. Daily logs will be completed at the end of each shift, logged into the computer in the office and then properly filled in the property folder for each officer.

2.35.04 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 or a group as defined in this policy.

B. Tarrant County Constable's Office does not condone and will not allow the use of bias-based profiling in their enforcement programs to include investigations 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 articulated facts which indicate that the person has committed a crime, is about to commit a 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.

2.35.05 Bias-based Profiling Complaints

A. Any person may file a complaint with the Constable's Office 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 document the complaint. All complaints will be forwarded to the agency representative who will review and process the complaint in accordance with agency policy procedures.

D. 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 tactics.

E. Dependent 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.

F. 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 Communications CAD system, MDT logs and inquires, and activity reports.

2.35.06 Supervisor Responsibilities

A. Department 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 the activities of their personnel and to identify potential bias-based profile activity.

C. All supervisors will be particularly alert to potential patterns and practices of their personnel that may indicate bias-based profiling and treatment of individuals.

2.35.07 Reporting Procedures

A. A Deputy is responsible for documenting each traffic stop (warning or citied) with the appropriately requested information. It is the Deputies responsibility to maintain those records and provide them upon request. Deputies will also fill out the daily logs with all the correct information.

B. The Chief Deputy shall maintain the database of information collected from traffic stops in which a citation is issued or arrest made (based on the traffic stop). Provided by each Deputy.

The data shall include:

1..Age

2. The race or ethnicity of the individual detained.

3.. Violation contact type

4 Whether a search was conducted and, if so, whether the person detained consented to the search.

C. Effective January 31, 2002, and annually thereafter, the agency supervisor shall submit a compilation of the date (as identified in this section) from the previous year to the agency department head.

D. Effective March 31, 2003, and annually thereafter, each law enforcement agency department head will write an Annual Report (of the previous year) of information collected (as identified in this section) to be submitted to Commissioners Court. This annual report will not include information that is specific to the identity of the Deputy(s) or the citizen(s) involved.

2.35.08 Training

A. Training related to bias-based profiling will be provided to sworn personnel. This training will be provided in coordination with each Departments training office 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.

CONTACTS BY RACE				
Asian	Black	Hispanic	White	TOTAL
49	135	91	281	556

CONTACTS BY VIOLATION					
Hazardous	Investigative	Local Ordinance	Non-Hazardous	Penal Code	TOTAL
5	2	0	9	540	556

FINAL OUTCOME					
	Arrested	Cited	Released	Warned	TOTALS
Asian	1	3	0	45	49
Black	18	11	0	106	135
Hispanic	22	7	0	62	91
White	31	22	0	228	281
TOTALS	72	43	0	441	556

SEARCHES			
	Consensual	Non-Consensual	TOTALS
Alcohol	2	0	2
Drugs	8	0	8
Property	0	0	0
Weapons	0	0	0
Other	0	0	0
None	0	0	0
TOTALS	0	0	10

CONSTABLE APPROVED

Executed by: *CONSTABLE CLINT C. BURGESS*
Chief Administrator
Tarrant County Constables Office Precinct 7
Date: 02/28/2014