



The Criminal Justice Institute's

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BIAS-BASED POLICING: Strengthening Your Agency Through Training and Education , Part I

Around 2:00 p.m. on a Wednesday afternoon, a police officer is on patrol in an affluent suburban community comprised primarily of Caucasian homeowners. When a Hispanic motorist is spotted driving through one of the community's upscale subdivisions, the police officer decides to pull him over and question him about his activities in the area. The motorist has not committed any traffic violations, nor has he engaged in any suspicious activity.

Is the officer justified in his decision to question this motorist?



According to new State legislation, probably not. Although the incident described above is fictitious, similar real-life scenarios have sparked a national debate on racial profiling, a practice commonly defined as “the inappropriate consideration of race or ethnicity in deciding with whom and how to intervene in an enforcement capacity.”¹

President Bush has formally banned racial profiling throughout federal law enforcement organizations, stating: “It’s wrong, and we will end it in America. In so doing, we will not hinder the work of our nation’s brave police officers. They protect us every day—often at great risk. But by stopping the abuses of a few, we will add to

the public confidence our police officers earn and deserve.”

In support of this ban, the Department of Justice has stated: “In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, federal law enforcement officers may *not* use race or ethnicity to any degree, except that officers may rely on race and ethnicity if a specific suspect description exists. This prohibition applies even where the use of race or ethnicity might otherwise be lawful.”

Today, this federal initiative is beginning to be adopted within state governments as well. According to the National Institute on Race and Justice at Northeastern University, more than twenty states have passed legislation prohibiting racial profiling and/or requiring jurisdictions within the state to collect data on law enforcement stops and searches.

¹ Lorie Fridell, Robert Lunney, Drew Diamond and Bruce Kubu, **Racially Biased Policing: A Principled Response**; Washington, D.C.: Police Executive Research Forum, 2001

Arkansas has not been untouched by this fiercely debated issue. In the 2003 Regular Session of the Arkansas Legislature, **ACT 1207 of 2003** was passed, prohibiting bias-based policing and requiring officers to articulate “reasonable suspicion” before a stop, frisk, arrest, or detention.

So what impact will Act 1207 have on law enforcement agencies in the State? The formal passage of racial profiling legislation within Arkansas largely reaffirms what the U.S. Constitution and Federal case law have already established—**equal protection under the law and equitable justice for all**. The Fourth Amendment already protects against unreasonable searches and seizures. Likewise, Title VI of the Civil Rights Act (of 1964) prohibits discrimination by agencies receiving federal funding, and the Equal Protection Clause of the Fourteenth Amendment prohibits states from denying any person within its jurisdiction the equal protection of the laws.

In essence, Act 1207, and similar pieces of legislation that have been enacted in other states, provides further protection against racial discrimination by mandating specific actions by law enforcement agencies and state government. For instance, Act 1207 requires law enforcement agencies to establish written policies prohibiting officers from relying on race, ethnicity, national origin, or religion in “selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.” It provides an exception in cases where there exists a reliable and relevant description of a specific suspect. Agencies would be required to investigate allegations of biased policing.

In addition, law enforcement officers must now undergo annual training that emphasizes the prohibition on bias-based policing. Other provisions in the bill require officers to properly identify themselves and their jurisdiction during a stop or arrest. The measure also creates a Task Force on Racial Profiling and a profiling advisory committee, which would provide a review process for investigating allegations of racial profiling.

In this two-part series of the *Management Quarterly*, we’ll take a close look at each component of this new legislation. We’ll also provide helpful tips on how you, as a manager, can utilize Act 1207 to strengthen your agency and create a proactive presence within your community.

Establishing Written Policies

Traffic stops are one of the most frequent patrol functions initiated by law enforcement personnel and, as such, provide one of the most frequent foundations for citizen complaints.

To protect officers against allegations of racial profiling, it is the responsibility of law enforcement managers to develop concrete policies and procedures for officers to follow during traffic stops. When followed consistently, these policies and procedures should ensure that citizens are afforded equal protection and treatment under the law while also protecting law enforcement personnel from frivolous claims and allegations.

Law enforcement agencies throughout the State are required by Act 1207 to have written policies and procedures in effect regarding racial profiling. These policies must include the following components:

- (1) A **formal prohibition on racial profiling**, which is defined in Section 1 of Act 1207.
 - (2) Requirement for law enforcement to have a **reasonable suspicion** prior to a stop, arrest or detention. Reasonable suspicion must be defined within the policy to ensure that individuals are stopped for valid reasons, and that race, ethnicity, national origin, or religion are not a basis for stops for violations for which other non group members would be stopped.
 - (3) Requirement for law enforcement to **identify themselves** by full name and jurisdiction
 - (4) Requirement for law enforcement to **state the reason for the stop**.
 - (5) Requirement for law enforcement to **present written identification**, if possible.
 - (6) A **systematic review process** must be in place to allow law enforcement supervisors to investigate allegations of racial profiling and to determine if officers within the agency have a pattern of stopping or searching persons. If the review reveals a pattern, an investigation must be initiated to determine whether a profiling trend is present.
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- (7) If a pattern of profiling is detected, a law enforcement agency must provide **timely assistance, remediation, or disciplinary action** for the offending officer(s).
- (8) An **assurance** that supervisors will not retaliate against officers who report incidents of racial profiling.
- (9) **Standards for the use of in-car audio and visual equipment**, including the duration for which the recordings are preserved.

CJI has drafted two model policies to assist Arkansas law enforcement in developing policies and procedures that meet the needs of their communities—*Bias-Based Policing* and *The Use of Mobile Video and Audio Recording Equipment in Vehicles*. You can request a copy of these policies by contacting Allison Hoffman at (501) 570-8061. Remember that all of your policies and procedures should be thoroughly reviewed and formally approved by your mayor or city attorney prior to adoption.

Training and Education

Training and education are some of the most powerful tools that law enforcement managers can utilize to build and maintain integrity within their agencies.

As mandated in Act 1207, law enforcement personnel must undergo annual training that accomplishes the following objectives:

1. Emphasizes the prohibition against racial profiling.
2. Ensures that policies and procedures adequately reflect this prohibition and are communicated to and understood by law enforcement personnel.
3. Includes foreign language instruction, if possible, to ensure adequate communication with residents of a community.
4. Stresses understanding and respect for racial, ethnic, national, religious, and cultural differences, and the development of effective and appropriate methods of carrying out law enforcement duties.



www.racialprofilinganalysis.neu.edu

This online resource center from Northeastern University is designed to be a clearinghouse for police agencies, legislators, community leaders, social scientists, legal researchers, and journalists to access racial profiling information, including current data collection efforts, legislation and model policies, police-community initiatives, and methodological tools that can be used to collect and analyze data.

The website contains information on the background of data collection, jurisdictions currently collecting data, community groups, legislation that is pending and enacted in states across the country, and has a resource kit on planning and implementing data collection procedures, training officers in to implement these systems, and analyzing and reporting the data and results.

Of particular interest to police administrators, there is a Planning, Training, and Implementation Resource Kit designed to assist jurisdictions as they begin to plan and implement the data collection process or as they encounter difficulties in the planning and implementation of the process. Topics addressed include:

- *Developing Task Force/Creating Partnerships*
- *Funding the Project*
- *Data Collection Elements*
- *Using Technology*
- *Sample Data Collection Forms*
- *DOJ Efforts*
- *Contact Information for Selected Jurisdictions*

For more information, contact:

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To assist Arkansas in meeting these requirements, the Criminal Justice Institute has created two special courses, specific to bias-based policing.

Our **Bias-Based Policing (Train-the-Trainer)** program allows police personnel who are certified law enforcement instructors to undergo training at the Institute and then return to their agency to instruct other officers in non-bias policing. This is a particularly advantageous program for rural agencies with limited staff, for by sending one eligible officer to the course, bias-based policing training can, in turn, be delivered throughout their agency upon the officer's return. The six-hour course focuses on the proper enforcement of traffic laws, as well as other officer/citizen contacts.

Any indication of biased-based policing can be very damaging to the law enforcement agency's ability to effectively police its jurisdiction. **Bias-Based Policing for Executives** is a six-hour course that presents techniques and principles supervisors can utilize to make their jobs not only easier but more effective.

Although not mandated by Act 1207, it is a good idea to provide annual training in other areas of law enforcement as well, particularly in law, ethics, and communication. Officers receiving updated training in these areas are better prepared to make enforcement decisions, thus reducing the potential for complaint in all areas of law enforcement.

The Criminal Justice Institute offers a variety of such courses each year. A current course schedule can be found on our website at www.cji.net or can be requested by calling 1-800-635-6310.

In the next issue of the *Management Quarterly*, we'll explore ways that your agency can take a proactive approach to the issue of racial profiling by educating the community about the role and responsibilities of law enforcement. We'll also review suggested methods for handling citizen complaints and will examine the pros and cons of data collection.

For more information, contact the Law Enforcement Management Center at (501) 570-8000 or (800) 635-6310.

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