

## Racial Profiling Policy

**SUBJECT:** Establishment of a departmental policy against racial profiling.

**CONTENTS:** This policy consists of the following numbered sections:

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### **INTRODUCTION**

The Sweeny Police Department is committed to upholding the lawful rights of all citizens. To further this commitment, a policy prohibiting racial profiling shall be established, as required. This pro-active approach to racial profiling will require Sweeny Police Officers to document the racial and ethnic background of every person detained, regardless of the outcome of the detention. This policy shall establish guidelines against racial profiling and bias-based profiling in regards to traffic stops, pedestrian stops, and field contacts. The policy will also address corrective measures if bias-based profiling is found to have occurred by officers. And finally, the policy will provide for a grievance procedure for citizens who believe they were detained for racial or ethnic reasons.

### **LEGAL REFERENCE**

The State of Texas adopted and enacted four new laws concerning racial profiling during the 77<sup>th</sup> Legislative Session. These new laws have been incorporated into the Texas Code of Criminal Procedures, Chapter 2, and they are specifically:

- ▶ Article 2.131, Racial Profiling Prohibited.
- ▶ Article 2.132, Law Enforcement Policy on Racial Profiling.
- ▶ Article 2.133, Reports Required for Traffic and Pedestrian Stops.
- ▶ Article 2.134, Compilation and Analysis of Information Collected.

Understanding that with each legislative session, and with new case law, these laws, in whole or in part, are subject to modifications, updates, and/or deletions. This policy shall be modified as needed to incorporate new Texas State Law.

## **WHAT IS RACIAL PROFILING?**

There is no definition in the dictionary for “racial profiling.” It is a phrase that has only recently been conjured to describe the practice of police in regards to the detention of minorities without reasonable suspicion or probable cause. The race of a specific group of people can be defined as a family, tribe, people, or nation with common or similar traits or customs. The term profiling can mean the representation of something. So, if one uses these definitions to create an understanding of what racial profiling is, one would have to presume that racial profiling is the representation of a specific group of people. This definition, however, does not include anything about discrimination, and that is what racial profiling is all about -- discrimination based on race. Then a more literal translation of racial profiling is just that -- discrimination based on race, or racial discrimination. When a law enforcement officer engages in the discrimination of people based on race, the officer violates the person’s constitutional rights. So, how can an officer, “...engage in the discrimination of people based on race...?” Simply put, if a law enforcement officer detains a person based on the color of the person’s skin, without reasonable suspicion or probable cause that a violation of the law has occurred, then that officer has just engaged in the discrimination of people based on race, and has violated that person’s constitutional rights; and the officer is subject to disciplinary action by the agency, as well as civil and criminal penalties.

## **POLICY STATEMENT**

Peace officers employed by the City of Sweeny Police Department are strictly prohibited from engaging in racial profiling; thus, no person shall be stopped, detained, questioned, or interrogated without reasonable suspicion or probable cause that a violation of the law has occurred, and the racial or ethnic background of the violator or accused violator shall not be a determining factor in the officer’s decision making process for making the detention.

## **PURPOSE**

The purpose of this policy is:

- ▶ To prevent the unlawful detention of persons based solely on the ethnic or racial background of the person.
- ▶ To determine the prevalence of racial profiling by peace officers employed by the Sweeny Police Department;
- ▶ To examine the disposition of traffic and pedestrian stops made by officers employed by the Sweeny Police Department, including searches resulting from the stops;
- ▶ To document information relating to each complaint filed with the Sweeny Police Department alleging that a peace officer employed by the agency has engaged in racial profiling.

## **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.
- Traffic Stop - A peace officer who stops a motor vehicle for an alleged violation of the law or ordinance.
- Pedestrian Stop - An interaction between a peace officer and an individual who is being detained for the purpose of as criminal investigation in which the individual is not under arrest.

**PROCEDURES**

Initially, the collection of the required information under this policy shall be documented on department approved forms, namely the officer's Daily Activity Report, Scantron Form, and/or other form approved by the agency. Data collected under this policy shall be submitted at the end of the officer's shift in which the data was collected.

All officers, full-time and reserve, shall collect the following information on every traffic stop and every pedestrian stop:

- ▶ **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. The race and ethnicity of an individual shall be classified as White, Black/African American, Hispanic/Latino, Asian, American Indian/Native Alaskan, or Other.
- ▶ **GENDER** (male or female);
- ▶ **VIOLATOR'S AGE**, can be documented by date of birth or as stated by the person or, if the person does not state the person's age, as determined by the officer to the best of the officer's ability;
- ▶ **LAW VIOLATION(s)**, this pertains to the probable cause for the stop and every other law violation discovered during the contact;
- ▶ **LOCATION OF VIOLATION**, documented by the street address, block number, or intersection.
- ▶ **DAY, DATA, & TIME OF THE STOP**;
- ▶ **SEARCH:**
  1. Search conducted as a result of the stop;
  2. Consent given or not;
  3. Contraband discovered, and if so, what type of contraband;
  4. Probable cause to conduct such search;
  5. Facts supporting the existence of the probable cause to search.
- ▶ **DISPOSITION:**
  1. Arrest as a result of the stop or the search;
  2. Written Warning;
  3. Verbal Warning;
  4. Citation.  
*Include the offense title of the violation(s) charged and cause number(s).*

After the installation of audio/video recording devices in all police patrol vehicles, only the following data shall be collected/reported:

1. Total number of traffic citations issued by Sweeny Police officers,
2. Percent of total citations by ethnic category,
3. Total number of consent searches,
4. Total number of non-consent searches, and
5. Total number of arrests resulting from traffic stops.

### **COMPILATION & ANALYSIS**

The Chief of Police or his designee shall compile and analyze the information contained in each report received by the agency under this policy (*and under Article 2.133.*) Not later than March 1 of each year, the Sweeny Police Department shall submit a report containing the information compiled during the previous calendar year to the governing body of the City of Sweeny.

### **GRIEVANCE/COMPLAINT PROCESS**

The complaint process is designed to deal with each allegation of wrongdoing factually and fairly. Citizens who file complaints will be treated respectfully, and the accusations against an agency employee will be taken seriously. All complaints will be investigated thoroughly, and all findings are based on impartial evidence gained during the investigation. Although the employee(s) named in the complaint will, at some point, be required to respond to the racial profiling allegation made, they are not permitted access to cases under investigation. Citizens who make complaints against an employee will not be subject to retribution or retaliation for legitimately stating a complaint.

A complaint will not be accepted after thirty (30) days from the alleged incident, unless a waiver is granted by the Chief of Police. Employees are not permitted access to cases under investigation.

The Department realizes that confusion, different perceptions or the timeliness of information sometimes will result in descriptions that produce different versions of the same incident. Beyond legitimate error, however, the deliberate making of a report that the complainant knows to be false or misleading could constitute a violation of State Law.

There are three ways citizens can submit a complaint to the Sweeny Police Department.

- ▶ In Person at the Sweeny Police Department.
- ▶ Via electronic communication devices, i.e., phone, fax, or e-mail.
- ▶ Via U.S. mail.

Any complaint can be made anonymously, without giving the citizen's name. However, the citizen cannot be informed of the internal reviews result if he/she chooses to remain anonymous.

After a thorough investigation, the complaint will be classified into one of the following dispositions:

- ▶ **Exonerated:** Act was lawful and proper.
- ▶ **Unfounded:** Incident did not occur, or affected employee was not involved.
- ▶ **Not Sustained:** Insufficient evidence was found to clearly prove or disprove the allegation.
- ▶ **Proven:** The allegation is supported by sufficient evidence. Violation of policy and procedure did occur, and the appropriate administrative action will be taken.
- ▶ **Misconduct Not Based on Complaint-Sustained:** Substantial misconduct not alleged in the complaint, but is disclosed or discovered in the investigation.

There are five types of disciplinary action that can be recommended for a sustained case.

- ▶ Written reprimand
- ▶ Training
- ▶ Counseling
- ▶ Suspension
- ▶ Termination

The Chief of Police makes the final determination about the disposition of the case. Complainants will be notified, in writing, of the disposition and/or disciplinary action taken by the department not later than the tenth (10) business day after the disposition. All dispositions are final.

### **THE IMPORTANCE OF THE CITIZEN COMPLAINT**

The Sweeny Police Department recognizes that its employees are responsible for their conduct where the public is concerned. The Department also acknowledges that, at certain times, conflicts between citizens and agency employees can arise. The proper relationship between police and citizens is necessary to gain confidence and trust, which is essential for effective law enforcement.

The complaint process and appropriate disciplinary procedures not only subject agency members to corrective action when they conduct themselves improperly, the guidelines also protect them from unwarranted criticism when they discharge their duties properly.

Police Officers must be free to exercise their best judgement and initiate action in a reasonable, lawful, impartial manner, without fear or reprisal. At the same time, they must observe the lawful rights of all citizens.

### **PUBLIC EDUCATION**

The Grievance/Complaint Process will be incorporated in the police department's web site, [www.sweenypolice.org](http://www.sweenypolice.org), and a Grievance/Complaint Brochure will be made available in the lobby of the police department.

### **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 2.122, Texas Code of Criminal Procedures, or this policy. The data collected as a result of the reporting requirements of this policy shall not constitute prima facie evidence of racial profiling.

**ADOPTED THIS** 18th Day of December, A.D. 2001.

**REVISED THIS** 8th Day of August, A.D. 2002.

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Gary Stroud  
Chief of Police  
Sweeny Police Department