

VIRGINIA MILITARY INSTITUTE POLICE DEPARTMENT

GENERAL ORDER	Number: 1-9
Bias Reduction	Date: 07/10/18
VLEPSC Number:	Manual Number:
Replaces:	Effective Date: 07/10/18
Authorization: Chief Michael L. Marshall	Review Date: Annually

Note: This order is for internal use only and does not enlarge an officer's liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this order, if proven, can only form the basis of a complaint by this department and then only in a non-judicial administrative setting.

I. POLICY

Virginia Military Institute Police Department is 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 citizens 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, color, gender, national origin, religion, age, sexual orientation, disability, or any other status protected by law. All people carry biases: in law enforcement, however, the failure to control our biases can lead to illegal arrests, searches, and detentions, thus thwarting the mission of our department. Most importantly, actions guided by bias destroy the trust and respect essential for our mission to succeed. We live and work in communities very diverse in population: respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions, particularly stops of citizens (for traffic and other purposes), investigative detentions, arrests, searches and seizures of persons or property, shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of citizens. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, sex, color, gender, national origin, religion, age, sexual orientation, or disability. Officers shall base all such actions on a reasonable suspicion that the person or an occupant of a vehicle committed an offense.

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

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 order. 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. Bias - Prejudice or partiality which may be based on preconceived ideas, a person's upbringing, culture, experience, or education.
- B. Biased policing - Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, sex, color, gender, national origin, religion, age, sexual orientation, or disability in violation of constitutional safeguards.
- C. Ethnicity - A cluster of characteristics which may include race but also cultural characteristics or traits which are shared by a group with a common experience or history.
- D. Gender - Unlike sex, a psychological classification based on cultural characteristics or traits.
- E. Pretextual - Refers to the officer's pretext or reason for making a stop.
- F. 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.
- G. Profile - A legitimate profile, sanctioned by the department, is a very specific attribute, or cluster of attributes or characteristics, that form the basis for reasonable suspicion of criminality. A profile is only valid for a limited time and under limited circumstances, most often for drug trafficking. These attributes or characteristics are established in writing based on considerable training and experience. A legitimate profile will not be based solely on a person's race, sex, color, gender, national origin, religion, age, sexual orientation, or disability.
- H. Race - A category of people based on common physical or genetic traits or characteristics. As distinct from ethnicity, race only refers to physical characteristics sufficiently distinctive to group people under a classification.
- I. Racial profiling - The unlawful detention, interdiction, or other disparate treatment of any person on the basis of their racial or ethnic status or characteristics. "Racial profiling" refers to practices prohibited by this department.
- J. Reasonable suspicion - Articulable, objective facts which lead an experienced officer to suspect that a person stopped has committed, is committing, or may be about to commit a crime. A well-founded 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 citizen. 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 - The detention of a subject for a brief period of time, based on reasonable suspicion. A stop is investigative detention. A citizen may not conclude a stop; the officer concludes the stop when his or her articulable concerns are satisfied.

IV. PROCEDURE

- A. Contexts of bias - Bias occurs most often in field interviews, stops (for traffic or investigative detention), or in narcotics cases.
- B. General responsibilities
 - 1. Officers are prohibited from stopping, detaining, searching or arresting anyone solely because of the person's race, sex, color, national origin, religion, age, sexual orientation, or disability. 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.
 - 2. Reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Citizens shall only be subjected to stops, seizures, or detention 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.
 - 3. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all citizens.
 - 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 citizen's perception of fairness or discrimination.
 - b. Officers shall not use the refusal or lack of cooperation to justify a search of the citizen's person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.
 - 4. All personnel shall treat citizens with the same courtesy and respect that they would have citizens observe to department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
 - a. Personnel shall facilitate citizens' access to other governmental services whenever possible, and shall actively provide referrals to other appropriate agencies.
 - b. All personnel shall courteously accept, document, and forward to the sheriff/chief of police any complaints made by citizens against the department. Further, officers shall provide information on the complaints process when requested by any citizen.
 - c. Some information collected by or stored at the department may be releasable to the public.
 - 5. When feasible, personnel shall offer explanations to citizens of the reasons for enforcement actions or other decisions that bear on citizens' well-being unless the explanation would undermine an investigation or jeopardize an officer's safety.

When concluding an encounter with a citizen, personnel shall thank him or her for cooperating.

6. When feasible, all personnel shall identify themselves by name. When a citizen requests the information, personnel shall give their departmental identification number, name of the immediate supervisor, or any other reasonable information.
7. Unless required by law, a citizen's refusal to cooperate or provide information does not create any justification for further enforcement action. Refusal to sign a summons, or failure to obey a lawful order of an officer, are examples of exceptions to voluntary cooperation.
8. All personnel are accountable for their actions. Personnel shall justify their actions when required.

C. 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 managing community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, 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 personnel. Lack of control over bias also exposes the department to liability consequences. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates.
5. Any criminal profiling requires supervisory participation and oversight. Any criminal profiles used in enforcement shall be authorized by the sheriff/chief of police per a detailed, written analysis. All criminal profiles shall be authorized in writing and shall be self-cancelling after a specified date. Upon cancellation, supervisors shall prepare a report on the utility and results of the profile and submit it to the sheriff/chief of police via the chain of command.
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 citizens' complaints about law enforcement service.

D. Pretextual traffic stops

1. Pretextual traffic stops, or those in which the explanation to the citizen of the reason for the stop may not reflect all of the officer's actual reasons, are legal and in some circumstances are necessary.
2. Note that the officer's subjective intent (pretext) is irrelevant when stopping a vehicle; the legitimacy of the stop will be gauged by its objective reasonableness. As long as an officer has at least one legal reason for stopping a vehicle (such as a minor traffic violation), then it is irrelevant that the officer had some suspicion unrelated to the traffic stop.

E. Disciplinary consequences

Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal. Disciplinary processes and sanctions are outlined in VMIPD General Order 0-2 *Rules and Regulations* and in VMIPD General Order 1-20 *Internal Investigations*.

F. Training

Officers shall receive ongoing training in proactive enforcement tactics, including training in officer safety, the laws governing search and seizure, and all personnel shall receive ongoing training in interpersonal communications skills, cultural, racial, and ethnic diversity, and courtesy.