

Racial Profiling Training

Since 2002, all Hutto Police officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Hutto Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Hutto has been included in this report.

It is important to recognize that the Chief of the Hutto Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Hutto Police Department fulfills the training requirements as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

Racial Profiling
Course Number 3256
Texas Commission on Law Enforcement
September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract:

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population:

Licensed law enforcement personnel in Texas

Prerequisites:

Experience as a law enforcement officer

Length of Course:

A suggested instructional time of 4 hours

Material Requirements:

Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises and demonstrations

Instructor Qualifications:

Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures:

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials:

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our website at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL:

The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE:

The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling - CCP 3.05

Racial profiling prohibited - CCP 2.131

Law enforcement policy on racial profiling - CCP 2.132

Reports required for traffic and pedestrian stops - CCP 2.133

Liability - CCP 2.136

Racial profiling education for police chiefs - Education Code 96.641

Training program - Occupations Code 1701.253

Training required for intermediate certificate - Occupations Code 1701.402

Definition of "race or ethnicity" for form - Transportation Code 543.202

- A. Written department policies
 - 1. Definition of what constitutes racial profiling
 - 2. Prohibition of racial profiling
 - 3. Complaint process
 - 4. Public education
 - 5. Corrective action
 - 6. Collection of traffic-stop statistics
 - 7. Annual reports
- B. Not prima facie evidence
- C. Feasibility of use of video equipment
- D. Data does not identify officer
- E. Copy of complaint-related video evidence to officer in question
- F. Vehicle stop report
 - 1. Physical description of detainees: gender, race, or ethnicity
 - 2. Alleged violation
 - 3. Consent to search
 - 4. Contraband

5. Facts supporting probable cause
 6. Arrest
 7. Warning or citation issued
- G. Compilation and analysis of data
- H. Exemption from reporting – audio/video equipment
- I. Officer non-liability
- J. Funding
- K. Required training in racial profiling
1. Police chiefs
 2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074

1.1.2 LEARNING OBJECTIVE:

The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

- A. *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769 (1996)
1. Motor vehicle search exemption
 2. Traffic violation acceptable as pretext for further investigation
 3. Selective enforcement can be challenged
- B. *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)
1. Stop and Frisk doctrine
 2. Stopping and briefly detaining a person
 3. Frisk and pat down
- C. Other cases
1. *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S. Ct. 330 (1977)
 2. *Maryland v. Wilson*, 117 S. Ct. 882 (1997)
 3. *Graham v. State*, 119 MdApp 444, 705 A.2d 82 (1998)
 4. *Pryor v. State*, 122 Md. App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
 5. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999)
 6. *New York v. Belton*, 452 U.S. 454 (1981)

2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

- A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.
- B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole.
- C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you may look for more minority criminals, and find them in disproportionate numbers.
- D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.
- E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stop.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

- A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements.
- B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown", "Flying While Black", etc).
- C. A typical traffic stop resulting from racial profiling
 1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver and passengers
 2. The driver and passengers are questioned about things that do not relate to the traffic violation
 3. The driver and passengers are ordered out of the vehicle

4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside.
6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc).

3.1.2 **LEARNING OBJECTIVE:** The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

- A. Drug courier profile (adapted from a profile developed by the DEA)
 1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
 2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
 3. Vehicle is rented
 4. Driver is a young male, 20-35
 5. No visible luggage, even though driver is traveling
 6. Driver was over-reckless or over-cautious in driving and responding to signals
 7. Use of air fresheners
- B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop.

3.1.3 **LEARNING OBJECTIVE:** The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

- A. Thinking about the totality of circumstances in a vehicle stop
- B. Vehicle exterior
 1. Non-standard repainting (esp. on a new vehicle)
 2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
 3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
 4. Unusual circumstances (pulling a camper at night, kid's bikes with no kids, etc.)
- C. Pre-stop indicators
 1. Not consistent with traffic flow
 2. Driver is overly cautious, or driver/passengers repeatedly look at police car
 3. Driver begins using a car-or-cell phone when signaled to stop
 4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)
- D. Vehicle Interior
 1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
 2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

- Proactive Field Stops Training Unit – Instructor’s Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)
- Web address for legislation 77R-SB1074:
[Http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm](http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm)