

## Bias-Based Policing

### 402.1 PURPOSE AND SCOPE

This policy provides guidance to department members and establishes appropriate controls to ensure that employees of the Bay Area Rapid Transit Police Department do not engage in racial- or bias-based profiling or violate any related laws while serving the community. In addition, this policy serves to establish procedures for collection of Bay Area Rapid Transit Police Department stop data pursuant to California Government Code section 12525.5, known as the Racial and Identity Profiling Act (RIPA).

#### 402.1.1 DEFINITIONS

Definitions related to this policy include:

**Bias-based policing or improper profiling** - An inappropriate reliance on actual or perceived characteristics such as race, ethnicity, national origin (including limited English proficiency), religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement (Penal Code § 13519.4). This includes explicit and implicit biases (i.e., conscious and unconscious beliefs or attitudes towards certain groups).

This includes biased conduct, including but not limited to conduct online, such as social media use, engaged in by a peace officer in any encounter with the public, first responders, or employees of criminal justice agencies, that is motivated by bias toward any person's protected class or characteristic, whether actual or perceived as identified in Civil Code 51(b) of the Unruh Civil Rights Act. Biased conduct may result from implicit and explicit biases. Conduct is biased if a reasonable person with the same training and experience would conclude, based upon the facts, that a peace officer's conduct resulted from bias towards that person's membership in a protected class. A peace officer need not admit biased or prejudiced intent for conduct to be determined to be biased conduct (Penal Code § 13510.6; 11 CCR 1022).

### 402.2 POLICY

The Bay Area Rapid Transit Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

### 402.3 RACIAL- OR BIAS-BASED PROFILING PROHIBITED

Racial- or bias-based profiling is strictly prohibited. However, nothing in this policy is intended to prohibit an officer from considering factors such as race or ethnicity in combination with other

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legitimate factors to establish reasonable suspicion or probable cause (e.g., suspect description is limited to a specific race or group).

#### 402.3.1 CALIFORNIA RELIGIOUS FREEDOM ACT

Members shall not collect information from a person based on religious belief, practice, affiliation, national origin or ethnicity unless permitted under state or federal law (Government Code § 8310.3).

Members shall not assist federal government authorities (Government Code § 8310.3):

- (a) In compiling personal information about a person's religious belief, practice, affiliation, national origin or ethnicity.
- (b) By investigating, enforcing or assisting with the investigation or enforcement of any requirement that a person register with the federal government based on religious belief, practice, or affiliation, or national origin or ethnicity.

#### **402.4 MEMBER RESPONSIBILITY**

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial- or bias-based profiling to a supervisor.

##### 402.4.1 REASON FOR DETENTION

Officers detaining a person shall be prepared to articulate sufficient reasonable suspicion to justify a detention, independent of the individual's membership in a protected class.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview (FI) card), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention, as applicable.

Nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

##### 402.4.2 REPORTING OF STOPS

Unless an exception applies under 11 CCR 999.227, an officer conducting a stop of a person shall collect the data elements required by Government Code § 12525.5 and 11 CCR 999.226 for every person stopped and prepare a stop data report. When multiple officers conduct a stop, the officer with the highest level of engagement with the person shall collect the data elements and prepare the report (11 CCR 999.227).

If multiple agencies are involved in a stop and the Bay Area Rapid Transit Police Department is the primary agency, the Bay Area Rapid Transit Police Department officer shall collect the data elements and prepare the stop data report (11 CCR 999.227).

The stop data report should be completed by the end of the officer's shift or as soon as practicable (11 CCR 999.227).

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#### 402.4.3 DISCLOSURE AND DOCUMENTATION OF TRAFFIC OR PEDESTRIAN STOP

An officer conducting a traffic or pedestrian stop shall state the reason for the stop prior to questioning the individual related to a criminal investigation or traffic violation unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including but not limited to cases of terrorism or kidnapping (Vehicle Code § 2806.5).

Officers shall document the reason for the stop on any citation or report (Vehicle Code § 2806.5).

#### 402.5 SUPERVISOR RESPONSIBILITIES

Supervisors shall monitor those individuals under their command for compliance with this policy and shall handle any alleged or observed violations in accordance with the Personnel Complaints Policy.

- (a) Supervisors should discuss any issues with the involved officer and their supervisor in a timely manner.
  1. Supervisors should document these discussions in the prescribed manner.
- (b) Supervisors should periodically review Mobile Audio/Video (MAV) recordings, body-worn camera (BWC) media, Mobile Data Computer (MDC) data, and any other available resource used to document contact between officers and the public to ensure compliance with the policy.
  1. Supervisors should document these periodic reviews.
  2. Recordings or data that capture a potential instance of bias-based policing should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
  1. When investigating any bias-related complaint or law enforcement activity incident that involves possible indications of officer biased conduct or improper profiling, a supervisor shall determine whether the officer engaged in conduct that constitutes biased conduct as defined in 11 CCR 1022 or improper profiling during a law enforcement activity as described in Penal Code § 13519.4(e) (Penal Code § 13510.6).
- (d) Supervisors should take prompt and reasonable steps to address any retaliatory action taken against any member of this department who discloses information concerning bias-based policing.

#### 402.6 ADMINISTRATION

Each year, the Internal Affairs Division Commander shall review the efforts of the Department to prevent racial- or bias-based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

This report should not contain any identifying information regarding any specific complaint, citizen or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

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Supervisors shall review the annual report and discuss the results with those they are assigned to supervise.

#### **402.7 TRAINING**

Training on racial- or bias-based profiling and review of this policy should be conducted as directed by the Personnel and Training Bureau.

- (a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial- or bias-based profiling.
- (b) Prior to assignment, all affected personnel will receive training, including legal aspects, on the subject of racial or bias-based profiling.
- (c) All affected personnel will participate in a documented review of this policy annually.
- (d) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (e) Each sworn member of this department who received initial racial- or bias-based profiling training will thereafter be required to complete an approved refresher course every **five two** years, or sooner if deemed necessary, in order to keep current with changing racial, identity, and cultural trends (Penal Code § 13519.4(i)).
- (f) Each civilian member who received initial racial- or bias-based profiling training will thereafter be required to complete an approved refresher course every **five two** years, or sooner if deemed necessary, in order to keep current with changing racial, identity, and cultural trends.
- (g) At the direction of the Personnel and Training Bureau, members may receive remedial training. Remedial training may be given as a result of a complaint, or as a result of another identified need including annual analysis.

#### **402.8 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

The Internal Affairs Division Manager shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and provided to the Records Supervisor for required reporting to the DOJ (Penal Code § 13012; Penal Code § 13020). See the Records Division Policy.

Supervisors should ensure that data stop reports are provided to the Records Supervisor for required annual reporting to the DOJ (Government Code § 12525.5) (See Records Bureau Policy).

#### **402.9 RACIAL AND IDENTITY PROFILING ACT (RIPA) COMPLIANCE**

Department sworn personnel shall comply with the RIPA reporting requirements. Data on Bay Area Rapid Transit Police department stops shall be collected through the Veritone Contact Application accessible through OneLogin. The data will be collected for any person detained or searched

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during a call for service or individual self-initiated activity, in accordance with Government Code section 12525.5.

Personnel shall complete the RIPA stop reports prior to the completion of the work shift during which the stop occurred. Personnel shall complete a RIPA stop report for every individual detained or searched. If multiple officers or officers and supervisors respond to the same call for service, the primary responding officer should generate the RIPA stop report.

Field Supervisors should review RIPA stop reports generated by officers and ensure the data collected is complete and that no personal identifying information is included. RIPA stop reports generated by sergeants should be reviewed by the lieutenant in their chain of command. Review of RIPA stop reports should be completed daily. The approval of RIPA stop reports, including corrections, should be completed within 14 days of the initial contact.

Zone commanders will monitor the "Under Review" and "Review Rejected" queues to ensure compliance with this policy. Monthly, zone commanders will randomly audit RIPA stop reports submitted in their zones to confirm proper documentation.

Department personnel shall not use or release any RIPA data unless authorized by the Chief of Police or his/her designee.