

DEL CARMEN CONSULTING, LLC



Annual Contact Report

2015

The Live Oak Police Department

February 2, 2016

Live Oak City Council
8001 Shin Oak Drive
Live Oak, Texas 78233

Dear Distinguished Members of the City Council,

The Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted in 2001 the Texas Racial Profiling Law. Since then, the Live Oak Police Department, in accordance with the law, has collected and reported traffic and motor vehicle-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements are now in place. These most recent requirements have been incorporated by the Live Oak Police Department and are also being addressed in this report.

This particular report contains three sections with information on traffic and motor vehicle-related contact data. In addition, when appropriate, documentation is also a component of this report, aiming at demonstrating the manner in which the Live Oak Police Department has complied with the Texas Racial Profiling Law. In section 1, you will find the table of contents in addition to the Texas Senate Bill (SB1074); which later became the Texas Racial Profiling Law. In addition, you will find the Texas HB 3389, which, in 2009, introduced new requirements relevant to racial profiling. Also, in this section, a list of requirements relevant to the Racial Profiling Law as established by TCOLE (Texas Commission on Law Enforcement) is included. In addition, you will find, in sections 2 and 3 documentation which demonstrates compliance by the Live Oak Police Department relevant to the requirements as established in the Texas Racial Profiling Law. That is, you will find documents relevant to the implementation of an institutional policy banning racial profiling, the incorporation of a racial profiling complaint process and the training administered to all law enforcement personnel.

The last section of this report provides statistical data relevant to contacts, made during the course of motor vehicle stops, between 1/1/15 and 12/31/15. In addition, this section contains the TCOLE Tier 1 form, which is required to be submitted to this particular organization by March 1st of each year. The data in this report has been analyzed and compared to data derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report. The findings in this report serve as evidence of the Live Oak Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.
Del Carmen Consulting, LLC

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Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an "agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties."

The article further defines race or ethnicity as being of "a particular descent, including Caucasian, African, Hispanic, Asian, or Native American." The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person's race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer's best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, "the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose."

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide and analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

S.B. No. 1074

AN ACT

relating to the prevention of racial profiling by certain peace officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained;

and

(B) whether a search was conducted and, if so,

whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual

who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's 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;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop;
and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED. (a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. 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 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax

effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means 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.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling; and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) ~~[(7)]~~ the date of conviction; and

(9) ~~[(8)]~~ the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as

added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 200

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

Most Recent Legal Requirements (H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

(A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);

(B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);

(C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);

(D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle [~~traffic~~] stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, [~~or~~] Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle [~~traffic~~] stops in which a citation is issued and to arrests made as a result of [~~resulting from~~] those [~~traffic~~] stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit [to the governing body of each county or municipality served by the agency] an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle ~~[traffic]~~ stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle ~~[traffic]~~ stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE ~~[TRAFFIC AND PEDESTRIAN]~~ STOPS. (a) In this article, "race~~[-~~

~~[-(1)]~~ "Race" or ethnicity" has the meaning assigned by Article 2.132(a).

~~[-(2)]~~ "Pedestrian stop" means an interaction between a ~~peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any [each] person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's 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;

(2) the initial reason for the stop [~~traffic law or ordinance alleged to have been violated or the suspected offense~~];

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description [~~the type~~] of the contraband or evidence [~~discovered~~];

(5) the reason for the search, including whether:
(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle [~~existed and the facts supporting the existence of that probable cause~~];

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop [~~, including a description of the warning or a statement of the violation charged~~].

SECTION ____ . Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) [~~means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest~~].

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each [~~local~~] law enforcement agency shall submit a report containing the incident-based data [~~information~~] compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency [~~in a manner approved by the agency~~].

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities [~~determine the prevalence of racial profiling by peace officers employed by the agency~~]; and

(B) examine the disposition of motor vehicle [~~traffic and pedestrian~~] stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from [~~the~~] stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle [~~traffic or pedestrian~~] stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b) (1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle [~~traffic and pedestrian~~] stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive

from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle [~~traffic and pedestrian~~] stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle [~~traffic or pedestrian~~] stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION _____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION _____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit

collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION _____. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; [~~and~~]
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN

MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; [and]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION _____. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

- (1) this chapter;
- (2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure; or
- (3) a commission rule.

SECTION _____. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Institutional Policy on Racial Profiling

Live Oak Police Department

Policy#: 3-20
Issue Date: 1/30/2015
Revised:
Standard: TBP 2.01

Racial Profiling

I. Purpose

The purpose of this policy is to affirm the Live Oak Police Department's commitment to unbiased policing in all its encounters between officers and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; to comply with the Texas Code of Criminal Procedure regarding the prohibition of racial profiling and law enforcement policies on racial profiling (*see* Tex. Code Crim. P. Chapter 2 *et. seq.*); and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

II. Policy

It is the policy of this department to police in a proactive manner and to aggressively investigate suspected violations of the law. Officers shall actively enforce state, federal and local laws in a responsible and professional manner, without regard to race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. Officers are strictly prohibited from engaging in bias-based/racial profiling as defined in this policy and as outlined in the Texas Code of Criminal Procedure. This policy shall be applicable to all persons, whether drivers, passengers or pedestrians.

This policy shall not preclude officers from offering assistance to persons when appropriate, e.g. someone appears ill; person appears lost; person has vehicle problems etc. Additionally, this policy does not prohibit consensual encounters with persons, absent a racial profiling basis. Nor does this policy prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.

III. Definitions

- A. Bias-Based Profiling - The selection of an individual based solely on a trait common to a group for enforcement action. This includes, but is not limited to: race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. Bias-Based Profiling includes Racial Profiling.

- B. 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.
 - 1. Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant to witnesses, complainants or other citizen contacts.
 - 2. The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision when they are used as part of an actual description of a specific suspect for whom an officer is searching.
 - 3. Detaining an individual and conducting an inquiry into that person’s activities simply because of that individual’s race, ethnicity or national origin constitutes racial profiling. Examples of racial profiling include but are not limited to the following:
 - a. Citing a driver who is speeding in a stream of motor vehicles where most other drivers are speeding because of the cited driver’s race, ethnicity or national origin.
 - b. Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possesses that specific make or model of vehicle.
 - c. Detaining an individual based upon the determination that a person of that race, ethnicity or national origin does not belong in a specific part of town or a specific place.
- C. Race or Ethnicity – Of a particular descent, including Caucasian, African, Hispanic, Asian, Native American or Middle Eastern descent.
- D. Pedestrian Stop – An interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest. The detention does not originate from a motor vehicle contact.
- E. Motor Vehicle Stop – an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

IV. Training

- A. Officers are required to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law.

- B. All officers shall complete TCOLE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate.
- C. The chief of police, as part of the initial training and continued education for such appointment, will be required to attend the LEMIT program on racial profiling.

V. Complaint Investigation

- A. The department shall accept complaints from any person who believes he or she has been stopped or searched based on bias-based or racial profiling. No person shall be discouraged, intimidated or coerced from filing a complaint, nor discriminated against because he or she filed such a complaint. A complaint may be filed by the guidelines outlined in the department's Professional Standard policy, Section VI(D).
- B. Any employee who receives an allegation of bias-based/racial profiling, including the officer who initiated the stop, shall address the complaint in conformance with the department's Professional Standards policy, specifically Section IV(D).
- C. Investigation of a complaint shall be conducted in a thorough and timely manner, consistent with pertinent provisions of the department's Professional Standards policy, which provides procedures for addressing citizen complaints.
- D. If a bias-based/racial profiling complaint is sustained against an officer after an investigation and in violation of this policy, it will result in appropriate corrective and/or disciplinary action, up to and including termination.
- E. If there is a departmental video or audio recording of the event upon which a complaint of racial profiling is based, upon commencement of an investigation by this department into the complaint and upon written request by the officer made the subject of the complaint, the department shall promptly provide a copy of the recording to the officer.

VI. Public Education

This department will inform the public of its policy against racial profiling and the complaint process. Methods that may be utilized to inform the public are the news media, radio, service or civic presentations, the Internet, as well as governing board meetings. Additionally, information will be made available as appropriate in languages other than English.

VII. Citation Data Collection and Reporting – Tier 1

- A. An officer is required to collect information relating to motor vehicle stops in which a citation is issued or an arrest made as a result of the stop. On the citation officers must include:
 - 1. The race or ethnicity of the individual detained;
 - 2. Whether a search was conducted, and if so, whether the search was consensual (an inventory search or search incident to arrest is not counted as a search for reporting purposes);
 - 3. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
 - 4. Whether the violator was arrested.

- B. Each year, the Chief of Police (or the designated chief administrator) shall submit an annual report of the information collected under Section VII(A) to the Texas Commission on Law Enforcement and its governing body that includes the pertinent information collected on the citations from the preceding calendar year. The report will include:
 - 1. A breakdown of citations by race or ethnicity of the individuals detained;
 - 2. Number of citations that resulted in a search;
 - 3. Number of searches;
 - 4. Number of searches that were consensual;
 - 5. Information on whether peace officer knew the race or ethnicity of the individual detained prior to the stop; and
 - 6. Number of motor vehicle stops that resulted in custodial arrest or citation.

- C. The first such report shall be submitted by March 1 of the current year for the period beginning January 1 through December 31 of the previous year. The report may not include identifying information about a peace officer who makes the motor vehicle stop or an individual who is stopped or arrested by a peace officer.

- D. Data Entry of Required Information
 - 1. Race: Use “unknown” for unoccupied vehicles where a citation is issued, e.g. parking violation.
 - 2. Search Conducted: Select either “yes” or “no.” Do not select “N/A” or “Unknown.”

3. Search Consensual: Correct responses are “yes”, “no”, or “N/A” if a search was not conducted.
4. Knowledge of Race Prior to Stop: Select either “yes” or “no.”
5. Arrest: Select either “yes” or “no.”

VIII. Video and Audio Equipment

- A. If a motor vehicle regularly used to make motor vehicle and pedestrian stops is equipped with a mobile video camera, each video recording shall be retained for a minimum of ninety (90) days. If a complaint is filed alleging that a peace officer engaged in racial profiling with respect to a motor vehicle or pedestrian stop, the video recording shall be retained until final disposition of the complaint or expiration of filing deadline for all lawsuits, whichever is later.
- B. If a motor vehicle regularly used to make motor vehicle and pedestrian stops is equipped with a mobile video camera, officers shall activate the video and audio recording on all such contacts. Additionally, officers shall, when feasible, adjust the camera as necessary to capture the contact with the citizen.
- C. Supervisors will ensure officers of the department are properly using the video and audio recording features by conducting spot checks as appropriate. An officer’s failure to use the video and audio recording features may be grounds for discipline.
- D. Patrol supervisors shall review a minimum of three motor vehicle and/or pedestrian contacts as captured on video/audio by each officer under his/her command each calendar month.
- E. In reviewing audio and video recordings, the supervisor shall seek to determine if the officer, who is involved therein, has engaged in an incident or pattern of racial profiling.
- F. On commencement of an investigation by the department of a complaint pursuant to Section V in which a video or audio recording of the occurrence on which the complaint was made, the Department shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request of the officer.
- G. Patrol officers shall refer to Policy #3-16 Mobile Video Recording for guidelines and operating procedures regarding the use of mobile video.

Complaint Process: Informing the Public and Addressing Allegations of Racial Profiling Practices

Informing the Public on the Process of Filing a Racial Profiling Complaint with the Live Oak Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a racial profiling complaint. In an effort to comply with this particular component, the Live Oak Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a complaint on a racial profiling violation by a Live Oak Police officer. It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

Live Oak Police Department

Policy #:	1-05
Effective Date:	11/14/2014
Standard:	Executive
Reference:	2.04, 2.05, 2.06, 2.07, 2.08, 2.09
Approved:	Chief Kenneth Evans

Professional Standards

I. Policy

It is the policy of the Live Oak Department to accept all complaints concerning official acts or personal behavior of its employees, sworn or non-sworn, and / or volunteers. The Department will conduct an appropriate investigation into all complaints, protecting the interests of all parties involved. (TBP: 2.06)

The Department encourages citizens to bring forward legitimate grievances regarding misconduct by employees or volunteers. Department members shall receive complaints courteously and are obligated to explain to inquiring citizens the complaint procedure. (TBP: 2.06)

II. Purpose

This policy establishes the procedures for receiving internal or external complaints against Department employees and volunteers. Additionally, the investigative process and appropriate responsibilities are detailed in this policy.

III. Definitions

- A. Administrative Investigation: Detailed investigation into allegations of employee misconduct.
- B. Administrative Review: Detailed investigation into an incident to determine if misconduct has occurred. A complaint is not required for an administrative review, but a complaint may result from such review. An administrative review generally originates from the Chief's office.
- C. Adopted Complaint: Complaint not formalized by a citizen but deemed worthy of investigation by the Chief; thus the Chief "adopts" the complaint and a written complaint is generated as required by state law and / or policy.
- D. Complaint: A formal written allegation against a member of the Department, which could result in disciplinary action up to and including termination. The complaint may originate from within or outside the Department. A complaint is required for all administrative investigations and it must allege, in general, a violation of City or Department rules, regulations, or policies; and / or an illegal act.
- E. Chief: The Chief of Police of the Live Oak Police Department. In his absence or at his direction the Assistant Chief of Police may act in his stead pursuant to the responsibilities contained within this policy. (TBP: 2.06 & 2.07)
- F. Department: The Live Oak Police Department.
- G. Employee: A full-time worker, part-time worker or volunteer worker, sworn or non-sworn, assigned to the Live Oak Police Department.

IV. Procedures

A. Professional Standards Management

1. The Office of Assistant Chief of Police shall have responsibility for oversight and management of all Professional Standards issues, unless directed otherwise by the Chief's office.
2. The Chief and Assistant Chief shall be notified of any formal or informal complaint filed against an employee of the police department as soon as possible. (2.07 TBP)
3. The Office of Assistant Chief of Police shall manage the database for all records and provide training to supervisors in the proper use of the database.

4. The Office of Assistant Chief of Police shall maintain records of all Professional Standards investigations. He may enlist the assistance of the Police Administrative Assistant to carry out this function.
5. The Assistant Chief of Police shall classify all complaints in conformance with this policy complaint classification of Class I, Class II, Class III or Class IV and assign all complaints for investigation as warranted.
6. The Assistant Chief of Police shall develop a standardized report format for all assigned investigators to use in administrative investigations.
7. The Assistant Chief of Police shall review all administrative investigation reports for accuracy, thoroughness, and overall quality. He may return reports for additional investigation or corrections as deemed appropriate. (TBP: 2.07)
8. The Assistant Chief of Police shall render a decision on all completed investigations, consulting with the assigned investigator as necessary.
9. The Assistant Chief of Police require that the appropriate disposition notices are completed as directed by the Chief's office.

B. Classification of Complaints

1. Class I: Class I allegations center around violations of federal, state or local laws, use of force, or incidents where the department or employee integrity and honesty come to concern, or if a complaint is of a potential public concern/outcry. Class I incidents include, but are not limited to, the following:
 - a. Serious misconduct or criminal misconduct.
 - b. Discharge of a firearm, other than pre-approved discharges related to animal issues or firearms training.
 - c. Complaints in the form of a notice of intent to sue (if no specific allegation is asserted, the notice of intent to sue may be classified as a Class III for administrative review).
 - d. Use of force complaints related to use of control techniques, impact weapons, chemical agents, firearms, electronic control device, and other authorized means.
 - e. An allegation of sexual harassment, racial profiling (biased policing), or civil rights violations.
2. Class II: Class II investigations center around incidents where a complaint has not been lodged but the circumstances are such that a detailed review of the incident is warranted. A Class II investigation may be ordered by the Chief's office, or initiated by a division-level supervisor. Class II incidents include, but are not limited to:

- a. Passive death of a prisoner
 - b. Death or serious bodily injury of any person as a result of any police action.
 - c. Incidents generating a public outcry / negative media attention.
3. Class III: Class III allegations revolve around violations of department procedures, often referred to as "conduct and behavior" complaints. Class III incidents include, but are not limited to:
 - a. Allegations of rudeness / discourtesy.
 - b. Allegations of inadequate / incomplete case investigation.
 - c. Allegations of improper tactics / procedures.
4. Class IV investigations are miscellaneous in nature and may cover a wide array of circumstances. They may revolve around a complaint from a party that lacks any personal knowledge of the incident complained on; or, they may revolve around an "informal" complaint wherein the complainant does not wish to provide a signed statement and the Chief does not believe the complaint merits adoption; but he does believe the issue warrants a cursory review as a safety measure. This is a catch all categories designed to provide "documentation" on actions taken on an assortment of circumstances.

C. Assignment of Cases

The Assistant Chief of Police shall have responsibility for assigning officers to investigate complaints.

1. Class I and II investigations, when possible, should be investigated by the Internal Affairs Investigator.
2. Class II investigations, may also be assigned to the Criminal Investigation Division as needed.
3. Class III investigations may be handled by same division officers, including the first line supervisor of the officer / employee under investigation.
4. Class IV investigations will be assigned at the discretion of the Assistant Chief of Police.

D. Receiving Complaints - External

1. Complaints can be received in person, by mail, or by phone. As part of the follow up investigation, persons making complaints by mail or phone should be interviewed and a complaint form completed. Anonymous complaints shall be

followed up to the extent possible as determined by the Assistant Chief of Police.
(TBP: 2.04 & 2.07)

2. All employees shall make every effort to facilitate the convenient, courteous and prompt receipt of citizen complaints. An employee of the Department, who interferes with, discourages, or unduly delays the filing of such complaints shall be subject to disciplinary action.
3. Before a complaint may be considered, the complaint must be reduced to writing and signed by the complainant as mandated by the Texas Government Code § 614.022.
4. If a complainant refuses to provide a written signed complaint, the Chief may adopt the complaint. Adopting a complaint is solely at the Chief's discretion. If the Chief adopts a complaint, he shall cause a signed written complaint to be completed for delivery to the officer / employee under investigation. (TBP: 2.07)
5. A preliminary complaint form shall be filled out on all complaints.
6. A Department case number should be obtained in relation to a Professional Standards Investigation (PSI) only if the PSI investigation generates evidence, e.g. a DVD, for storage.
7. If a complainant presents himself at the police station to file a complaint, he should be directed as follows:
 - a. To the Assistant Chief of Police or Patrol Lieutenant, Monday through Friday between 8:00 a.m. and 5:00 p.m. The Assistant Chief of Police or Patrol Lieutenant will conduct the preliminary interview, complete a preliminary complaint form and secure a statement as appropriate. If neither is available, any police supervisor can handle the complaint. (TBP:2.07)
 - b. At all other times the complainant should be directed to a police supervisor when possible. The supervisor shall conduct the preliminary interview with the complainant and complete the preliminary complaint form. Additionally, the supervisor shall complete a short summary memo to the Assistant Chief of Police and forward it and the complaint form to him for review and assignment. (TBP:2.07)
8. If a complainant does not wish to wait for a supervisor, he may be given a complaint brochure to take with him for completion and ultimate submission.
9. If a citizen approaches a patrol officer seeking to file a complaint, the officer shall assist the citizen in contacting a supervisor. If a supervisor is not available the officer shall take the preliminary complaint and forward it and a summary memo

to their respective immediate supervisor. The officer also may give the complainant a complaint brochure if he doesn't want to wait.

10. Complaints received via U.S. mail shall be forwarded to the Chief of Police. (TBP:2.07)
11. Supervisors / officers may delay taking complaints from citizens when the citizen is under the influence of intoxicants to the extent his mental faculties are significantly impaired; or when the complainant is suffering obvious mental impairment.

E. Internal Complaints

1. A co-worker, an employee's supervisor, or member of management may file complaints against an employee.
2. Minor procedural violations that normally would result only in counseling, a verbal reprimand or remedial training are exempt from this policy and may be handled at the first line supervisor's level.
3. Complaints that are likely to result in a minimum of a "Letter of Reprimand" must be processed in conformance with this policy.
4. Internal complaints can be filed by co-workers and supervisors by completing a preliminary complaint form and submitting it to:
 - a. The Assistant Chief of Police when generated by a sergeant or higher ranking officer.
 - b. The complaining employee's first line supervisor when generated by a civilian employee or officer below the rank of sergeant. The first line supervisor will forward the complaint to the Assistant Chief of Police for processing.
5. Sexual harassment complaints are governed by city policy, as set forth in the City Personnel Manual and 1-02 of the Live Oak Police Department Policy Manual. (TBP: 2.11)

F. Notifications

1. Officers assigned to conduct professional standards investigations shall notify the complainant of said assignment within three (3) work days, providing contact information to the complainant and arranging for an interview and statement as appropriate.
2. Officers conducting professional standards investigations shall promptly provide the officer / employee under investigation with formal written notice of the investigation, including:
 - a. Investigating officer's name and contact information.

- b. A copy of the written complaint;
 - c. Related case number or ticket number;
 - d. Professional standards incident number; and
 - e. Alleged charges as best understood at time of notification.
- 3. The notification requirement in #2 above also applies to all anonymous complaints. If a formal investigation is not initiated based on an anonymous complaint, the Assistant Chief of Police shall, by memo or verbally, inform the pertinent employee of the complaint.
 - 4. The notification requirement in #2 above may be suspended by the Assistant Chief of Police when deemed necessary for investigative purposes.
 - 5. At the conclusion of the investigation the complainant and the officer / employee under investigation shall receive a written notice of disposition regarding the complaint.
 - 6. A copy of any officer / employee notification shall be provided to the pertinent supervisor of the officer / employee.

V. Case Investigation

- A. Professional standards investigations are confidential; only pertinent employees may be apprised of the investigation status or conclusion, e.g. officer / employee under investigation and their supervisors, and command staff.
- B. Professional standards investigators shall adhere to basic evidentiary rules regarding all evidence associated with the investigation. All collected evidence shall be properly tagged and submitted as evidence and placed in the departmental evidence storage area. Evidence associated to a professional standards investigation shall have the investigator's name, date submitted, and item description placed on the evidence identification tag.
- C. Professional standards investigations are generally "administrative" in nature, i.e. directed toward policy or procedural violations. If possible criminal conduct is discovered during a professional standards investigation, the Assistant Chief of Police will decide proper investigative responsibilities. The subsequent criminal investigation will be conducted according to department's standard investigative protocol and the investigating officer will submit his report to the appropriate district attorney's office for consideration of charges. (TBP: 2.07)
- D. All Department employees are required to cooperate in professional standards investigations related to administrative issues and must provide a written response to the complaint. Failure to cooperate, including failing to respond to all pertinent questions

and obey direct orders, will subject the employee to disciplinary action, up to and including termination.

- E. Information gathered in an administrative professional standards investigation is generally not admissible in criminal procedures.
- F. Officers / employees / volunteers under investigation may be required to submit to medical and laboratory examination as deemed appropriate, e.g. drug test, alcohol test (BAC) etc.
- G. Officers / employees / volunteers under investigation may be required to submit to a physical line up for identification purposes, or their picture may be used in a photo line-up for identification purposes.
- H. Officers / employees / volunteers under investigation may be required to make financial disclosures related to investigations.
- I. Officers / employees / volunteers under investigation may be required to submit to a polygraph test(s) related to the investigation.
- J. All administrative professional standards investigations, including the taking of all disciplinary action, shall be completed and submitted for review no later than Sixty-days (60) days after date assigned to an officer for investigation. (TBP: 2.05)
- K. The investigating officer may request a time extension of fifteen (15) days when necessary. The Chief of Police must approve all time extensions and may grant consecutive extensions as deemed warranted.

VI. Discovered Violations

- A. When non-reported / complaint of policy and procedure violations are discovered during the course of a professional standards investigation, the following procedures apply:
- B. A second notice (or first notice if a different employee) detailing the alleged violation(s) shall be sent to the pertinent officer / employee / volunteer and their supervisor.
- C. An initial or second interview may be scheduled as warranted on the additional allegations and the officer / employee / volunteer under investigation shall provide a written response to the additional allegations.
- D. The discovered violation(s) will be cleared in normal fashion and made a part of the original case, or filed as a separate case if appropriate.

VII. Adjudication of Complaints

- A. Completed professional standards investigations shall be classified as follows:
 - 1. Unfounded – The investigation revealed the misconduct as alleged did not occur.

2. Exonerated - The investigation revealed the actions alleged did occur, but they are lawful and proper.
 3. Not Sustained - The investigation revealed facts were insufficient to either prove or disprove the allegation(s).
 4. Sustained - The allegation(s) of misconduct are true and correct based on the "finding of fact" on the totality of the circumstances.
 5. Complaint Withdrawn – complainant withdraws complaint.
 6. Fail To Cooperate – complainant’s refusal to cooperate in the investigation prevents proper investigation. Also applies to failure to provide written statement of complaint.
 7. No action taken – review only. (TBP: 2.04)
- B. Complaints with multiple allegations may have more than one clearance, e.g. some allegations may be unfounded, some not sustained and some exonerated etc.
- C. Officers / employees / volunteers may appeal the complaint disposition utilizing the City grievance policy in Chapter 15 of the City of Live Oak Personnel Manual. (TBP: 2.08)

VIII. Records

- A. Professional standards reports shall be maintained in a secure environment, accessible only to authorized personnel. (TBP: 2.09)
- B. No record of a complaint will be placed in an employee’s personnel file unless the complaint was sustained, and then the notice of disposition only will go in the personnel file of the officer / employee under investigation.
- C. All professional standards reports will be maintained, at a minimum, in conformance with appropriate retention statutes.

IX. Criminal Investigations

- A. Some incidents, such as use of deadly force, require a criminal investigation in addition to the professional standards investigation at the outset of the incident.
- B. The officer / employee / volunteer under investigation in such investigations is entitled to all constitutional protections afforded any citizen.
- C. The criminal and professional standards investigations may be conducted at the same time, but not by the same officer.
- D. The Chief reserves the right to modify / amend this policy without prior notice in the best interest of the Department and community.

X. Progressive Discipline Process

- A. The Department's disciplinary process provides a guideline of available options to address employee work or behavior problems. Discipline may begin with any step of the disciplinary process, but this process does not require that a disciplinary action be administered in progressive steps or in a particular order. The instances of misconduct need not be similar or related. By maintaining this discretion, the Department can consider aggravating circumstances, as well as the severity and frequency of the behavior.
- B. Supervisors must meet with employees to discuss expectations when the employee's work performance or behavior is unsatisfactory. The goal of the counseling session is to identify the expected standard of performance and behavior. A record of this meeting may be maintained within the Department.

XI. Pre-Disciplinary Review Board And Disciplinary Process

- A. The purpose of the pre-disciplinary review board (PDRB) is to consider the mitigating circumstances involved in the employee's decisions and actions and to consider the totality of the situation prior to and during the event which led to the policy violation(s) and possible discipline of the employee – including training and policy failures.
- B. A pre-disciplinary review board is generally comprised of two or more of the following: Patrol Division Commander, Support Services Division Command and Assistant Chief and the immediate supervisor of the employee, as well as an employee of the same rank or similar position within the organization, if possible. The board shall convene anytime a member of command staff believes that a PDRB should review a policy violation or performance issue or there is a recommendation for discipline from a supervisor that involves a Letter of Reprimand or greater.

XII. Pre-Disciplinary Review Process

- A. The assigned Division Commander of the affected employee is responsible for the appropriate notification of the affected employee as to the date, time and location of the PDRB.
- B. Employees appearing before a PDRB will be given a copy of the investigation 48 hours prior the hearing to ensure they are able to review the facts being presented for consideration. Employees have the right to wave the 48 hour notice if desired.
- C. No persons present in a PDRB are authorized to record any portion of the meeting.
- D. At the beginning of the PDRB the chair will introduce those present, states the reason for the board, and request the Internal Affairs Sergeant or their designee present a brief overview of the personal history of the affected employee. If the IA Sergeant was not the person conducting the investigation and there are no further questions of them they will be excused from the board.

- E. The chair will ask the Supervisor/Investigator who completed the investigation to present the facts of the investigation and any recommended disciplinary action or further training needed to correct the issue.
- F. The employee who is the subject of the complaint/investigation will be given an opportunity to make a statement and may be asked questions by the board members.
- G. An attorney or a representative of the employee's choosing may be present during the Pre-Disciplinary Review in an effort to allow for transparency of the process and assist the employee with any future appeals processes if desired. They may provide brief comments however should minimize involvement in the proceedings. Any failure to adhere to this rule may result in removal of the attorney or representative from the proceedings.
- H. Upon the conclusion of the presentation of the employee history, facts in the case, recommended discipline or training, and the employee's opportunity to provide their perspective, the PDRB will dismiss the employee and his/her representative to consider the matter further.
- I. The board shall remain intact and consider all information presented to the panel and deliberate upon any appropriate discipline or corrective measures to be recommended.
- J. The disciplinary matrix shall be used as a guide in formulating any disciplinary recommendations. The objectives in developing any recommendation should be:
 - 1. Correcting behavior that is not in conformance with Departmental Policy and/or expectations; and
 - 2. Ensuring compliance with Department Policy in a uniform manner.
- K. In order to accomplish these objectives as equitably as possible, disciplinary discussions should address the following issues:
 - 1. Past practices regarding similar issues;
 - 2. Legal aspects of the issue(s) involved;
 - 3. Progressive discipline, if appropriate;

4. The employee's past disciplinary record;
 5. Training or re-training to eliminate/correct pattern violations;
 6. Psychological evaluations and recommendations; and
 7. Other alternative actions directed toward behavior adjustment.
- L. The Assistant Chief of Police or his designee will make the final recommendation on the discipline to the Chief of Police. Disciplinary options in descending order of severity are:
1. Termination;
 2. Demotion;
 3. Suspension without pay;
 4. Letter of Reprimand;
 5. Counseling/training, which should be used when education of expected behavior is likely to be successful in improving employee conduct; and
 6. When appropriate, restitution for loss or damage to city property may be ordered in addition to discipline.
- M. The Assistant Chief of Police or his designee will give the investigation a final classification.
- N. Internal Affairs will not make a recommendation on disciplinary action.
- O. Internal Affairs will provide the employee and his or her supervisor written notification of the investigation's final results before the employee's first meeting with the Chief.
- P. Internal Affairs will notify, in writing, the complainant of the final disposition.
- Q. All copies of the investigation and summaries will be returned to Internal Affairs.
- R. The employee has the right to appeal any disciplinary action in accordance with this section to the appropriate authority listed.
- S. Required Dress for the Pre-Disciplinary Review Board;
1. Class A or duty uniform;

2. A full suit or sports coat, slacks, dress shirt, and tie; or, for female employees, a dress, suit or blouse with dress slacks or skirt.
3. All employees will appear appropriate footwear.

T. Submission or Disciplinary Recommendation to the Chief of Police

U. At the conclusion of the PDRB the Assistant Chief of Police will submit the recommendation of action to the Chief of Police.

Chief of Police Will Meet with Employee:

A. The Chief of Police or the Assistant Chief of Police in his/her absence will arrange a meeting with the affected employee within (7) business days of the conclusion of the Pre-Disciplinary Review Board. The Chief or Assistant Chief of Police will meet with the affected employee and their designated representative if desired. The Chief of Police will hear all final considerations prior to making a final decision as to the disciplinary action to be taken. The affected employee will be notified within (7) business days of the final decision. Certain cases involving the need for legal opinions from the City Attorney may require additional time over and above the general (7) business day notification of the final decision to the employee. The employee will be notified should there be a need to extend this time frame. Should the employee desire to appeal the decision they shall utilize the appropriate policy and form.

XIII. APPEAL PROCESS

Employees have the right to appeal a disciplinary action. The sequential steps are found in the City of Live Oak Personnel Policy Manual Chapter 15. (TBP: 2.08)

IX. Disciplinary Matrix

DEFINITIONS

Disciplinary Matrix	The disciplinary matrix is a guideline for assessing penalties for acts of misconduct as a part of the disciplinary process. The disciplinary matrix contains a list of acts of misconduct followed by a range of recommended discipline for the first through the third offense. The disciplinary matrix is adopted and updated by the Department under the direction of the Chief of Police.
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X. General Policy

This Department resolves work performance and behavior problems by utilizing an informal process between the supervisor and the employee whenever possible. However, there are circumstances when work performance and behavior problems must be resolved through a formal disciplinary process.

The Department employs a progressive approach to discipline, wherein disciplinary penalties for repeated offenses become increasingly severe. Supervisory staff will take appropriate disciplinary action using the guidelines suggested by the disciplinary matrix presented in this

policy as a reference. Except in unusual or extraordinary circumstances, the level of discipline should be consistent with the disciplinary matrix when a similar violation can be found in the matrix. In the event an employee is disciplined for more than one act of misconduct, the act with the highest level of disciplinary action will become the minimum level of action that should be administered. In some cases, due to the nature of the conduct in question, it may be appropriate to invoke a higher disciplinary action than the minimum level recommended for single infractions. When aggravating circumstances exist, it is the responsibility of the supervisor administering the discipline to justify the higher level of punishment.

While the disciplinary matrix is comprehensive there may be circumstances where an employee violates a policy or procedure which is not directly listed. In these situations the chain of command will utilize its best effort to ensure an appropriate recommendation of discipline is administered.

Police officers have the right to appeal a disciplinary action as outlined by City Policy.

XI. Discipline Matrix Review Committee

This policy will be reviewed on an annual basis by a discipline process review committee composed of the Chief of Police or Assistant Chief of Police, the Patrol Division Commander, and Internal Affairs Supervisor – all of whom are permanent members of this committee. In addition, one representative from each of the Patrol shifts and one representative from each remaining division will serve one-year terms on this committee.

LEVELS OF DISCIPLINARY ACTION

The matrix provides for four levels of disciplinary action given numerical designations:

- Level 1 – Written counseling or letter of reprimand
- Level 2 – Less than 24 hours of suspension without pay
- Level 3 – Greater than 24 hour’s suspension without pay/demotion
- Level 4 – Termination

DISCIPLINE MATRIX

ACT OF MISCONDUCT	OFFENSE		
	First	Second	Third
Alcohol Abuse			
Unfit For Duty Due To Prior Consumption Of Alcohol	2	3	4
Off Duty And Under The Influence Of Alcohol Resulting In A Police Response	1	2	3-4
On Duty, Improperly Possessed Alcoholic Beverage	2	3	4
On Duty, Improperly Consumed Alcoholic Beverage	2	3	4
DWI	1-4	3-4	4
DWI With Traffic Collision – Serious Bodily Injury Or Death	3-4	4	4
Allow Minor To Consume Alcoholic Beverage	1	2	3
Discourtesy			

General	1	2	3
Made Discourteous Remark To A Member Of The Public	1	2	3
Inappropriately Hung Up On A Caller	1	2	3
Made An Inappropriate Gesture	1	2	3
Discrimination			
General	1-2	3	4
Made A Discriminatory Remark	1-2	2-3	3-4
Showed/Hung Cartoons, Photos, Etc. Of Discriminatory Nature In The Workplace	1-2	3	4
Dishonesty			
General	1-3	2-3	4
Submitted False Time Reporting Sheet	2-4	3-4	4
Received Benefits Through Fraud	3	4	4
Converted Found/Recovered/Seized Property To Personal Use	1-3	2-4	4
Domestic Violence			
Committed An Act Of Domestic Violence	1-4	2-4	4
Caused Police To Respond To A Domestic Disturbance	1	1-2	2-3
Violated A Domestic Violence Protective Order	2-3	4	4
Failed To Comply With A Court Order	2-3	4	4
Failed To Appear In Court			
Failure To Appear (Second Offense In A 1-Year Period; Or Third Offense In A 2-Year Period)	1	1-2	2-3
False Imprisonment			
Detained Someone Without Cause Or For Too Long	1	2	3
Knowingly Falsely Arrested Someone	2-4	4	4
ACT OF MISCONDUCT	OFFENSE		
	First	Second	Third
False/Misleading Statements			
Knowingly made False Statements During An Internal Affairs Investigation	4	4	4
Knowingly Falsified A Police Report	4	4	4
Knowingly made False Statement While Under Oath	4	4	4
Improper Remark			
Improper Remark	1	2	3
Insubordination			
Improper Comments To A Supervisor	1-2	2-3	3-4
Refused To Obey A Direct Lawful Order	1-3	3-4	4
Refused To Obey A Written Department/Division Directive-Training Order	1	2	3-4

Refused To Follow Dictates Of A Sick Letter/Workers Comp.	1-2	2-4	4
Narcotics/Drugs			
Improperly Possessed Illegal Narcotics/Drugs	4	4	4
Improperly Sold Narcotics/Drugs	4	4	4
Improperly Ingested Narcotics/Drugs	4	4	4
Under The Influence Illegal Narcotics/Drugs	4	4	4
Improperly Ingested/Provided Prescribed Narcotics/Drugs	1	2-4	4
Improperly Under The Influence Of Prescribed Narcotics/Drugs	2	3-4	4
Knowingly Present Where Illegal Narcotics/Drugs Being Used	2-4	4	4
Knowingly Transported A Person To Buy/Obtain Narcotics/Drugs	4	4	4
Neglect Of Duty			
Negligent care of Department-Issued Equipment Resulting In Damage Or Loss	1-2	2	3
Failed To Properly Search A Vehicle/Holding Area	1	1-2	2-3
Intentional Damage To City Property	2-3	3-4	4
Failed To Care For Another's Property	1	1-2	3
Tardiness	1	1-2	3
Failed To Remain Alert	1	2	2-3
Absent From Assignment Without Authorization	1	2	3
Conducted Personal Business While On Duty	1	1-2	2-3
Failed To Return To Duty Promptly	1	1-2	2-3
Failed To Return To Duty	1	2	3
ACT OF MISCONDUCT	OFFENSE		
	First	Second	Third
Failed To Report For Duty As Scheduled	1	2	2-3
Failed To "Clear" In A Prompt Manner	1	1-2	2-3
Passed On A Call/Assignment Without Approval	1	1-2	2-3
Changed Work Assignment Without Approval	1	1-2	2-3
Failed To Take Appropriate Action	1	1-2	2-3
Failed To Provide Appropriate Service	1	1-2	2-3
Failed To Properly Report An On-Duty Altercation	1	1-2	2-3
Failed To Report Misconduct As Required	1-2	2-3	3-4
Failed To Report Off-Duty Misconduct	1-2	2-3	3-4
Fail To Report To Scheduled Off-Duty Assignment	1	1-2	2-3
Represented Personal Opinion As That Of The Department	1	1-2	2-3
Failed To Take Appropriate Action With A Misdemeanor	1	2	2-3

Suspect			
Failed To Take Appropriate Action With A Prisoner	1-2	2-3	3-4
Failed To Take Appropriate Action With A Felony Suspect	2	2-3	3-4
Failed To Control A Detainee Resulting In An Escape	1	1-2	2-3
Worked Off Duty While On Light Duty Status Without Authorization	1-2	2-3	3-4
Worked Off Duty Without An Approved Outside Employment Application When Required	1-2	2-3	3-4
Released Confidential Reports/Records/Information To Unauthorized Person	1-4	2-4	3-4
Released Confidential Reports/Records/Information To Unauthorized Person	1-4	2-4	3-4
Off-Duty Altercation			
Improperly Altered Department Records/Reports	2-4	3-4	4
Failed To Take Appropriate Action In A High-Risk Situation	1-4	2-4	3-4
Purposely Failed To Monitor And/or Care For A Person In Custody	1-4	2-4	3-4
Failure To Adhere to Training	1-4	1-4	1-4
Off-Duty Altercation			
Unnecessarily Involved In An Altercation	1	1-2	3-4
Unnecessarily Struck Another	1-4	2-4	3-4
Sexual Harassment			
Made Improper Sexual Gestures – Verbal Or Written	1-4	2-4	3-4
Made Improper Sexual Remark	1-4	2-4	3-4
ACT OF MISCONDUCT	OFFENSE		
	First	Second	Third
Sexual Harassment, Continued			
Had Inappropriate Photos, Cartoons, Etc., In The Workplace	1-4	2-4	3-4
Created A Hostile Work Environment	1-4	2-4	4
Quid Pro Quo (Something In Return For Something Else)	3-4	4	4
Sexual Misconduct			
Improperly Touched Another In A Sexual Manner	2-4	3-4	4
Forced Sex Act Upon Another	4	4	4
Solicited Illegal Sex Act	4	4	4
Involved In Prostitution/Lewd Conduct	4	4	4
Involved In Lewd Conduct	2-4	4	4
Supervisory Failure			
Failed To Take Appropriate Supervisory Action	1-4	1-4	1-4
Failed To Report Misconduct, As Required	1-4	3-4	4

Failed To Provide Proper Leadership In A Pursuit, Critical Incident Or Other Situation	1-3	2-4	3-4
Failed To Process A Complaint In A Timely Manner	1	2	3
Theft			
Took Property Of Another Without Permission	1-4	2-4	3-4
Converted City Property To Personal Use	1-4	3-4	4
Used City Resources For Personal Use	1	2	3
Unreasonable Response to Resistance			
On Duty, Unnecessarily Struck Another Person	1-4	3-4	4
Improperly Struck A Handcuffed Detainee/Prisoner	1-4	4	4
Unnecessarily Applied Upper Body Control Hold	1-3	3-4	4
Unnecessarily Sprayed A Chemical Irritant	1-2	2-3	3-4
Unnecessarily Sprayed A Person With A Chemical Irritant Or Used an Electrical Control Device (ECD)	1-2	2-3	3-4
Unnecessarily Handcuffed A Person	1-4	2-4	3-4

ACT OF MISCONDUCT	OFFENSE		
	First	Second	Third
Unbecoming Conduct			
Off Duty, Unnecessarily Involved In A Dispute Resulting In The Response Of On-Duty Officers (Any Agency)	1	1-2	2-3
Off Duty, Unnecessarily Involved In A Dispute Resulting In The Response Of On-Duty Officers, Resulting In Officer's Arrest	2-4	3-4	4
Off Duty, Failed To Cooperate With On-Duty Officers Conducting An Official Investigation	1-2	2-3	4

ACT OF MISCONDUCT	OFFENSE		
	First	Second	Third
Unbecoming Conduct, Continued			
Off Duty, Unnecessarily Involved In A Dispute	1	1-2	2-3
Off Duty, Directed Improper Remarks To On-Duty Officers Conducting An Official Investigation	1	2	3
Unbecoming Conduct (Financial)			
Knowingly Submitted A False Claim To Receive Insurance Benefits	4	4	4
Knowingly Issued NSF Check(S)	3-4	4	4
Unbecoming Conduct (Financial)			
Failed To Pay Debts	1	2	3

Accepted A Gratuity	1-4	2-4	3-4
Unbecoming Conduct (Miscellaneous)			
Retaliated Against Employee For Filing A Complaint Of Misconduct	2-4	3-4	4
Improperly Converted Or Attempted To Convert An Official On-Duty Contact Into A Social Relationship	1-4	3-4	4
Unauthorized Or Improper Use of Dept. Computer System For Personal Reasons	1-4	2-4	3-4
Unauthorized Or Improper Use Of The MCT/Radio Frequency	1-4	2-4	3-4
Improperly Possessed Or Damaged Property Of Another	1-4	2-4	3-4
Operated A Motor Vehicle Without Current Driver License, Vehicle Inspection Or Vehicle Registration	1	1-2	2
Improperly Touched The Person Of Another	1-4	2-4	3-4
Improperly Identified Self As An LOPD Employee	1	2	3
Compromised An Official Police Investigation	2-4	3-4	4
Knowingly Maintained A Personal Relationship With An Individual Involved In Criminal Activity	1-4	2-4	3-4
Falsely Reported Theft Of Personal Property	4	4	4
Failed To Properly Dispose Of Traffic Citations Issued Against His/Her Private Vehicle	1	1-2	2
Unbecoming Conduct (Crimes)			
Committed A Misdemeanor Excluding Class C Traffic	1-4	2-4	3-4
Committed A Felony	4	4	4
Unlawful Search			
Knowingly Conducted An Unlawful Search Of A Person	1-4	2-4	3-4
ACT OF MISCONDUCT	OFFENSE		
	First	Second	Third
Unlawful Search, Continued			
Knowingly Conducted An Unlawful Search Of A Vehicle Or Location	1-4	2-4	3-4
Vehicles			
Used Unauthorized Code 3	1	2	3
Unauthorized Code 3 With Traffic Accident	2-4	3-4	3-4
On/Off Duty, Improperly Operated A City Vehicle	1-4	2-4	3-4
Failure To Wear A Seat Belt In City Vehicle	1	1-2	2-3
Improperly Transported A Detainee	1	1-2	2-3
Transported An Unauthorized Person In A City Vehicle	1	1-2	2-3
Improperly Used Vehicle Public Address (PA) System	1	1-2	2-3

Improperly Used Vehicle Emergency Equipment	1	1-2	2-3
Preventable Traffic Collision	1-2	1-3	2-4
Weapons			
Negligent Discharge Of Department-Approved Weapon	1	2	3
Negligent Discharge Of Department Approved Weapon (Causing Personal Injury Or Property Damage)	1-4	1-4	4
Fired Weapon In Violation Of Department Policy	1-3	3-4	4
Utilized Unauthorized Tactics Leading To An Officer-Involved Shooting	1-3	3-4	4
Carried Unauthorized Weapon/Ammunition	1-2	2-3	4
Failed To Appear For Qualification When Scheduled	1	2	3
Failure To Qualify With A Department Issued Weapon Causing Officer To Enter Remedial Firearms Training.	1-3	1-3	1-3
Failed To Successfully Complete Remedial Firearms Training	1-2	1-3	4
Improperly Left Weapon Unattended	1-2	2-3	4

Racial Profiling Training

Since 2002, all Live Oak 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 Live Oak Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Live Oak has been included in this report.

It is important to recognize that the Chief of the Live Oak 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 Live Oak Police Department fulfills the training requirement 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 web site 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 departmental 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 & 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, 453 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 might 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 stops.

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, kids' 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>

Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/15---12/31/15, based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.

X

A check above indicates that the Live Oak Police Department has not received any complaints, on any members of its police force, for having violated the Texas Racial Profiling Law during the time period of 1/1/15 ---- 12/31/15.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint No.	Alleged Violation			Disposition of the Case
	None			

Tier 1 Data

(I) Tier 1 Data

Motor Vehicle-Related Contact Information (1/1/15—12/31/15)

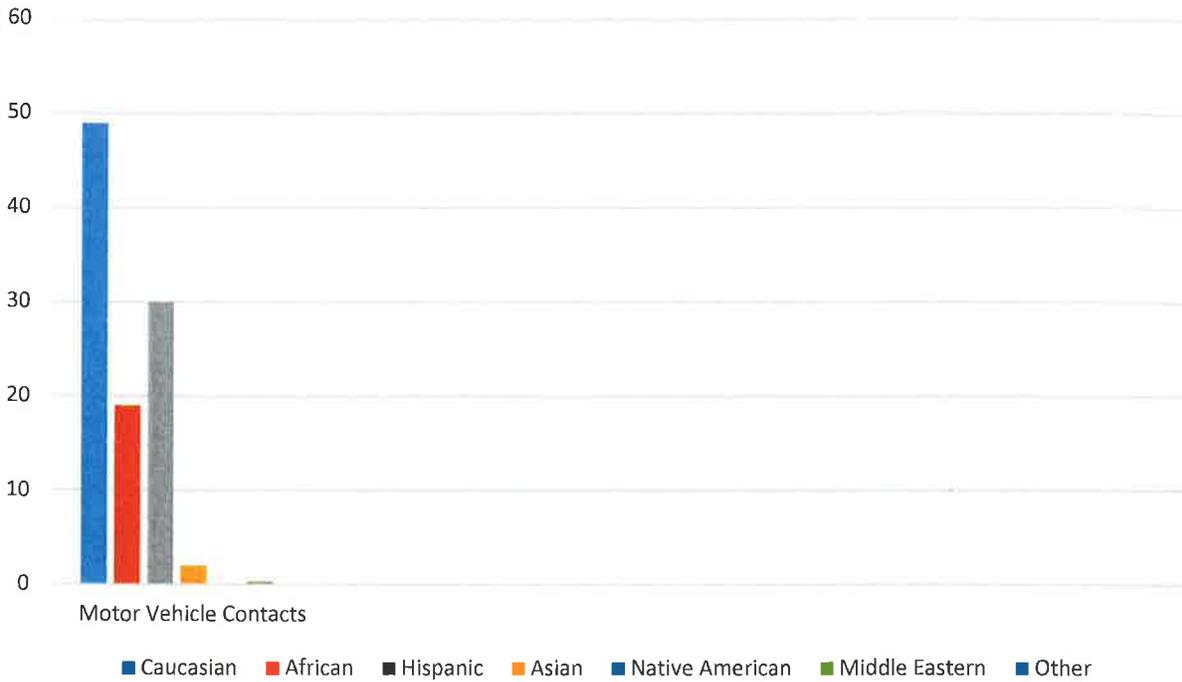
Race/Ethnicity*	Contacts		Searches		Consensual Searches		PC Searches		Custody Arrests	
	N	%	N	%	N	%	N	%	N	%
Caucasian	740	49	196	59	52	68	144	57	103	61
African	286	19	66	20	11	14	55	22	37	22
Hispanic	459	30	65	20	13	17	52	20	27	16
Asian	26	2	3	.9	0	0	3	1	2	1
Native American	0	0	0	0	0	0	0	0	0	0
Middle Eastern	4	.3	1	.3	1	1	0	0	1	.6
Other	0	0	0	0	0	0	0	0	0	0
Total	1,515	100	331	100	77	100	254	100	170	100

“N” represents “number” of traffic-related contacts

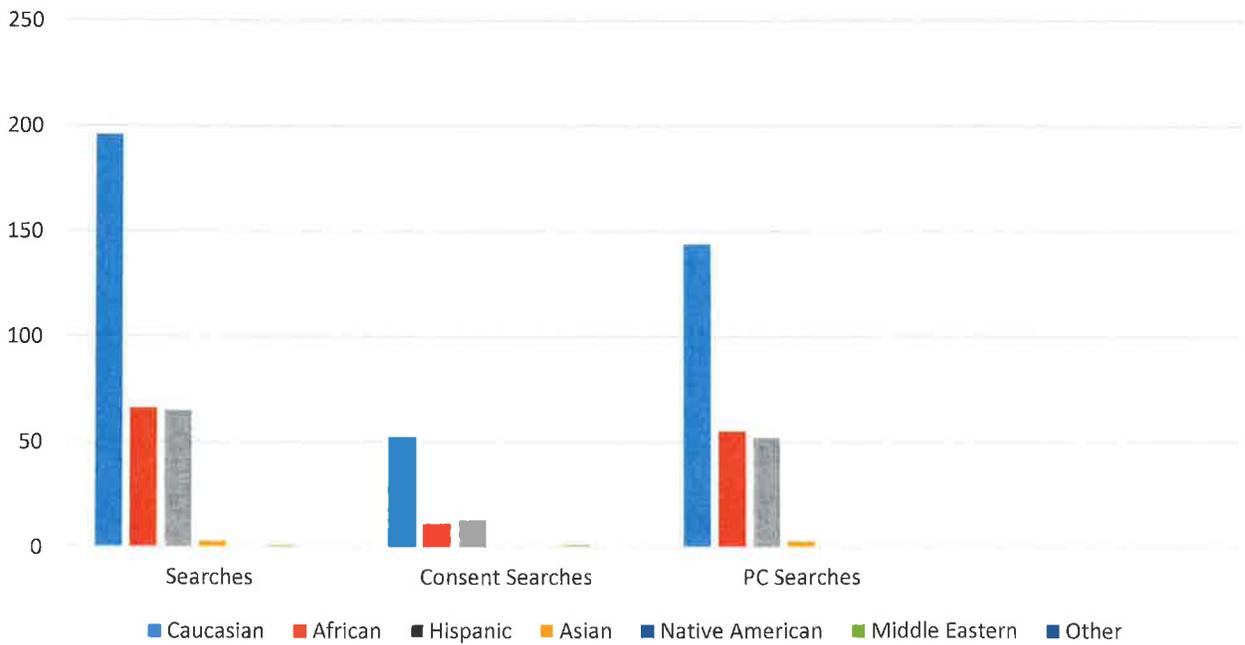
* Race/Ethnicity is defined by Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American or Middle Eastern”.

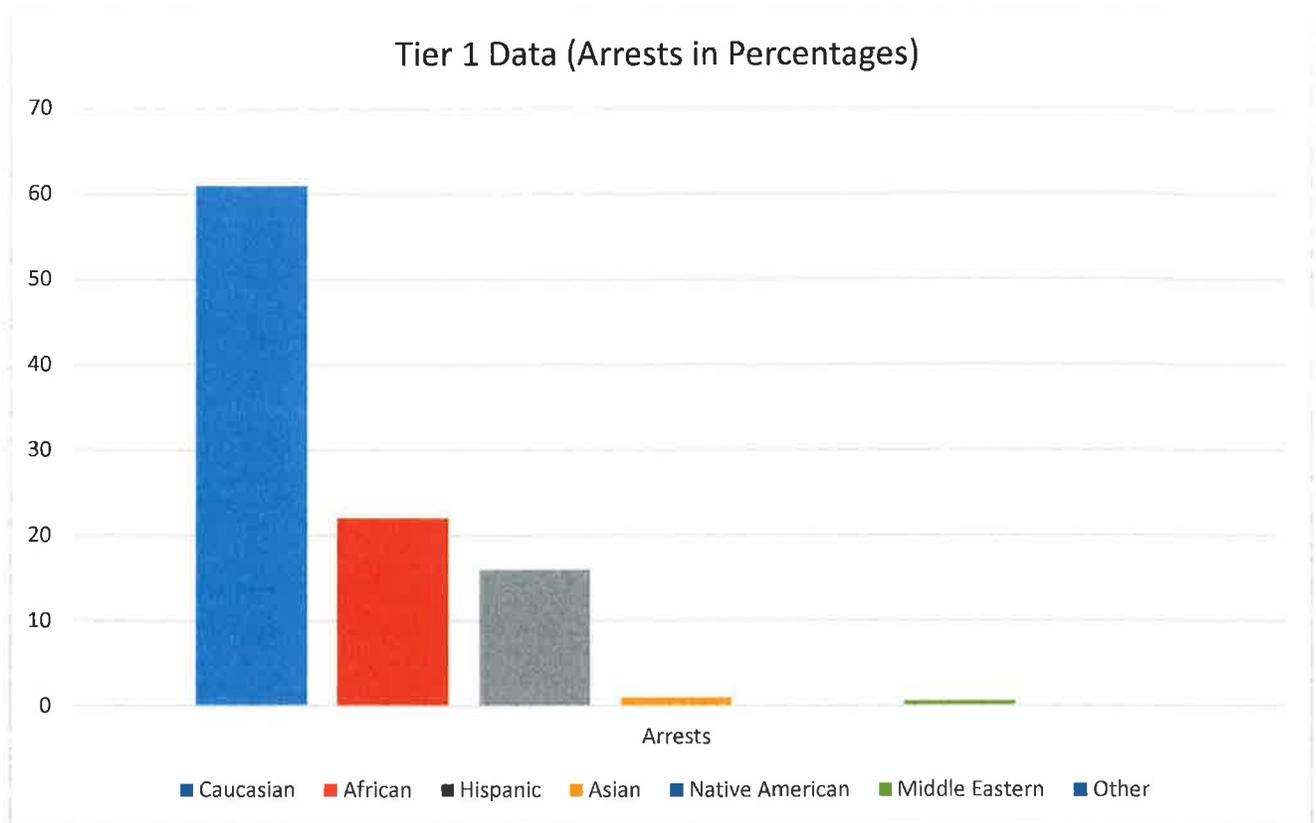
**Figure has been rounded

Tier 1 Data (Motor Vehicle Contacts in Percentages)



Tier 1 Data (Frequency of Searches)

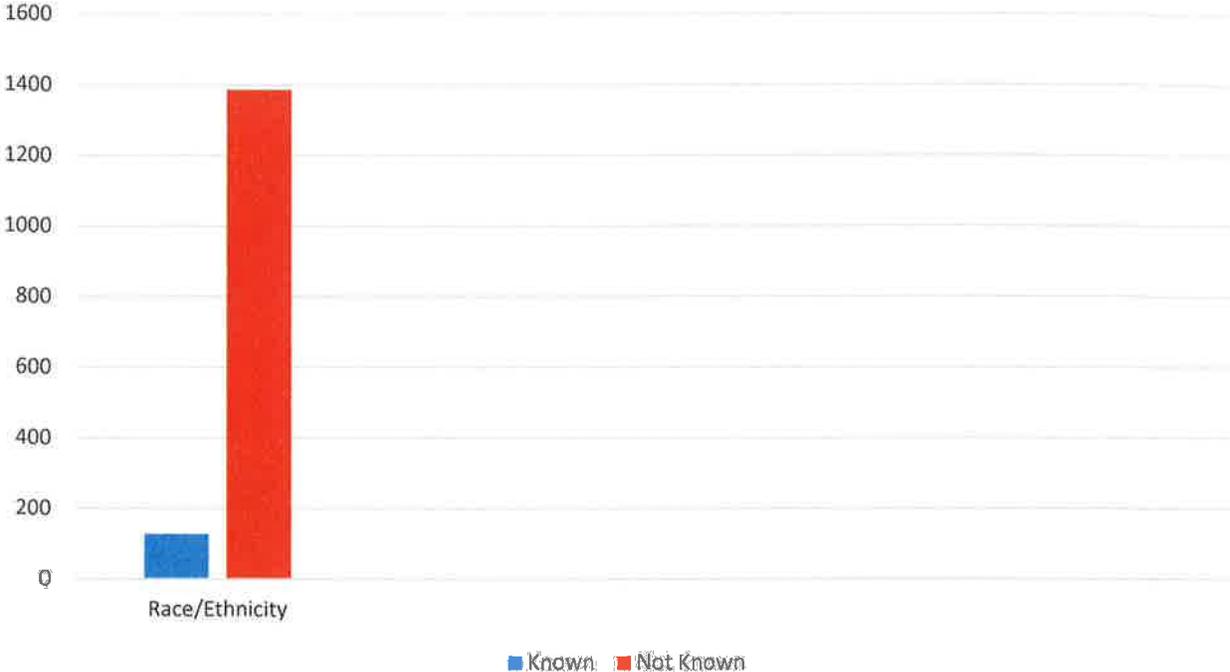




Total Number of Instances where Officers Knew/did not Know Race/Ethnicity of Individuals Before Being Detained (1/1/15--12/31/15)

Total Number of Instances where Officers <u>Knew</u> Race and Ethnicity of Individuals Before Being Detained	Total Number of Instances where Officers <u>Did Not Know</u> the Race and Ethnicity of Individuals Before Being Detained
128	1,387

Known Race/Ethnicity (Frequencies)



Tier 1 (Partial Exemption TCOLE Form)

Partial Exemption Racial Profiling Reporting (Tier 1)

Department Name Live Oak Police Department

Agency Number TX0151600

Chief Administrator Name Kenneth E. Evans

Reporting Name Paige Osborn

Contact Number 210-945-1700

E-mail Address posborn@liveoaktx.net

Certification to Report 2.132 (Tier 1) – Partial Exemption

Policy Requirements (2.132(b) CCP): **Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:**

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's complaint process;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in

which a citation is issued and to arrests made as a result of those stops, including information relating to:

(A) the race or ethnicity of the individual detained;

(B) whether a search was conducted and, if so, whether the individual detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

These policies are in effect

 02.23-16

Chief Administrator Date Kenneth E. Evans, Chief of Police

Partial Exemption Racial Profiling Reporting

(Tier 1)

Video and Audio Equipment Exemption

Partial Exemption Claimed by (2.135(a) CCP):

all cars regularly used for motor vehicle stops are equipped with video camera and transmitter-activated equipment and each motor stop is recorded and the recording of the stop is retained for at least 90 days after the stop.

OR

In accordance with 2.135(a)(2) the agency has requested and not received funds to install the recording equipment

I claim this exemption

 02-23-16 Kenneth E. Evans, Chief of Police
Chief Administrator Date

Partial Exemption Racial Profiling Reporting (Tier 1)

(This is the TCLEOSE recommended form. The form is not mandatory. The information contained in this form, however, is mandatory. You may use your form, but all information must be provided.)

If you claim a partial exemption you must submit a report that contains the following data or use this format to report the data.

Instructions: Please fill out all boxes. If zero, use 0.

1. Total on lines 4, 11, 14, and 17 Must be equal

2. Total on line 20 Must equal line 15

Number of Motor Vehicle Stops:

1. _____ citation only
2. _____ arrest only
3. _____ both
4. _____ Total

Race or Ethnicity:

5. _____ African
6. _____ Asian
7. _____ Caucasian
8. _____ Hispanic
9. _____ Middle Eastern
10. _____ Native American
11. _____ Total

Race or Ethnicity Known Prior to Stop?

12. _____ Yes
13. _____ No
14. _____ Total

Search Conducted:

15. _____ Yes
16. _____ No
17. _____ Total

Was Search Consented?

18. _____ Yes
19. _____ No
20. _____ Total Must Equal # 15

Option to submit required data by utilizing agency report

You must submit your report in PDF format

Electronic Submission of data required by 2.132(b)(6) CCP

(6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:

(A) the race or ethnicity of the individual detained;

(B) whether a search was conducted and, if so, whether the individual detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

This report meets the above requirements



Kenneth E. Evans, Chief of Police

Chief Administrator

Date 02-23-16

Send entire documents electronically to this website

www.tcleose.state.tx.us

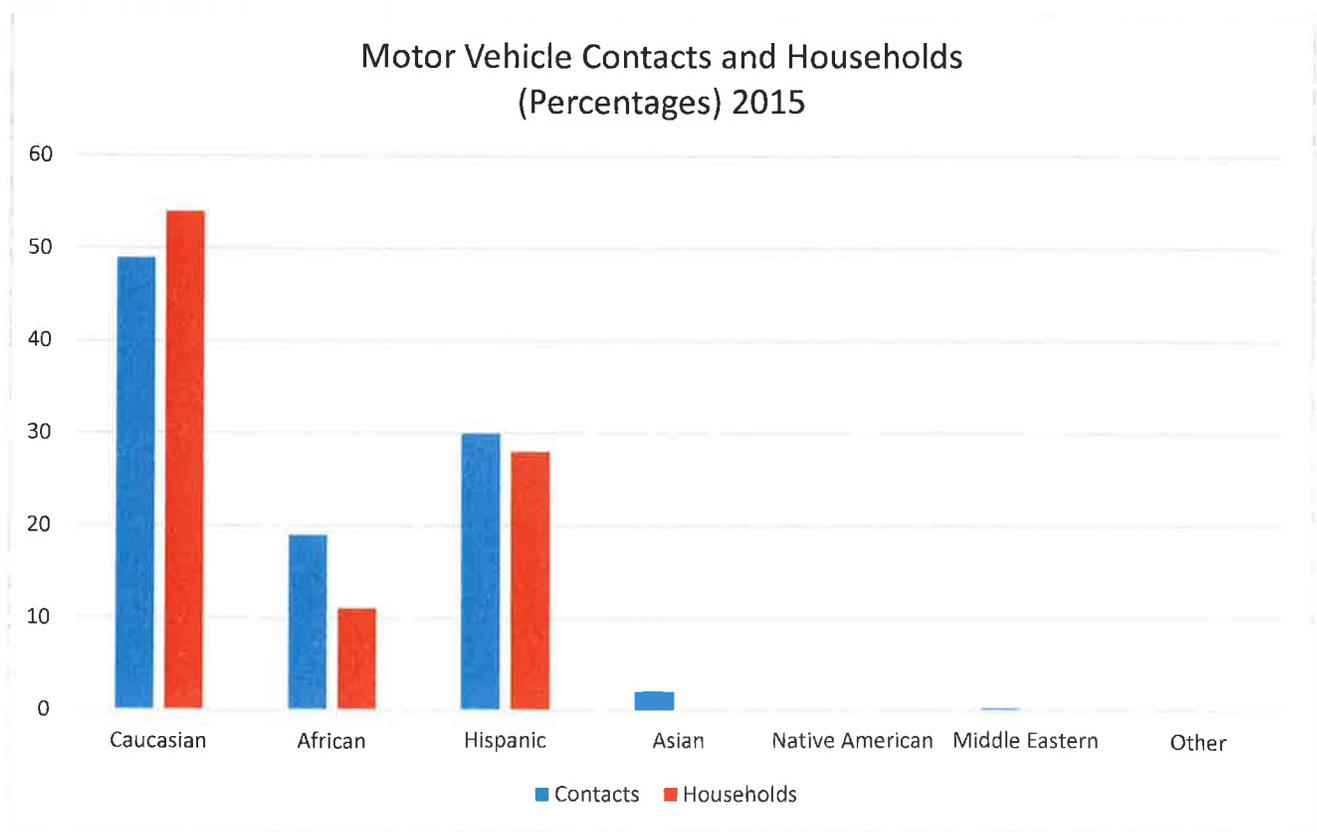
(II) Motor Vehicle-Contacts and Fair Roads Standard Comparison

Comparison of motor vehicle-related contacts with households in Live Oak that have vehicle access (in percentages). (1/1/15—12/31/15)

Race/Ethnicity*	Contacts (in percentages)	Households with vehicle access (in percentages)
Caucasian	49	54
African	19	11
Hispanic	30	28
Asian	2	N/A
Native American	0	N/A
Middle Eastern	.3	N/A
Other	0	N/A
Total	100	93

* Race/Ethnicity are defined by Senate Bill 1074 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American and Middle Eastern”.

**Represents rounded figure



Analysis

In 2001, the Texas legislature passed Senate Bill 1074 which became the Texas Racial Profiling Law. That is, the law came into effect on January 1, 2002 and required all police departments in Texas, to collect traffic-related data and report this information to their local governing authority by March 1st of each year. In 2009, the racial profiling law was modified to include the collection and reporting of all motor vehicle related contacts where a citation was issued or arrest made. In addition, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individual before detaining them. Further, it is required that agencies report motor vehicle related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1st of each year. The purpose in collecting and presenting this information is to determine if police officers in a particular municipality are engaging in the practice of racially profiling minority motorists.

The Texas Racial Profiling Law also requires police departments to interpret motor vehicle-related data. Even though most researchers would probably agree with the fact that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is very difficult to determine if individual police officers are engaging in racial profiling, from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific “individual” racist behavior from aggregate-level “institutional” data on traffic or motor vehicle-related contacts.

As stated previously, in 2009, the Texas Legislature passed House Bill 3389, which modified the existing Racial Profiling Law by adding new requirements; this took effect on January 1st, 2010. These most recent changes include, but are not exclusive of, the re-definition of a contact to include motor vehicles where a citation was issued or an arrest made. In addition, it requires police officers to indicate if they knew the race or ethnicity of the individual before detaining them. Also, the more recent law requires adding "middle eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1st of each year. I am pleased to inform you that these additional requirements have been addressed, since 2009, by the Live Oak Police Department as it is demonstrated throughout this report.

In an effort to comply with The Texas Racial Profiling Law, the Live Oak Police Department commissioned the analysis of its 2015 motor vehicle contact data. Thus, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2015 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Caucasians, African Americans, Hispanics, Asians, Native Americans, Middle Easterners and individuals belonging to the “other” category, that came in contact with the police in the course of a motor vehicle related contact, and were either issued a citation or arrested. Further, the analysis included information relevant to the number and percentage of searches (table 1) while indicating the type of search performed (i.e., consensual or probable cause). Also, the data analysis included the number and percentage of individuals who, after they came in contact with the police for a motor vehicle-related reason, were arrested.

The additional data analysis performed was based on a comparison of the 2015 motor vehicle contact data with a specific baseline. When reviewing this particular analysis, it should be noted that there is disagreement, in the literature, regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Live Oak Police Department opted to adopt, as a baseline measure, the Fair Roads Standard. This particular baseline is based on data obtained through the U.S. Census Bureau (2010) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It is clear that census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless of the fact they may or may not be among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only. Thus, excluding individuals who may have come in contact with the Live Oak Police Department in 2015 but live outside city limits. In some cases, the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

Since 2002, several civil rights groups in Texas expressed their desire and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). This, in essence, constitutes a comparison that may result in ecological fallacy. Despite this, the Live Oak Police Department made a decision that it would use this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to Live Oak.

Tier 1 (2015) Motor Vehicle-Related Contact Analysis

When analyzing the Tier 1 data collected in 2015, it was evident that most motor vehicle-related contacts were made with Caucasian drivers. This was followed by Hispanic and African American drivers. With respect to searches, most of them were performed on Caucasian drivers. This was followed by African Americans and Hispanics. It is important to note that the arrest data revealed that Caucasian drivers were arrested the most in motor vehicle-related contacts; this was followed by African Americans and Hispanics.

Fair Roads Standard Analysis

The data analysis of motor vehicle contacts to the census data relevant to the number of “households” in Live Oak who indicated, in the 2010 census, that they had access to vehicles, produced interesting findings. Specifically, the percentage of individuals of African American and Hispanic descent that came in contact with the police was higher than the percentage of African American and Hispanic households in Live Oak that claimed, in the 2010 census, to have access to vehicles. With respect to Caucasians, a lower percentage of contacts were detected. That is, the percentage of Caucasian drivers that came in contact with the police in 2015 was lower than the percentage of Caucasian households in Live Oak with access to vehicles.

Summary of Findings

The comparison of motor vehicle contacts showed that the Live Oak Police Department came in contact (in motor vehicle-related incidents) with a smaller percentage of Caucasian drivers than the percentage that resided in Live Oak and had access to vehicles. Further, the data suggested that the percentage of African American and Hispanic drivers that came in contact with the police in 2015 was higher than the percentage of African American and Hispanic households in Live Oak with access to vehicles. In addition, the data showed that in a large number of instances, officers did not know the race or ethnicity of individuals before detaining them, when compared to instances where officers knew the race/ethnicity of individuals before they were detained.

While considering the findings made in this analysis, it is recommended that the Live Oak Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected) which may prove to be useful when determining the nature of the contacts police officers are making with all individuals; particularly with African Americans and Hispanics. Although this additional data may not be required by state law, it is likely to provide insights regarding the nature and outcome of all motor vehicle contacts made with the public.

As part of this effort, the Live Oak Police Department is also encouraged to:

- 1) Perform an independent search analysis on the search data collected in the first quarter of 2016.
- 2) Commission data audits in 2016 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The Live Oak Police Department complied with recommendations made last year, in a similar report, regarding data audits. In sum, the information and analysis provided in this report serves as evidence that the Live Oak Police Department has, once again, complied with the Texas Racial Profiling Law.

Checklist

The following requirements **were** met by the Live Oak Police Department in accordance with The Texas Racial Profiling Law:

- Clearly defined act or actions that constitute racial profiling
- Statement indicating prohibition of any peace officer employed by the Live Oak Police Department from engaging in racial profiling
- Implement a process by which an individual may file a complaint regarding racial profiling violations
- Provide public education related to the complaint process
- Implement disciplinary guidelines for officer found in violation of the Texas Racial Profiling Law
- Collect data (Tier 1) that includes information on
 - a) Race and ethnicity of individual detained
 - b) Whether a search was conducted
 - c) If there was a search, whether it was a consent search or a probable cause search
 - d) Whether a custody arrest took place
- Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- Produce an annual report on police contacts (Tier 1) and present this to local governing body and TCOLE by March 1, 2016.
- Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation

Contact Information

For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting, LLC

817.681.7840

www.texasracialprofiling.com

www.delcarmenconsulting.com

Disclaimer: The author of this report, Alejandro del Carmen/del Carmen Consulting, LLC, is not liable for any omissions or errors committed in the acquisition, analysis, or creation of this report. Further, Dr. del Carmen/del Carmen Consulting is not responsible for the inappropriate use and distribution of information contained in this report. Further, no liability shall be incurred as a result of any harm that may be caused to individuals and/or organizations as a result of the information contained in this report.

Racial Profile Tier 1 HB3389

PLEASE NOTE: The official form does not allow for Other and Unknown in the Race or Ethnicity boxes on the TCOLE website. Please contact TCOLE for instructions on how to resolve these issues for 2012. This report only includes traffic stops resulting in a citation, traffic stops resulting in a citation with an arrest, traffic stops resulting in a warning with an arrest and field interviews that resulted in an arrest.

Number of Motor Vehicle Stops		
1345	Citations only	
12	Arrest only	
158	Citations and Arrests	
		4. 1515 Total
Race or Ethnicity		
286	African	
26	Asian	
740	Caucasian	
459	Hispanic	
4	Middle Eastern	
0	Native American	
		11. 1515 Total
Race or Ethnicity known prior to stop?		
128	Yes	
1387	No	
		14. 1515 Total
Search conducted?		
331	Yes	
1184	No	
		17. 1515 Total
Was search consented?		
77	Yes	
254	No	
		20. 331 Total