



POLICE DEPARTMENT

TO: Robert Camareno, City Manager

FROM: Tom Wibert, Chief of Police

REF: Racial Profiling Report - 2015

DATE: February 01, 2016

On September 1, 2001, the racial profiling law became effective as found in the Texas Code of Criminal Procedure (CCP) beginning with Article 2.131. The law mandated that law enforcement agencies begin collecting certain data in connection to traffic or pedestrian stops beginning on January 1, 2002. Based on that data, the law mandated law enforcement agencies to submit a report to the law enforcement agency's governing body beginning March 1, 2003 and each year thereafter no later than March 1.

Attached is a compilation and analysis report of information collected pursuant to the requirements mandated in CCP Art. 2.134 in connection to the subject matter of racial profiling.

Given the totality of the aforementioned information provided in the report, it can be established that there is no prevalence of racial profiling by peace officers employed by the New Braunfels Police Department (N.B.P.D). In addition and pursuant to reporting requirements, the New Braunfels Police Department received no formal complaints alleging that a New Braunfels police officer engaged in racial profiling during the year 2015.

For the purposes of convenience, the 2015 Racial Profiling Report will be posted on the New Braunfels Police Department website making it readily available to the public.

The analysis of material and data from the New Braunfels Police Department revealed the following:

The analysis of statistical information from the New Braunfels Police Department reveals that there are not any indications of systemic racial profiling by the department.

The findings presented in this report support that the N.B.P.D. is committed to the identification and resolution of all issues relevant to racial profiling according to the law. The New Braunfels Police Department is in full compliance with applicable Texas law concerning the prohibition of racial profiling.

February 1, 2016

New Braunfels City Council
New Braunfels, Texas

Dear Distinguished Mayor and Members of the City Council,

In 2001 and 2009, the Texas legislature passed the Texas Racial Profiling Laws (S.B. 1074 and H.B.3389). Since becoming effective, the New Braunfels Police Department, in accordance with the law, has collected citation-based contact data for the purpose of identifying and addressing concerns regarding racial profiling practices by police officers.

In this report, you will encounter information on citation-based contact data, along with documentation which aims at supporting the fact that the New Braunfels Police Department has complied with The Texas Racial Profiling Law. Included in this report, you will find the Texas Law on Racial Profiling and the list of requirements relevant to the Racial Profiling Law as interpreted by TCOLE (Texas Commission on Law Enforcement).

You will find documentation which demonstrates compliance of the New Braunfels Police Department with the Texas Racial Profiling Law. Specifically, documents relevant to the implementation of an institutional policy banning racial profiling, the racial profiling complaint process and the training administered to all law enforcement personnel.

This report also contains statistical data relevant to public contacts, made during the course of traffic stops, between January 1, 2015 and December 31, 2015. This information has been analyzed and compared to data derived from the U.S. Census Bureau. The final analysis and recommendations are also included.

The findings presented in this report support that the New Braunfels Police Department is committed to the identification and resolution of all issues relevant to racial profiling according to the state law.

Sincerely,

Tom Wibert
Chief of Police

**The New Braunfels Police Department
Annual Contact Report
(2015)**



Introduction

This report details an analysis of the New Braunfels Police Department's statistical information on citizen contacts for the year 2015. According to the State of Texas, "race" means "of a particular descent, including Caucasian, African, Hispanic, Asian or Native American descent" and Middle Eastern decent.

This report has been prepared to specifically comply with Article 2.132 (7) of the Texas Code of Criminal Procedure regarding the compilation and analysis of citizen contacts data. Because all New Braunfels Patrol vehicles have cameras for the recording of traffic stops, New Braunfels is exempt from the more rigorous reporting requirements of section 2.134. The full copies of the applicable laws and regulations pertaining to this report are contained in Appendix A.

For the purposes of this report and analysis, the following definition of racial profiling is used: 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 (Texas CCP Article 3.05).

The demographic information contained in this report was taken from the demographic profile from the 2010 census. New Braunfels demographic information was compared to Comal County information for analytical and comparison purposes.

The greatest challenge in presenting meaningful numbers is using an appropriate comparison. Census data is the most readily available data that identifies the demographics of the city and county. However, the accuracy of census data is always questioned and even if accurate in the beginning, the data becomes aged and out of date as the decade progresses. Since the data is only collected every ten years, the data becomes less and less accurate with each passing year.

Even though the census data is fresh, there are still questions about the accuracy of the data. In some of the data, the numbers do not add up. This is primarily caused by individuals being counted twice. The Census Bureau considers Hispanics to be a culture and not a race, so there are White Hispanics and Black Hispanics. This can cause some individuals to be counted twice, depending on how the individual completes the Census survey form. On the other hand, the State of Texas considers "Hispanic" to be a race. However, the State does not provide any census data based on their definitions of race.

Other challenges related to the statistical comparisons relate to the percentage of citations written to residents vs. non-residents vs. regional visitors, etc. We have several major thoroughfares through New Braunfels and many people who receive citations do not live in the city or the county.

2010 Population – City of New Braunfels*

Total Population	57,740	
Caucasian (Not Hispanic)	29,902	51.7%
African (Black)	1,081	1.9%
Amer. Indian	385	0.7%
Asian	595	1.0%
Two or More Races	1,311	2.3%
Native Hawaiian/Pacific Islander	24	0.1%
Other	4,212	7.3%
Hispanic	20,230	35.0%

*These numbers provided by the US Census Bureau

2010 Population – Comal County*

Total Population	108,472	
Caucasian (Not Hispanic)	70,055	64.6%
African (Black)	1,727	1.6%
Amer. Indian	645	0.6%
Asian	849	0.8%
Two or More Races	2,348	2.2%
Native Hawaiian/Pacific Islander	51	0.1%
Other	5,808	5.4%
Hispanic	26,989	24.9%

*These numbers provided by the US Census Bureau

The State of Texas has defined "Race or ethnicity" as a particular descent, including Caucasian, African, Hispanic, Asian, Middle Eastern, or Native American descent. Since the State is requiring the reporting, we are required to use their definition but for comparison purposes, we must use Census data and their definitions. The Census does not recognize "Middle Eastern" as a race but the State of Texas does.

New Braunfels Police Department Policy on Racial Profiling

A review of NBPD policies reveal that the department has adopted policies to be in compliance with Article 2.132 of the Texas Code of Criminal Procedure. There are seven specific requirements mandated by Article 2.132 that a law enforcement agency must address. The policy provides clear direction that any form of racial profiling is prohibited and that officers found engaging in inappropriate profiling may be disciplined. The policies also provide a very clear statement of the agency's philosophy regarding equal treatment of all persons regardless of race, ethnicity, or social status. Appendix B lists the corresponding policy for the New Braunfels Police Department..

New Braunfels Police Department Training and Education on Citizen Contacts

Texas Occupation Code § 1701.253 and § 1701.402 require that curriculum be established and training certificates issued on citizen contacts for all Texas Peace officers. Documentation provided by NBPD reveals that citizen contacts training and certification has occurred and has either been provided to all officers in the department or is being obtained for new officers. New officers are typically trained as they are hired.

New Braunfels Police Department Complaint Process and Public Education on Citizen Contacts

Article 2.132 §2(b)3-4 of the Texas Code of Criminal Procedure requires that law enforcement agencies implement a complaint process on citizen contacts and that the agency provide public education on the complaint process. The department has published this information on the NBPD website as well as making the department policy available on this web page, to include the citizen complaint process which includes a specific section on citizen contacts.

New Braunfels Police Department Video Review

In accordance with State mandates, the N.B.P.D. regularly reviews video footage captured by cameras installed in the patrol vehicles. The footage is chosen randomly. In addition to random viewing, the footage is reviewed when related to complaints or evidence. There were no violations of racial profiling prohibitions found during this process.

New Braunfels Police Department Statistical Data on Citizen Contacts

Article 2.132(b)6 requires that law enforcement agencies collect statistical information on traffic stops and detentions with specific information on the race of the person stopped. In addition, information concerning searches of persons and whether or not the search was based on consent or probable cause is also collected. The statistical data collected reveals no racial profiling violations were found during this process.

2015 Analysis of Traffic Stops

New Braunfels Police Officers made a total of 10,230 stops that resulted in citations or arrests during 2015. Figure 1 depicts the percentages of people detained by race.

It should be noted that the race of drivers is determined by the officer's perception. The law allows for the determination to be made by either perception or by asking. However, it is generally believed that asking for the person's race would often result in an argument or confrontation due to the issue of race being brought up by the officer. This could explain the number of "Other/Unknown" race determination.

Figure 1

Traffic stops resulting in Citations or Arrests

	Caucasian	Asian	Hispanic	African/ Black	Middle Eastern	Amer. Indian	Other/ Unk.*
Total Contacted	6,662	138	2,807	544	30	48	1
Percentage	65.1%	1.3%	27.4%	5.3%	0.3%	0.5%	0.0%
New Braunfels Population	51.8%	1.0%	35.0%	1.9%	Not shown in survey	0.7%	9.6%

These figures are not surprising due to the traffic pattern of a major interstate highway through the city. The percentages of individuals stopped are similar to the local and county population make up. It should be noted that officers do not stop only city residents or County residents. They often stop individuals who live outside of the County. The major thoroughfares in New Braunfels bring county, tourist, regional, and out-of-state residents through the city. However, the use of city and county population data is most appropriate because these residents would have the highest likelihood of using New Braunfels roadways. Using the city and county population data, percentage of traffic stops by race appear both expected and understandable.

2015 Analysis of Persons Searched

The State statute requires police departments to capture data related to searches. Unfortunately, the statute does not define “search”. The term “search” can mean different things to different people and the term can mean one thing to law enforcement and another to citizens. The definitions listed below are the terms and definitions relative to law enforcement.

Frisk – a “frisk” is used when an officer has a reasonable suspicion that the individual may be armed or may have a weapon within reach in the vehicle. The frisk may involve the person or it may involve the vehicle. The officer can check for weapons in those areas of a vehicle that are within reach of the vehicle occupant. This is not considered a “search” by law enforcement but might be considered a search by the vehicle occupant.

Vehicle Search – a complete search of a vehicle based on probable cause or consent. If an officer has probable cause to believe that there is contraband or evidence in a vehicle, the officer may search the vehicle. The vehicle occupant can also give consent for the officer to search the vehicle regardless whether probable cause exists.

Vehicle Inventory – a vehicle inventory is conducted after an individual is arrested to ensure the safekeeping of any valuables in the vehicle. The department is responsible for the vehicle and its contents after an individual is arrested out of that vehicle. The inventory is not considered a search by law enforcement but may be considered a search by the vehicle owner.

Search incident to arrest – This search refers to a search of an individual after they have been arrested. The Courts have recognized that it is necessary to search individuals after they are arrested to ensure the safety of the officers and the security of the jail facility.

The table below reports the summaries for the total number of persons searched subsequent to being stopped by NBPD for traffic offenses and either cited to court or searched prior to being arrested. The numbers do not include searches incident to arrest or vehicle inventories. These numbers were not included because these searches are not discretionary in nature, they are required after an arrest. Individuals are searched after being stopped for a variety of reasons. Officers may be concerned for their personal safety (the possibility of a weapon), they may have probable cause that a crime has been committed and the person stopped is concealing evidence of the crime, or they may only have a suspicion of a criminal offense and request consent from the person to search the person or vehicle.

Figure 2
Searches by Race

	Caucasian	Asian	Hispanic	African	Middle Eastern	Amer. Indian	Unknown
Total Detained	6692	140	2,832	548	30	48	41
Total Searched (not incident to arrest)	133	3	88	13	2	1	0
Searched with Probable Cause	77	0	47	8	1	1	0
Searched by Consent	56	3	41	5	1	0	0

Recent legislation changes require that agencies submit specified data to the Texas Commission on Law Enforcement (TCOLE). The data submitted is as follows:

New Braunfels Police department TCOLE Tier I Submitted Data 2015

Number of motor vehicle stops:

- | | | |
|----|-------------|---------------|
| 1. | <u>9550</u> | citation only |
| 2. | <u>22</u> | arrest only |
| 3. | <u>658</u> | both |

4. 10,230 Total

Race or Ethnicity:

- | | | |
|------|-------------|-----------------|
| 5. | <u>544</u> | African |
| 6. | <u>138</u> | Asian |
| 7. | <u>6662</u> | Caucasian |
| 8. | <u>2807</u> | Hispanic |
| 9. | <u>30</u> | Middle Eastern |
| 10. | <u>48</u> | Native American |
| 10a. | <u>1</u> | Other/Unknown |

11. 10,230 Total

Race or Ethnicity known prior to stop?

- | | | |
|-----|--------------|-----|
| 12. | <u>409</u> | Yes |
| 13. | <u>9,821</u> | No |

14. 10,230 Total

Search Conducted?

- | | | |
|-----|--------------|-----|
| 15. | <u>386</u> | Yes |
| 16. | <u>9,844</u> | No |

17. 10,230 Total

Was Search Consented?

- | | | |
|-----|------------|-----|
| 18. | <u>106</u> | Yes |
| 19. | <u>280</u> | No |

20. 386 Total

2015 Analysis of Traffic Stops

For comparison, NBPD has included the 2014 traffic stop data as well. During 2014, New Braunfels Police Officers had a total of 10,877 contacts that resulted in a citation as compared to 10,230 contacts that resulted in a citation in 2015. From January 1, 2015 through December 31, 2015, NBPD participated in a STEP grant through the Texas Department of Transportation, which provided funds, allowing more NBPD Officers to be deployed to enforce specific traffic laws within areas of the city of New Braunfels, where low traffic law compliance percentages had been identified.

Figure 3 shows a comparison of 2014 and 2015.

YEAR TO YEAR COMPARISON

A Comparison of Contacts 2014-2015

TRAFFIC CONTACTS - 2014

	Number	Percent*
<u>Caucasian</u>	<u>6778</u>	<u>62.3%</u>
<u>African</u>	<u>453</u>	<u>4.2%</u>
<u>Hispanic</u>	<u>2343</u>	<u>21.5%</u>
<u>Asian</u>	<u>124</u>	<u>1.1%</u>
<u>Middle East.</u>	<u>3</u>	<u>0.1%</u>
<u>Native Amer.</u>	<u>26</u>	<u>0.2%</u>
<u>Other/Unk</u>	<u>1150</u>	<u>10.6%</u>
	10,877	100%

TRAFFIC CONTACTS – 2015

	Number	Percent*
<u>Caucasian</u>	<u>6662</u>	<u>65.1%</u>
<u>African</u>	<u>544</u>	<u>5.3%</u>
<u>Hispanic</u>	<u>2807</u>	<u>27.5%</u>
<u>Asian</u>	<u>138</u>	<u>1.3%</u>
<u>Middle East.</u>	<u>30</u>	<u>0.3%</u>
<u>Native Amer.</u>	<u>48</u>	<u>0.5%</u>
<u>Unknown</u>	<u>1</u>	<u>0.0</u>
	10,230	100%

Data Collection Issues

There are a variety of issues with any data collected on citizen contacts. First, although the law mandates collection, there is not a standardized method of collecting data or what the data should entail. Hence, there is wide variation in the reporting by law enforcement across the state. There is an effort to change this and agencies are now required to submit certain data to the Texas Commission on Law Enforcement. (TCOLE).

Second, the determination of race is sometimes difficult and is left to the officer's opinion. Currently, race is not identified on a State of Texas driver's license. As previously discussed, asking a person for their race could create the perception of a bias. As a result, in compliance with the law, the officers of the New Braunfels Police Department determine race through their perception. Hence, each officer must code race as best they can based on physical appearance and surnames.

Finally, the law provides no standards by which to compare the data collected. It only states that a report will be provided to the legislative body. If a comparison is to be made, any statistics gathered must be compared to a variety of other measures and must take into account regional and city variations. For example, this report compared New Braunfels statistics with both the city and Comal County in an attempt to show that although New Braunfels has certain percentages of various races, the same is not necessarily true for the county or the region. City population statistics do not take into account the effect that a major arterial roadway connecting the region will have or the impact that the level of crime in a large retail area will have on decisions to detain or search. In short, a growing community with construction and traffic might very well have higher rates of detentions and searches of minorities than is reflected in their actual population. This does not mean that the agency is racially profiling.

Summary

Statistics alone will never reveal whether police officers engage in racial profiling or not. The police department makes every effort to ensure that each officer is trained and held to high standards of conduct. In the end, a police department has to rely on the ethics of its officers and the values instilled within the organization. Officers are held accountable for their actions and supervisors are trained to critique the day-to-day performance of their officers. The N.B.P.D. is proud of its officers and of the diversity and the racial composition of the department.

The N.B.P.D. is committed to providing police services in a fair and bias free manner. New Braunfels police officers are some of the finest and most well trained officers in the region and are committed to avoiding any form of bias based policing. Our mission remains to provide the highest level of professional police and emergency services, and dedicating ourselves to protecting life and property, while maintaining the highest ethical standards.

Appendix A

Racial Profiling Statutes and Laws

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.

Added by Acts 2001, 77th Leg., ch. 947, § 2, eff. Sept. 1, 2001.

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

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

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 motor vehicle 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, 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 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 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.
- (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 motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle 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 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.

- (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.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1172](#), Sec. 25, eff. September 1, 2009.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

- (a) In this article:
 - (1) "Motor vehicle stop" has the meaning assigned by Article 2.132(a).
 - (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 law enforcement agency shall submit a report containing the incident-based data 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.
- (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; and
 - (B) examine the disposition of motor vehicle 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 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 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, in accordance with Section 1701.162, Occupations Code, 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.
- (g) On a finding by the Commission on Law Enforcement 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.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1172](#), Sec. 27, eff. September 1, 2009.

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 (not shown in this report due to being exempt from that article) 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 stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly

used to make motor vehicle stops is equipped with transmitter-activated equipment; and

- (B) each motor vehicle 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 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 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).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [1172](#), Sec. 28, eff. September 1, 2009.

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.

§ 1701.253. School Curriculum

(a) The commission shall establish minimum curriculum requirements for preparatory and advanced courses and programs for schools subject to approval under Section 1701.251(c)(1).

(b) In establishing requirements under this section, the commission shall require courses and programs to provide training in:

(1) the investigation and documentation of cases that involve:

(A) child abuse or neglect;

(B) family violence; and

(C) sexual assault;

(2) issues concerning sex offender characteristics; and

(3) crime victims' rights under Chapter 56, Code of Criminal Procedure, and Chapter 57, Family Code, and the duty of law enforcement agencies to ensure that a victim is afforded those rights.

(c) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on civil rights, **racial** sensitivity, and cultural diversity for persons licensed under this chapter.

(d) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries; and

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made.

Text of subsection (e) added by Acts 2001, 77th Leg., ch. 657, § 4

(e) As part of the minimum curriculum requirements relating to the vehicle and traffic laws of this state, the commission shall require an education and training program on laws relating to the operation of motorcycles and to the wearing of protective headgear by motorcycle operators and passengers. In addition, the commission shall require education and training on motorcycle operator profiling awareness and sensitivity training.

Text of subsection (e) added by Acts 2001, 77th Leg., ch. 897, § 1

(e) Training officers and recruits in investigation of cases required by Subsection (b)(1)(B) shall include instruction in preventing dual arrest whenever possible and conducting a thorough investigation to determine which person is the predominant aggressor when allegations of family violence from two or more opposing persons are received arising from the same incident.

Text of subsection (e) added by Acts 2001, 77th Leg., ch. 929, § 5

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on asset forfeiture under Chapter 59, Code of Criminal Procedure, 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.

Text of subsection (e) added by Acts 2001, 77th Leg., ch. 947, § 4

(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.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 657, § 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 897, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 929, § 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 947, § 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1034, § 14, eff. Sept. 1, 2001.

§ 1701.402. Proficiency Certificates

(a) The commission shall issue certificates that recognize proficiency based on law enforcement training, education, and experience. For this purpose the commission shall use the employment records of the employing agency.

(b) As a requirement for a basic proficiency certificate, the commission shall require completion of local courses or programs of instruction on federal and state statutes that relate to employment issues affecting peace officers and county jailers, including:

- (1) civil service;
- (2) compensation, including overtime compensation, and vacation time;
- (3) personnel files and other employee records;
- (4) management-employee relations in law enforcement organizations;
- (5) work-related injuries;
- (6) complaints and investigations of employee misconduct; and
- (7) disciplinary actions and the appeal of disciplinary actions.

(c) An employing agency is responsible for providing the training required by this section.

Text of subsec. (d) as added by Acts 2001, 77th Leg., ch. 929, § 6

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

Text of subsec. (d) as added by Acts 2001, 77th Leg., ch. 947, § 5

(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).

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 929, § 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 947, § 5, eff. Sept. 1, 2001.

Appendix B
New Braunfels Police Department
RACIAL PROFILING
POLICY

Annual Review Date: February 2013

I PURPOSE

The purpose of the policy is to reaffirm the New Braunfels Police Department's commitment to unbiased policing in all its encounters between officer 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; 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 law. Officers shall actively enforce state and federal laws in a responsible and professional manner, without regard to race, ethnicity or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in this policy. This policy shall be applicable to all persons, whether drivers, passengers or pedestrians.

Officers shall conduct themselves in a dignified and respectful manner at all times when dealing with the public. Two of the fundamental rights guaranteed by both the United States and Texas constitutions are equal protection under the law and freedom from unreasonable searches and seizures by government agents. The right of all persons to be treated equally and to be free from unreasonable searches and seizures must be respected. Racial profiling is an unacceptable patrol tactic and will not be condoned.

This policy shall not preclude officers from offering assistance, such as upon observing a substance leaking from a vehicle, a flat tire, or someone who appears to be ill, lost or confused. Nor does this policy prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.

III DEFINITIONS

Racial Profiling: A law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants or other citizen contacts.

The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision. Race, ethnicity or national origin may be legitimate factors in a detention decision when used as part of an actual description of a specific suspect for whom an officer is searching. Detaining an individual and conducting an inquiry into that person's activities simply because of that individual's race, ethnicity or national origin is racial profiling. Examples of racial profiling include but are not limited to the following:

- Citing a driver who is speeding in a stream of traffic where most other drivers are speeding because of the cited driver's race, ethnicity or national origin.
- 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 possess that specific make or model of vehicle.
- 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.

A law enforcement agency can derive two principles from the adoption of this definition of racial profiling:

- Police may not use racial or ethnic stereotypes as factors in selecting whom to stop and search, while police may use race in conjunction with other known factors of the suspect.
- Law enforcement officers may not use racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling is not relevant as it pertains to witnesses, etc.

Race or Ethnicity : Of a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern.

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.

Traffic Stop: A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic.

IV PROCEDURES

A. TRAINING

Officers are responsible 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.

All officers shall complete a 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, whichever date is earlier. A person who on September 1, 2001, held a TCOLE intermediate proficiency certificate, or who had held a peace officer license issued by TCOLE for at least two years, shall complete a

TCOLE training and education program on racial profiling not later than September 1, 2003.

B. COMPLAINT INVESTIGATION

1. The department shall accept complaints from any person who believes he or she has been stopped or searched based on racial, ethnic or national origin profiling. No person shall be discouraged, intimidated or coerced from filing a complaint, nor discriminated against because he or she filed such a complaint.

2. Any employee who receives an allegation of racial profiling, including the officer who initiated the stop, shall record the person's name, address and telephone number, and forward the complaint through the appropriate channel or direct the individual(s) as to the proper manner in which to file a complaint. Any employee contacted shall provide to that person a copy of a complaint form or the department process for filing a complaint. All employees will report any allegation of racial profiling to their superior before the end of their shift.

3. Investigation of a complaint shall be conducted in a thorough and timely manner. All complaints will be acknowledged in writing to the initiator who will receive disposition regarding said complaint within a reasonable period of time. The investigation shall be reduced to writing and any reviewer's comments or conclusions shall be filed with the chief. When applicable, findings and/or suggestions for disciplinary action, retraining, or changes in policy shall be filed with the Chief.

4. If a racial profiling complaint is sustained against an officer, it will result in appropriate corrective and/or disciplinary action, up to and including termination.

5. If there is a departmental video or audio recording of the events upon which a complaint of racial profiling is based, upon commencement of an investigation by this department into the complaint and written request of the officer made the subject of the complaint, this department shall promptly provide a copy of the recording to that officer.

C. 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.

D. CITATION DATA COLLECTION & REPORTING

An officer is required to collect information relating to traffic stops in which a citation is issued.

On the citation officers must include

1. the violators race or ethnicity;
2. whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual pursuant to any vehicle stop.
3. whether a search was conducted;
4. was the search consensual; and
5. arrest for this cited violation or any other violation.

By March of each year, the department shall submit a report to the Texas Commission on Law Enforcement, as well as their governing board that includes the information gathered by the citations. The report will include:

1. a breakdown of citations by race or ethnicity;
2. number of citations that resulted in a search;
3. number of searches that were consensual; and
4. number of citations that resulted in custodial arrest for this cited violation or any other violation.

Not later than March 1st of each year, this department shall submit a report to TCOLE, as well as our governing body containing this information from the preceding calendar year.

E. USE OF VIDEO AND AUDIO EQUIPMENT

Each motor vehicle regularly used by this department to make traffic and pedestrian stops is equipped with a video camera and transmitter-activated equipment, and each motorcycle regularly used by this department to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

Each traffic and pedestrian stop made by an officer of this department that is capable of being recorded by video and audio, or audio, as appropriate, is recorded.

This department shall retain the video and audiotapes, or the audiotape of each traffic and pedestrian stop for at least ninety (90) days after the date of the stop. If a complaint is filed with this department alleging that one of our officers has engaged in racial profiling with respect to traffic or pedestrian stop, this department shall retain the video and audiotapes, or the audiotape of the stop until final disposition of the complaint.

Supervisors will ensure officers of this department are recording their traffic and pedestrian stops. A recording of each officer will be reviewed at least once every ninety (90) days.

* If the equipment used to record audio and/or video of traffic or pedestrian stops is malfunctioning or otherwise not operable, the officer making the stop may properly record and report the information as required in Section F.

F. COLLECTION AND REPORTING INFORMATION GATHERED FROM TRAFFIC AND PEDESTRIAN STOPS

An 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 record and report the following information:

1. A physical description of each person detained as a result of the stop, including:
 - a. The person's gender;
 - b. The person's race or ethnicity, as stated by the person or as determined by the officer to the best of his/her ability.
2. If the officer knew the race or ethnicity of the individual detained before detaining that individual pursuant to any vehicle stop.
3. The street address or approximate location of the stop. The suspected offense or the traffic law or ordinance alleged to have been violated.
4. Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search.
5. Whether probable cause to search existed and, if so, the fact(s) supporting the existence of that probable cause.
6. Whether any contraband was discovered in the course of the search and, if so, the type of contraband discovered.
7. Whether the officer made an arrest as a result of the stop and/or search, and, if so, a statement of the offense charged.
8. Whether the officer issued a warning or a citation as a result of the stop and, if so, a statement of the offense charged.

This department shall compile and analyze the information contained in these individual reports. Not later than March 1st of each year, this department shall submit a report to TCOLE, as well as our governing body containing the information compiled from the preceding calendar year in a manner they approve.

This report will include:

1. A comparative analysis of the information contained in the individual reports in order to:

- a. Determine the prevalence of racial profiling by officers in this department;
and
- b. Examine the disposition of traffic and pedestrian stops made by this department's officers, including searches resulting from stops.

2. Information relating to each complaint filed with this department alleging racial profiling.

This report will not include identifying information about a peace officer who makes a stop or about an individual who is stopped or arrested by a peace officer.

Checklist

The following requirements **were** met by the New Braunfels Police Department in accordance with Senate Bill 1074 and House Bill 3389:

- Clearly defined act or actions that constitute racial profiling
- Statement indicating prohibition of any peace officer employed by the New Braunfels 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
 - e) Whether the officer knew the race or ethnicity prior to any vehicle stop.
- Produce an annual report on police contacts (Tier 1) and present this to the Texas Commission on Law Enforcement and the local governing body by March 1, 2016.
- Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.