

RACIAL PROFILING

2 HOURS

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REFERENCES:

Act 1207 of 2003
Act 2136 of 2005
Act 1048 of 2007
Arkansas Statutes 12-12-1401 through 12-12-1404
Act 1458 of 2009

A Resource Guide on Racial Profiling Data Collection Systems, U.S. Department of Justice. 9-2002

Critical Issues in Racially Biased Policing, Police Executive Research Forum, Washington, D.C. 2-2003

TRAINING AIDS:

Power Point Presentation

"Racially Biased Policing"- DVD

COORDINATION/PERSONNEL:

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INSTRUCTIONAL UNIT TITLE: Racial Profiling

LESSON PURPOSE: To give the officer an overview of the concept of Racial Profiling and to give the officers guidelines to prevent the act of Racial Profiling.

TRAINING OBJECTIVES: Following this block of instruction, the student will be able to:

1. define Racial Profiling.
2. differentiate between low and high discretion stops.
3. cite the covered statistics on Racial Profiling.
4. better understand minority perceptions of police contacts.
5. discuss Arkansas Statutes concerning Racial Profiling.

TIME ALLOTTED: 2 Hours

INSTRUCTIONAL METHOD: Lecture

TARGET GROUP: Basic

STUDY ASSIGNMENTS: None

I. INTRODUCTION

During this block of instruction we are going to examine a very controversial subject. We are going to look at the practice of "Racial Profiling." We will define this term, examine recent legislation, and discuss ways to prevent "Racial Profiling" from occurring.

II. BODY

A. THE BASIC CONCEPT OF PROFILING

Slide#2

1. The principle of profiling is a viable and practical law enforcement activity.
2. As an officer you will be taught what the profile of an individual criminal activity would be.
(Ask the students to list some of these criminal activities that we have profiles for.) DWI, Burglary, Batterer and others would be the more common.
3. The problem in profiling occurs when we add the issue of racial or ethnic background.

B. PERCEPTIONS OF RACIAL PROFILING.

Slide#10-12

1. One of the greatest problems associated with racial profiling is the perceptions of the individuals involved in the process.
2. When an officer is asked what racial profiling is they will almost always respond with issues about vehicle stops.
3. When you ask a member of the minority community what racial profiling is they will refer to traffic stops but will also refer to many other law enforcement activities.
4. Because there is a difference in perception the issue of racial profiling becomes even more complex.
5. For our training purposes we will focus on law enforcement actions on levels that go beyond just a traffic stop.

C. RACIAL PROFILING DEFINITION

Slide#4-5,#15-16

1. Racial profiling is defined in Act 1207 of 2003 and 2136 of 2005 (AR Statute 12-12-1401).

2. Racial profiling means the practice of a law enforcement officer relying, **to any degree**, on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.
3. No member of the Arkansas State Police, Arkansas Highway Police, a Sheriff's dept., a municipal police dept., constable, or any other law enforcement officer of this state shall engage in racial profiling.
4. Racial profiling is taking further action after a stop or contact based on racial or ethnic background.
5. Racial profiling does not include the use of a personal or vehicle description in the attempt to locate a particular suspect or suspects.

D. Act 1207 of 2003 (AR Statute 12-12-1403)

Slide#6-8,#17-18

1. Requires that each law enforcement agency in Arkansas develop a Racial Profiling Policy by January 1, 2004 that:
 - a. Prohibits Racial Profiling
 - b. Requires that law enforcement officers have reasonable suspicion prior to a stop, arrest, or detention.
 - c. Defines reasonable suspicion, to insure that individuals are stopped for valid reasons, and that race, ethnicity, national origin, or religion are not a basis for stops for violations for which other non-group-members would not be stopped
 - d. Requires law enforcement officers to identify themselves by full name and jurisdiction, and state the reason for the stop, and when possible, present written identification.
 - e. Provides for a systematic review process by supervising personnel within a department or law enforcement agency for investigating allegations of racial profiling to determine whether any officers of the law enforcement agency have a pattern of stopping or searching persons.
 - f. If the review reveals a pattern, requires an investigation to determine whether a trend is present indicating that an officer may be using race, ethnicity, national origin, or religion as a basis for investigating other violations of criminal law.

- g. Provides, where a supervisor or other reviewer has detected a pattern of racial profiling, timely assistance, remediation, or discipline for individual law enforcement officers who have been found to be profiling by race, ethnicity, national origin or religion.
- h. Ensures that supervisors will not retaliate against officers who report racial profiling by others.
- i. Provides standards for the use of in-car audio and visual equipment, including the duration for which the recordings are preserved.
 - (1) Each law enforcement agency will provide annual training to all officers that:
 - (a) Emphasizes the prohibition against racial profiling
 - (b) Ensures that operating procedures adequately implement the prohibition against racial profiling and that the agency's law enforcement personnel have copies of, understand, and follow the operating procedures.
 - (c) Includes foreign language instruction, if possible, to ensure adequate communication with the residents of a community.
 - (d) Includes guidelines that stress understanding and respect for racial, ethnic, national, religious, and cultural differences, and development of effective and appropriate methods of carrying out the law enforcement duties.

E. Act 2136 of 2005 and Act 1048 of 2007 amends 1207 of 2003 as follows (AR Statute 12-12-1404) Slide #9,#10

1. Each law enforcement agency shall include a copy of its policy in the annual report submitted to the Division of Legislative Audit.
2. The Division of Legislative Audit shall submit to the Attorney General the names of any law enforcement agency that fails to comply with (1) and the Attorney General shall take such action as may be necessary to enforce this section.
3. The Division of Legislative Audit shall forward to the Attorney General a copy of each policy received by the division. The Attorney General shall review each policy to insure that the policy meets the standards required by law.

4. Each law enforcement agency may promote public awareness of the law enforcement agency's efforts to comply with the mandates of this section.
5. Each law enforcement agency shall make available for public inspection a copy of the law enforcement agency's policy.

F. Arkansas Commission on Law Enforcement Standards and Training

1. Adopt a training module an initial training module concerning diversity and racial sensitivity and a training module for biannual re-certification for all recruits and officers who have completed the initial training. Slide#20
2. All officers currently employed are required to complete the initial training by June 30, 2006.
3. By 1-1-06 shall promulgate rules that will set significant standards for all training required. Slide#21
4. Is authorized to make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, 25-15-201.
5. May review and recommend changes to the racial profiling policy of any law enforcement agency. Slide#22
6. Upon request the racial profiling policy of any agency will be made available to the commission for review and recommended changes.
7. Act 768 of 2009 established the Racial Profiling Hotline.

G. Task Force on Racial Profiling Slide#23-29

1. The governor shall appoint a 13-member task force on Racial Profiling.
2. The Governor shall appoint (4) active or retired law enforcement officers or prosecuting attorneys, (3) members associate4d with civil rights or community organizations, (2) lawyers practicing substantially in the field of criminal defense, and (4) citizen representatives.
 - a. The task force shall:
 - (1) Monitor the implementation and compliance of the racial profiling legislation among law enforcement agencies.
 - (2) Serve in an advisory capacity to the Director of the Department of Arkansas State Police and the State Board of Education regarding the public education and awareness campaigns on racial profiling.

- (3) Study the effectiveness and feasibility of a racial profiling data collection requirement in the State of Arkansas.
- (4) Work with law enforcement agencies and civil rights advocates to determine an effective and appropriate penalty for violating the prohibition on racial profiling.
- (5) Compile an annual report of all complaints and investigations regarding racial profiling including the task force's findings and recommendations and provide the report to the Governor, Legislative Council, and Arkansas Legislative Black Caucus of the General Assembly.
- (6) Report its findings and recommendations to the Governor and Legislative Council before 12-31-2011.
- (7) Facilitate an annual symposium on racial profiling for the Governor's Office, Arkansas Legislative Black Caucus of the General Assembly, Department of Arkansas State Police and other interested persons to:
 - (a) Serve as a forum for dialogue to promote awareness and understanding of racial profiling between the public, law enforcement agencies, and other government agencies.
 - (b) Disseminate information and materials about the best practices toward combating misinformation and prejudice.
 - (c) Provide assistance to community leaders and law enforcement agencies in the fight against racial profiling.
 - (d) Advocate and promote a state policy agenda that establishes the best practices for addressing racial profiling.
 - (e) The commission (did) expire on 12-31-06 but was reinstated by Act 1458 of 2009.

H. THE REASON FOR THIS LEGISLATION

Slide#13-14

1. Nationally, a problem has been identified in regard to racial profiling.

2. Several states and local law enforcement agencies have been successfully sued for racial profiling.
3. Racial Profiling is creating an atmosphere of distrust between law enforcement and minorities.
4. Several states have already passed legislation that clearly defines and prohibits racial profiling.

I. THE CONCEPT OF MINORITIES AS PRIMARY VIOLATORS Slide#30-34

1. While most officers are offended by the statement that law enforcement targets minorities as offenders, the facts bear out that it is a practice that is not being done by a few "bad apples" but, rather, a standard practice.
2. Several studies of offender racial breakdown have been made. I will use the results of studies that are cited in publications about racial profiling.
 - a. The most cited study was conducted by Dr. John Lamberth of Temple University. His study concluded that 28.4% of blacks that were stopped and searched were found with contraband and 28.8% of whites that were stopped and searched had contraband.
 - b. The 1999 New Jersey Attorney General's study found that 10.5% of whites and 13.5% of blacks that were searched had contraband.
 - c. The 1999 New York Attorney General's report found that 12.6% of whites, 10.5% of blacks and 11.3% of Hispanics had contraband when searched.

While there are different percentages reflected in each study, there is no significant difference between blacks and whites being found with contraband.

J. BASIS FOR VIOLATOR CONTACTS Slide#35-40

1. The most common way of officers making citizen contacts is traffic stops.
2. Contacts can be broken down into two types. This breakdown is based on officer discretion.
3. Discretion defined:
 - a. For classroom purposes, we will define discretion as "the ability of an officer to make decisions about the actions that they will take." The exercise of discretion gives an officer a great deal of power over the

individual that they are dealing with. As with any type of power, discretion is subject to abuse and must be closely monitored.

4. Types of Discretion:

a. Low discretion – These stops are the ones that are based on externally generated reports of a crime or suspicious activity. It could also be a visible violation of law that occurs in the presence of the officer.

b. Examples of low discretion:

- (1) DWI
- (2) Excessive speed – 20 miles plus over the speed limit.
- (3) A report of a crime coupled with a suspect or vehicle description.
- (4) While these are a few examples and they don't include every situation, they are examples that should help you understand.

The New York Attorney General's Study found that only 30% of officer stops were based on descriptions.

c. High discretion – This stop involves the officer making stops without external descriptions. It normally involves minor violations of the law

d. Examples of high discretion actions:

- (1) Under-inflated tires
- (2) Failure to signal
- (3) Drove left of center or off road
- (4) Obscured license plate
- (5) License plate light out
- (6) Wrong person in a neighborhood.
- (7) Wrong car for that person.

These are a few examples but it should give you an idea of what constitutes high discretion stops.

K. STUDIES OF RACIAL PROFILING

Slide#41-42

1. Many studies have been done to validate the public's accusations of racial profiling.
2. We will examine the study conducted by Dr. John Lamberth of Temple University.
3. Lamberth conducted his study by:
 - a. Collecting data on arrests made on a section of the New Jersey Turnpike for a three year period.
 - b. Collecting driving population data by placing observers on this section of the turnpike and having them count and record drivers by race.
 - b. Collecting violation data by having the observers set their cruise control at 5 M.P.H. over the posted speed and record the drivers that passed them by race. Other violations were also recorded by race.
4. Conclusions drawn by Lamberth:
 - a. 13.5% of the driving population was black.
 - b. 73.2% of those stopped and arrested were black.
 - c. There was no difference in visible traffic violations by race.
 - d. The foundations conclusion was that blacks were being stopped significantly more than whites.

Many other studies have been done but Lamberth's was the most comprehensive and closely followed the principles of scientific sampling.

L. THE INTENT OF NATIONWIDE STUDIES AND LEGISLATION

Slide#43

1. There is not any intent to prevent officers from making "probable cause" stops.
2. The intent is for an even-handed impartial application of criminal procedure

M. AGENCY STEPS TO TAKE TO AVOID RACIAL PROFILING

Slide#44

1. If complaints are made, act on them.

2. Collect data on vehicle stops.
3. First-line supervisors must be aware of what the street officers are doing.
4. Attempt to hire and retain only the best officers.

N. OFFICER STEPS TO TAKE TO AVOID RACIAL PROFILING Slide#47-48

1. Be sure that each stop has a basis for the stop that is legal, clear and explainable.
2. Don't conduct any search unless real probable cause for a search exists.
3. Identify yourself and give the reason for the stop.
4. If you stop based on a description and you are obviously dealing with someone who is not the suspect explain the reason for the stop and apologize for the inconvenience.

O. DATA COLLECTION Slide#45-46

1. The wording of Act 2136 of 2005 clearly indicates that there will be some form of data collection implemented by the task force.
2. Try to find the easiest and shortest method to collect the needed data.
3. Never try to short cut the data collection. Bad data can harm you and your agency.
4. Do not use the requirement of data collection as an excuse for not doing your job.
5. Make use of the data. Properly handled data can show how effective our actions are and give a clear presentation of officer and agency performance.

III. CONCLUSION

During this block of instruction, we have examined the current data available on Racial Profiling and looked at the actions required by Act 1207 of 2003 and subsequent legislation.

If we apply this data to our current enforcement practices, we can see what changes need to be made and how these changes can enhance our ability to effectively do our job.