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# BIAS BASED PROFILING ANALYSIS

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2018



ROCKPORT POLICE DEPARTMENT

## **Executive Summary**

Article 2.132 (7) of the Texas Code of Criminal Procedure requires the annual reporting to the local governing body of data collected on the race or ethnicity of individuals stopped and issued citations or arrested for traffic violations and whether or not those individuals were searched. Since the law provides no clear instruction to a governing body on how to review such data, the Rockport Police Department developed this analysis and review to assist the City Council in reviewing the data.

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

- **A COMPREHENSIVE REVIEW OF THE ROCKPORT POLICE DEPARTMENT'S BIAS BASED PROFILING POLICY SHOWS THAT THE ROCKPORT POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH ARTICLE 2.132 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.**
- **A REVIEW OF THE INFORMATION PRESENTED AND SUPPORTING DOCUMENTATION REVEALS THAT THE ROCKPORT POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH TEXAS LAW ON TRAINING AND EDUCATION REGARDING RACIAL PROFILING.**
- **A REVIEW OF THE DOCUMENTATION PRODUCED BY THE DEPARTMENT REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE RACIAL PROFILING COMPLAINT PROCESS AND PUBLIC EDUCATION ABOUT THE COMPLAINT PROCESS.**
- **ANALYSIS OF THE DATA REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE COLLECTION OF BIAS BASED PROFILING DATA.**
- **THE ANALYSIS OF STATISTICAL INFORMATION FROM ROCKPORT POLICE DEPARTMENT REVEALS THAT THERE ARE NO METHODOLOGICALLY CONCLUSIVE INDICATIONS OF SYSTEMIC BIAS BASED PROFILING BY THE DEPARTMENT.**
- **THE ROCKPORT POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW CONCERNING THE PROHIBITION OF BIAS BASED PROFILING.**
- **THE ROCKPORT POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW CONCERNING THE REPORTING OF INFORMATION TO TCOLE.**

## **Introduction**

This report details an analysis of the Rockport Police Department's policies, training, and statistical information on bias based profiling for the calendar year 2018. This report has been prepared to specifically comply with Article 2.132 of the Texas Code of Criminal Procedure (CCP) regarding the compilation and analysis of bias based profiling data. Specifically, the analysis will address Articles 2.131 – 2.135 of the CCP and make a determination of the level of compliance with those articles by the Rockport Police Department in 2018. The full copies of the applicable laws and regulations pertaining to this report are contained in Appendix A.

This report is divided into six analytical sections: Rockport Police Department's bias based profiling policy; Rockport Police Department's training and education on bias based profiling; Rockport Police Department's complaint process and public education on bias based profiling; analysis of statistical data on bias based profiling; analysis of Rockport Police Department's compliance with applicable laws on bias based profiling; and a final section which includes completed data and information reporting forms required to be sent to TCOLE beginning in 2011.

For the purposes of this report and analysis, the following definition of bias based profiling is used: bias based 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).

## **Rockport Police Department Policy on Racial Profiling**

A review of Rockport Police Department's "Bias Based Profiling" policy revealed that the department has adopted policies in compliance with Article 2.132 of the Texas CCP (see Appendix B). There are seven specific requirements mandated by Article 2.132 that a law enforcement agency must address. All seven are clearly covered in Rockport Police Department's bias based profiling policy. Rockport Police Department policies provide clear direction that any form of bias based profiling is prohibited and that officers found engaging in inappropriate profiling may be disciplined in accordance with chapter 2.02 of the Rockport Police Department Policies and Procedures pertaining to receipt, processing, investigation, and adjudication of complaints. The policies also provide a very clear statement of the agency's philosophy regarding equal treatment of all persons regardless of race, ethnicity, or national origin. Appendix C lists the applicable statute and corresponding Rockport Police Department regulation.

***A COMPREHENSIVE REVIEW OF ROCKPORT POLICE DEPARTMENT'S BIAS BASED PROFILING POLICY SHOWS THAT THE ROCKPORT POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH ARTICLE 2.132 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.***

## **Rockport Police Department Training and Education on Racial Profiling**

Texas Occupation Code § 1701.253 and § 1701.402 require that curriculum be established and training certificates issued on bias based profiling for all Texas peace officers. Documentation provided by Rockport Police Department reveals that bias based profiling training and certification is current for all officers in 2018. The department has also identified officers who will need updated training in 2019 and has planned for those officers to attend the training. All Rockport Police

Department officers are trained and instructed on the bias based profiling law in Texas. In addition, officers also receive mandatory cultural diversity training. All officers have been instructed on the policies and procedures regarding bias based profiling and the accompanying complaint process as well.

***A REVIEW OF THE INFORMATION PRESENTED AND SUPPORTING DOCUMENTATION REVEALS THAT THE ROCKPORT POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH TEXAS LAW ON TRAINING AND EDUCATION REGARDING BIAS BASED PROFILING.***

## **Rockport Police Department Complaint Process and Public Education on Bias Based Profiling**

Article 2.132 §(b)3-4 of the Texas Code of Criminal Procedure requires that law enforcement agencies implement a complaint process on bias based profiling and that the agency provide public education on the complaint process. Rockport Police Department's Bias Based Profiling Policy Section 1.06 covers this requirement. The City of Rockport Police Department has also taken the following actions to ensure that the information relating to the policy disallowing bias based profiling has been made known to the public:

1. Created a complaint form which is available at any time from any officer or at any time from the lobby of the police station; and
2. Officers of the department have been instructed on the bias based profiling law and are available to, and have answered requests about, the law and complaint procedure.

***A REVIEW OF THE DOCUMENTATION PRODUCED BY THE DEPARTMENT REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE BIAS BASED PROFILING COMPLAINT PROCESS AND PUBLIC EDUCATION ABOUT THE COMPLAINT PROCESS.***

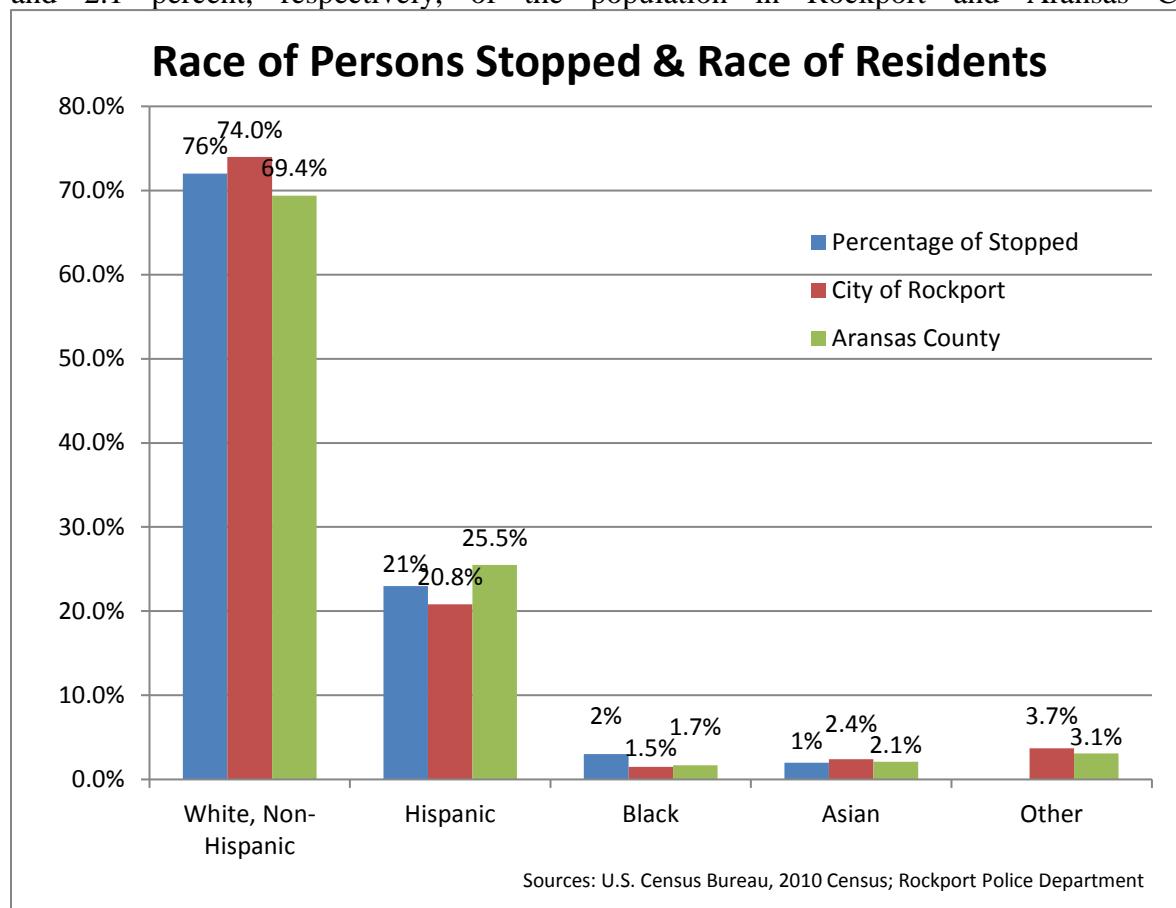
## **Rockport Police Department Statistical Data on Bias Based Profiling**

Article 2.132(b) 6 requires that law enforcement agencies collect statistical information on traffic citations and detentions with specific information on the race of the person cited. In addition, information concerning searches of persons and whether or not the search was based on consent is also collected. Rockport Police Department submitted statistical information on all vehicle stops resulting in a citation or arrest in 2018 and accompanying information on the race of the person stopped. Accompanying this data was the relevant information on searches and arrests.

***ANALYSIS OF THE DATA REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE COLLECTION OF BIAS BASED PROFILING DATA.***

## Analysis of the Data

The chart below depicts the percentages of people stopped by race including Whites, Hispanics, Blacks, Asians, and Others.<sup>1</sup> White drivers constituted 76 percent of all drivers stopped, whereas Whites constituted 74.0 percent of the city population and 69.4 percent of the county population.<sup>2</sup> The chart shows that White drivers were stopped at a rate that is slightly above the percentage of Whites in the city population and above the percentage of Whites in the county population. Hispanic drivers constituted 21 percent of all drivers stopped, whereas Hispanics constituted 20.8 percent of the city population and 25.5 percent of the county population. Hispanics were stopped at rates higher than the percentage of Hispanics found in the city and lower than the percentage of Hispanics found in the county populations. Black drivers constituted 3 percent of all drivers stopped, whereas Blacks constituted 2 percent of the city population and 1.7 percent of the county population. Asian drivers constituted 1 percent of those stopped while they account for 2.4 percent and 2.1 percent, respectively, of the population in Rockport and Aransas County.



The different rates within racial groups between U.S. Census figures and those stopped by police are not significant and can be accounted for by two factors. First, it is important to note that the

<sup>1</sup> The total number of violations is comprised of 5810 citations and 15 arrests for a total of 5795 violations resulting in a citation or arrest. See the TCOLE forms at the end of this report.

<sup>2</sup> City and County population figures are derived from the 2010 Census from the U.S. Census Bureau.

racial and ethnic composition in the counties surrounding Rockport and Aransas County is significantly different. Specifically, the Hispanic populations of the surrounding counties are:

- Calhoun County – 44 %
- Nueces County – 59%
- Refugio County – 46%
- San Patricio County – 52%

Second, the economy of Rockport is based on tourism and on any given day there are as many visitors as there are permanent residents and during certain times of the year more than twice the number of visitors. This is reflected by the 51 percent of stops that were of non-residents. Between these two factors, variation within groups is expected.

As the chart shows, easy determinations regarding whether or not Rockport police officers have "bias based profiled" a given motorist are impossible given the nature of the data that has been collected and presented for this report. The law dictates that police agencies compile aggregate-level data regarding the *rates* at which agencies *collectively* stop motorists in terms of their race/ethnicity. These aggregated data are to be subsequently analyzed in order to determine whether or not *individual* officers are "bias based profiling" motorists. This methodological error, commonly referred to as the "ecological fallacy," defines the dangers involved in making assertions about individual officer decisions based on the examination of aggregate incident level data. In short, one cannot "prove" that an *individual* officer has "bias based profiled" any *individual* motorist based on the rate at which a department stops any given *group* of motorists.

Additional interpretation problems remain in regards to the specific measurement of "bias based profiling" as defined by Texas state code. For example, officers are currently forced to make subjective determinations regarding an individual's race based on his or her personal observations because the Texas Department of Public Safety does not provide an objectively-based determination of an individual's race/ethnicity on the Texas driver's license. The absence of any verifiable race/ethnicity data on the driver's license is especially troubling given the racial diversity within the city of Rockport. The validity of any racial/ethnic disparities discovered in the aggregate level data becomes threatened in direct proportion to the number of subjective "guesses" officers are forced to make when trying to determine an individual's racial/ethnic background.

In addition, the data collected for the current report does not allow for an analysis that separates (or disaggregates) the discretionary decisions of officers to stop a motorist from those that are largely non-discretionary. For example, non-discretionary stops of motorists based on the discovery of outstanding warrants should not be analyzed in terms of whether or not "profiling" has occurred simply because the officer who has stopped a motorist as a result of the discovery of an outstanding warrant does not *independently* make the decision to stop, but rather, is required to stop that individual regardless of any determination of race. An officer cannot be determined to be "bias based profiling" when organizational rules and state codes compel them to stop regardless of an individual's race/ethnicity. Straightforward aggregate comparisons of stop rates ignore these realities, and fail to distinguish between discretionary and non-discretionary law enforcement actions. In the future, this validity issue could be lessened by the collection of data indicating the initial reason for the traffic stop, whether it be an observed traffic violation, other criminal activity, the existence of an outstanding warrant, or some other reason.

Finally, there has been considerable debate as to what the most appropriate population “base-rate” is in determining whether or not racial/ethnic disparities exist. As the current analysis shows in regards to the use of city and county population base-rates, the outcome of analyses designed to determine whether or not disparities exist is obviously dependent on which base-rate is used. In addition, recent population changes in the city of Rockport exacerbates problems associated with determining appropriate base-rates because measures derived from the U.S. Census can become quickly outdated. Although this report utilized the more recent 2010 Census, this population measure will become quickly outdated as well.

Related to the above, the determination of valid stop base-rates becomes multiplied if analyses fail to distinguish between residents and non-residents who are stopped, because the existence of significant proportions of non-resident stops will lead to invalid conclusions if racial/ethnic comparisons are made exclusively to resident population figures.

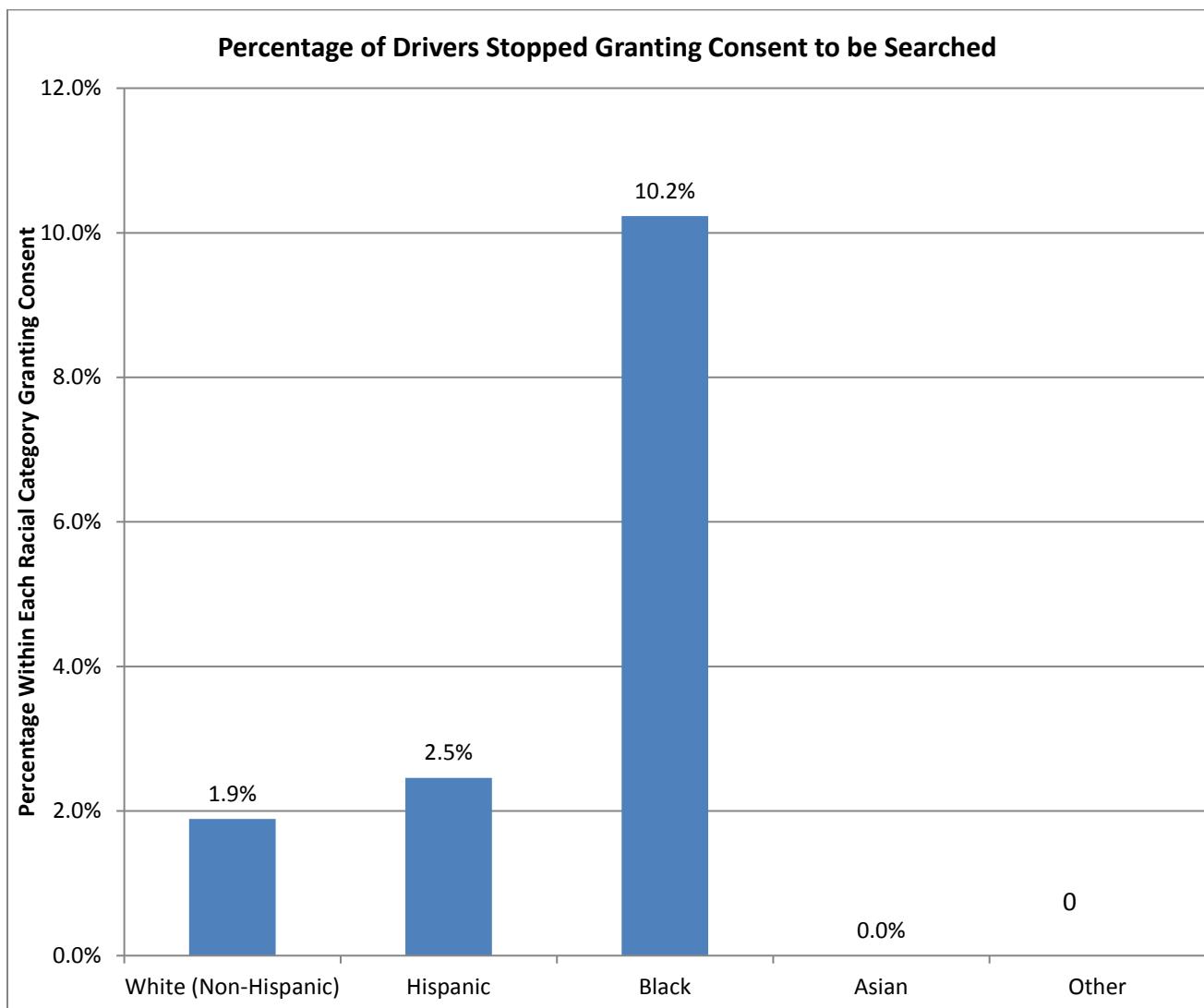
In short, the methodological problems outlined above point to the limited utility of using aggregate level comparisons of the rates at which different racial/ethnic groups are stopped in order to determine whether or not bias based profiling exists within a given jurisdiction.

The table below reports the summaries for the total number of persons stopped and searched subsequent to being stopped by the Rockport Police Department for traffic offenses in 2018 (5810). In addition, the table shows the number of individuals who granted consent to search and those drivers who were arrested at the conclusion of the stop. The table shows that 60 percent of all drivers searched were White (161/269 total searches), 29 percent of all drivers were Hispanic (79/269 total searches), 10 percent of all drivers were Black (28/269), and less than 1 percent of all drivers were other (1/269 total searches). It is clear from the table that the vast majorities of the total number of drivers stopped (including White, Black, and Hispanic groups) were not searched, as 95 percent of all drivers who were stopped were not searched (5541/5810).

Action	White (Non-Hispanic)	Hispanic	Black	Asian	Other	Total
Total Stops*	4385	1218	127	68	12	5810
Total Searches	161	79	28	1	0	269
Consent Searches	83	30	13	1	0	127
Incident to Arrest	40	16	3	0	0	59
Probable Cause	35	26	11	0	0	72
Inventory	3	7	1	0	0	11

\*Breaks down into 1,329 Citations & 4,481 Warnings

The bar chart below presents the percentage of drivers that provided consent to search within each racial category. The chart indicates that drivers who were stopped were rarely consent searched across the racial categories. For example, 1.89 percent of all White drivers who were stopped were also searched by consent (83 total consent searches), 2.46 percent of all Hispanic drivers who were stopped were searched by consent (30 total consent searches), and 10.23 percent of all Black drivers who were stopped were searched by consent (3 total consent searches).



## **Analysis of Bias Based Profiling Compliance by Rockport Police Department**

The foregoing analysis shows that the Rockport Police Department is fully in compliance with all relevant Texas laws concerning bias based profiling, including the existence of a formal policy prohibiting bias based profiling by its officers, officer training and educational programs, a formalized complaint process, and the collection of data in compliance with the law. Finally, internal records indicate that the department received no complaints in reference to bias based profiling for the year 2018.

In addition to providing summary reports and analysis of the data collected by the Rockport Police Department in 2018, this report also included an extensive presentation of some of the limitations involved in the level of data collection currently required by law and the methodological problems associated with analyzing such data for the Rockport Police Department as well as police agencies across Texas. The Rockport Police Department should continue its educational and training efforts within the department on bias based profiling. Finally, the department should conduct periodic evaluations to assess patterns of officer decision-making on traffic stops. The final section of this report includes required TCOLE reporting information by Texas law enforcement organizations.

## City of Rockport Traffic Stop Driver Statistics

Category	Searches						Arrests					
	Total Stops*		Consent		Incident to Arrest		Probable Cause		Total		Total	
	Total	Percent	Total	Percent	Total	Percent	Total	Percent	Total	Percent	Total	Percent
<b>Race</b>												
White (Non-Hispanic)	4,385	75.5%	83	65.4%	40	67.8%	35	48.6%	161	59.9%	3,454	77.1%
Hispanic	1,218	21.0%	30	23.6%	16	27.1%	26	36.1%	79	29.4%	869	19.4%
Black	127	2.2%	13	10.2%	3	5.1%	11	15.3%	28	10.4%	93	2.1%
Asian	68	1.2%	1	0.8%	-	0.0%	-	0.0%	1	0.4%	55	1.2%
Other	12	0.2%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	10	0.2%
Native American	4	0.1%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	3	0.1%
Middle Eastern	8	0.1%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	7	0.2%
Unknown	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%	-	0.0%
<b>Total</b>	<b>5,810</b>	<b>100.0%</b>	<b>127</b>	<b>100.0%</b>	<b>59</b>	<b>100.0%</b>	<b>72</b>	<b>100.0%</b>	<b>269</b>	<b>100.0%</b>	<b>4,481</b>	<b>100.0%</b>
<b>Gender</b>												
Male	4,134	71.2%	103	81.1%	44	74.6%	61	84.7%	216	80.3%	3,134	69.9%
Female	1,676	28.8%	24	18.9%	15	25.4%	11	15.3%	53	19.7%	1,347	30.1%
<b>Total</b>	<b>5,810</b>	<b>100.0%</b>	<b>127</b>	<b>100.0%</b>	<b>59</b>	<b>100.0%</b>	<b>72</b>	<b>100.0%</b>	<b>269</b>	<b>100.0%</b>	<b>4,481</b>	<b>100.0%</b>
<b>Residential Status</b>												
Resident	2,863	49.3%	55	43.3%	36	61.0%	36	50.0%	134	49.8%	2,185	48.8%
Non-Resident	2,947	50.7%	72	56.7%	23	39.0%	36	50.0%	135	50.2%	2,296	51.2%
<b>Total</b>	<b>5,810</b>	<b>100.0%</b>	<b>127</b>	<b>100.0%</b>	<b>59</b>	<b>100.0%</b>	<b>72</b>	<b>100.0%</b>	<b>269</b>	<b>100.0%</b>	<b>4,481</b>	<b>100.0%</b>

\*Includes 1,329 Citations & 4,481 Warnings

## Appendix A

# Appendix B

## 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, Sec. 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. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS.**

(a) In this article, "race or ethnicity" has the meaning assigned by Article 2.132(a).

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

- (1) a physical description of any 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;
- (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 of the contraband or evidence;
- (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;
- (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.

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. 26, eff. September 1, 2009.

### **Art. 2.134. COMPILED 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 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.

(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 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.

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 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. 2.136. 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.

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

### **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).

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

#### **Art. 2.138. RULES.**

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

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

#### **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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 29, eff. September 1, 2009.

# Appendix C

## Rockport Police Department Bias Based Profiling Policy

**COMMENT:** It has been the long standing practice of officers of the Rockport Police Department to treat all individuals with respect and courtesy. The Rockport Police Department Code of Conduct was established in September, 1989 to “promote efficiency, discipline, and good public relations” (Code of Conduct 1.2) and “to maintain the confidence, respect, and support of the public” (Code of Conduct 2.1). Chapter VI of the Code of Conduct describes the responsibilities of all personnel in dealings with the public.

Effective September 1, 2001 Article 2.131 of the Texas Code of Criminal Procedure established a prohibition against racial profiling as follows:

“A peace officer may not engage in racial profiling”.

Racial Profiling is defined in Article 3.05 as

“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 behavior”.

### I. POLICY

The Rockport Police Department is committed to a respect for constitutional rights of all people in the performance of our duties. Our success is based on the respect we show to the people with whom we come in contact and the respect they demonstrate toward law enforcement. To meet this goal, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex gender, national origin, ethnicity, age, or religion. All people carry biases: in law enforcement, however, the failure to control our biases can lead to improper arrests, searches, and detentions, resulting in our failure to accomplish the mission of our department. Actions guided by bias destroy the trust and respect essential for our mission to succeed. Respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions, particularly stops of individuals (for traffic and other purposes), investigative detentions, arrests, searches and seizures of persons or property, shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person’s race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group affiliation. Officers shall base all such actions on a reasonable suspicion that the person or an occupant of a vehicle committed or is committing an identifiable criminal offense.

Nothing in this order limits non-enforcement contacts between officers and the public.

## **II. PURPOSE**

The purpose of this policy is to provide general guidance on reducing the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions and emphasize the importance of the constitutional guidelines within which we operate.

## **III. DEFINITIONS**

Most of the following terms appear in this order. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

- A. Bias: Prejudice or partiality which may be based on preconceived ideas, a person's upbringing, culture, experience, or education.
- B. Biased policing: Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group affiliation, or for any other reason without reasonable suspicion or probable cause.
- C. Ethnicity: A cluster of characteristics which may include race but also cultural characteristics or traits which are shared by a group with a common experience or history (ex. Hispanic).
- D. Gender: Unlike sex, a psychological classification based on cultural characteristics or traits.
- E. Probable Cause: Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.
- F. Race: A category of people of a particular descent, including Caucasian, African, Asian, or Native American descent. As distinct from ethnicity, race only refers to physical characteristics sufficiently distinctive to group people under a classification.
- G. Racial profiling: A law-enforcement initiated actions based on an individual's race, ethnicity, or nation origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.
- H. Reasonable suspicion: Articulable, objective facts which lead an experienced officer to suspect that a person has committed, is committing, or may be about

to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be “objectively reasonable”.

- I. Sex: A biological classification, male or female, based on physical and genetic characteristics.
- J. Stop: The detention of a subject for a brief period of time, based on reasonable suspicion. A stop is an investigative detention.

#### **IV. PROCEDURES**

##### **A. General responsibilities**

- 1. Officers are prohibited from engaging in bias based profiling or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person’s race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group affiliation. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes. (TBP: 2.01)
- 2. Reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall only be subjected to stops, seizures, or detention upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.
- 3. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
  - a. As traffic stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent.
  - b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.
- 4. All personnel shall treat everyone with the same courtesy and respect that they would have others observe to department personnel.

a. All personnel shall courteously accept, document, and forward to the Chief of Police any complaints made by an individual against the department. Further, officers shall provide information on the complaints process and shall give copies of “How to Make a Complaint” when appropriate.

5. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual’s well-being unless the explanation would undermine an investigation or jeopardize an officer’s safety.
6. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give them their departmental identification number, name of the immediate supervisor, or any other reasonable information.
7. All personnel are accountable for their actions. Personnel shall justify their actions when required by appropriate authority.

#### B. Supervisor responsibilities

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.
2. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with this order and the constitutional requirements of law enforcement.
3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are instrumental to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community’s trust in law enforcement.
4. Supervisors are reminded that biased enforcement of the law results not only in mistrust of law enforcement but increases safety risks to personnel. Lack of control over bias also unnecessarily exposes the department to liability consequences. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates.
5. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.

6. Supervisors shall facilitate the filing of any complaints about law enforcement service.

**C. Disciplinary consequences**

Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

**D. Training (TBP: 2.01)**

Officers shall complete training required by state law regarding bias based profiling.

**V. COMPLAINTS**

- A. The department shall publish “How to Make a Complaint” packets and make them available at the Aransas County Public Safety Center and Rockport City Hall. The department’s complaint process and its bias based profiling policy will be posted on the department’s website. Whenever possible, the media will be used to inform the public of the department’s policy and complaint process.
- B. Complaints alleging incidents of bias based profiling will be fully investigated as described under Policy 2.4.
- C. Complainants will be notified of the results of the investigation when such investigation is completed.

**VI. RECORD KEEPING**

- A. The department will maintain all required records on traffic stops where a citation is issued or where an arrest is made subsequent to a traffic stop pursuant to state law.
- B. The information collected above will be reported to the city council annually.
- C. The information will also be reported to TCOLE in the required format.