

LAKEHURST POLICE DEPARTMENT STANDARD OPERATING PROCEDURE



RACIALLY INFLUENCED POLICING

BY THE ORDER OF:
Chief Eric S. Higgins

OF PAGES:
7

EFFECTIVE DATE: February 18, 2019

ACCREDITATION STANDARDS: 1.5.5

SUPERSEDES ORDER #: GO 05-06

PURPOSE The purpose of this standard operating procedure is to codify this department's policy and procedures concerning racially influenced policing, profiling and discriminatory practices. This SOP also codifies this department's policy and procedures for dealing with transgender persons.

POLICY It is the policy of the Lakehurst Police Department to prevent and prohibit the practice of racially influenced policing, bias-based profiling and other discriminatory practice by employees of this department in detention, interdiction, traffic contacts, field contacts, asset seizure and asset forfeiture. Racially influenced policing, biased based policing and discriminatory profiling are violative of the Equal Protection Clause of the 14th Amendment to the United States Constitution and in direct contravention of *New Jersey Attorney General Directive 2005-01*.

No Lakehurst police officer or civilian employee, while operating under the authority of the laws of the State of New Jersey, shall engage in or tolerate any practice or act constituting racially influenced policing or bias-based policing.

PROCEDURES

I. DEFINITIONS

A. The following terms are defined:

1. Citizen contact is a consensual encounter between a police employee and a member of the public, initiated by either party, wherein the person is free to terminate the encounter at any time.
2. Detain or detention is the act of stopping or restraining a person's freedom to leave; approaching and questioning a person outside the realm of a consensual encounter, or stopping a person suspected of being personally involved in criminal activity.
3. Field interview/investigative detention is the brief detainment of a person, whether on foot or in a vehicle, based upon reasonable suspicion for the purposes of determining the individual's identity and resolving an officer's suspicions.
4. Gender identity is a person's internal, deeply held sense of gender. Unlike gender expression, gender identity is not visible to others.
5. Gender expression is an external manifestation of gender; expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics.
6. Racially influenced policing is the detention, interdiction, or other disparate treatment of an individual or class of individuals on the basis of their race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation, gender identity, gender expression, transgender status, physical or mental disability. Other synonymous terms include, bias-based profiling, discriminatory profiling, racial profiling, etc.
7. Reasonable suspicion is suspicion that goes beyond a mere hunch, but is based upon a set of articulable facts and circumstances that would warrant a reasonable person to believe that an infraction of the law has been committed, is about to be committed, or is in the process of being committed by a person or persons under suspicion. This can be based on the observations of a police officer combined with his or her training and experience and/or reliable information provided by credible outside sources.
8. Search is looking for or seeking out that which is otherwise concealed from view.
9. Stop is the restraining of a person's liberty by physical force or a show of authority.
10. Transgender is an umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they inherited at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms, including transgender.

II. GENERAL

- A. A fundamental right guaranteed by the Constitutions of the United States and the State of New Jersey is equal protection under the law. Along with the right to equal protection, is the right to be free from unreasonable searches and seizures by government agents. The public is free to walk and drive public streets, highways, and other public places without police interference so long as they obey the law.
 - 1. The public is also entitled to be free from crime and from the acts of criminals and to drive and walk public roadways and walkways, safe from the actions of reckless and careless drivers.
 - 2. Because of the nature of policing, are required to be observant, to identify unusual occurrences and law violations, and to act upon them. Officers must also routinely engage in consensual contacts with the public and are encouraged to do so. It is these pro-active actions that keep the public free from crime, streets and highways safe to drive upon, and detect crime and apprehend criminals.
- B. In accomplishing the mission of this department, officers must not take enforcement actions based upon an individual's or class of individuals' race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation, gender identity, gender expression, transgender status, physical or mental disability.
- C. Racially influenced policing of persons by employees of this department is strictly prohibited in detention, interdiction, traffic contacts, field contacts, and asset seizure and forfeiture.
- D. Absent reasonable suspicion or probable cause, race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation, gender identity, gender expression, transgender status, physical or mental disability (unless a danger to themselves or others) will not be a factor in determining whether to interdict, detain, stop, arrest or take a person into custody.
- E. Unless in response to a specific report of criminal activity, race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation, gender identity, gender expression, transgender status, physical or mental disability will not be a factor in determining the existence of probable cause to arrest a person.
- F. The stop or detention of any person(s) or vehicle(s) that is not based on factors related to a violation or violations of the laws and ordinances of the United States, State of New Jersey, County of Ocean, Borough of Lakehurst, or in response to the police community caretaking function is prohibited.
- G. No employee of this department shall search a person, their effects, or vehicle based upon their race, color, gender, creed, national origin, ethnicity, religious beliefs, age, marital status, sexual orientation, gender identity, gender expression, transgender status, physical or mental disability.

- H. Race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation, gender identity, gender expression, transgender status, physical or mental disability shall not be a factor in any asset forfeiture proceedings.
- I. Nothing in this SOP shall be construed in any way to prohibit a Borough of Lakehurst sworn officer or civilian employee from taking into account a person's race or ethnicity, when race or ethnicity is used to describe physical characteristics that identify a particular individual or individuals who is/are the subject of a law enforcement investigation; or who is/are otherwise being sought by a law enforcement agency in furtherance of a specific investigation or prosecution.
- J. The intentional altering or concealing of any information related to enforcement actions by an officer or employee when based on racially influenced policing or discriminatory profiling factors is prohibited.

II. INTERACTIONS WITH TRANSGENDER PEOPLE

- A. All personnel shall interact with transgender people and the transgender community in a professional, respectful and courteous manner. This includes transgender juveniles. This SOP does not affect any other provisions in applicable SOPs and laws covering the processing and handling of juveniles
- B. Officers shall not treat a person's transgender status or appearance as a basis of suspicion or as evidence of a crime or offense.
- C. A person is considered transgender when either of these two conditions is met:
 - 1. A person explicitly informs the officer(s) that the person is a transgender person; or
 - 2. An officer has good reason to believe that the person is a transgender person. Good reason may be based on the individual's gender appearance and presentation, reasonable observation, background checks, third party information, prior interaction, and/or routine policing procedures.
- D. If gender expression does not clearly indicate a transgender person's identity, officers may politely and respectfully ask how the person wishes to be addressed. For example, officers may ask a transgender person which name and pronoun the person prefers.
 - 1. When a person self-identifies as a transgender person, officers should not question this identity or ask about the person's transition status. Officers shall not engage in any argument, disagreement, or debate regarding a person's self-identification as a transgender person.
 - 2. If officers do question such self-identification or ask about a person's transgender status, officers should have compelling, professional, articulable reason for having done so. These reason(s) shall be thoroughly documented in the corresponding investigation report.
 - 3. Officers should not ask questions or make statements about a transgender person's genitalia, breasts, or transition status. If an officer does ask such questions or make such statements, that officer shall have a compelling,

professional, and articulable reason for having done so. The reason(s) shall be thoroughly documented in the corresponding investigation report.

- E. Whether or not the name on a person's driver's license or identification card coincides with the person's gender identity, an officer shall address or refer to the person by the name that the person has used to identify him or herself. An officer shall also use the pronouns consistent with the name provided by the person.
- F. Under no circumstances shall an officer frisk, search, or otherwise touch any person for the purpose of obtaining information about that person's gender status. Officers shall comply with all existing SOPs, laws, New Jersey Attorney General directives and guidelines and Ocean County Prosecutor's Office directives regarding search and seizure. Under no circumstances shall transgender people be subjected to more invasive search procedures than non-transgender people.
- G. In the event a transgender person's legal name is required and, absent extenuating circumstances, an officer should ask the person for his or her legal name in a one-on-one situation. If the contact is in a group environment, the officer should ask the person to step outside the group to obtain the legal name to protect the privacy interests of the person.
- H. Whenever a transgender person who is detained in custody requires or expresses a need for medical attention or medication (including, but not limited to hormone therapy), an officer shall respond to and address the need with the same urgency and respect as required in connection with any other medical need, illness, or injury experienced by any other detainee or arrestee.
- I. Appearance-related items, including but not limited to, prosthetics, clothes, wigs, or makeup should not be confiscated or removed from transgender people unless such items present a safety hazard, impede the administration of medical attention, or are needed for evidentiary reasons. If an officer confiscates or removes a transgender person's appearance-related items, that officer shall have compelling, professional, and articulable reason for having done so. The reason(s) shall be thoroughly documented in the corresponding investigation report.
- J. Under no circumstances should an officer disclose that a person is transgender to non-law enforcement personnel or to other non-relevant agency personnel. If an officer does disclose such information, that officer shall have a compelling, professional, and articulable reason for having done so. The reason(s) shall be thoroughly documented in the corresponding investigation report.
- K. If a person has self-identified as transgender, this information may be recorded in public documents. If an officer does record such information in any public document, that officer shall have a compelling, professional, and articulable reason for having done so. The reason(s) shall be thoroughly documented in the corresponding investigation report.
- L. There are no set guidelines for searching a transgender person. Officers must be guided by common-sense and good judgment. Generally, a person of the same gender with which the person most closely gender-identifies should conduct the search, unless truly unavailable. When in doubt, ask the person being searched. Officers should not delay any search of a transgender person if there is probable cause that the person is concealing weapons or contraband.

- M. All reports shall refer to a transgender person's name as shown on official documents. The person's preferred name shall be listed as an alias or 'also known as' (AKA). Preferred gender pronouns should be used in the narrative

III. RESPONSIBILITIES

- A. Supervisors and OICs are responsible for providing effective supervision to reasonably monitor those under their command to ensure compliance with this SOP and to take or recommend corrective action where indicated. Corrective action includes, but is not limited to:
 - 1. Counseling;
 - 2. Training;
 - 3. Punitive discipline (up to and including termination) upon notice of final disciplinary action.
- B. Regardless of assignment, supervisors and OICs shall take or recommend corrective action if an employee, even when that employee is not under their direct command, does not appear to be in compliance with this SOP.
- C. Employees witnessing behavior contrary to this SOP are required to take immediate action to end the behavior.
 - 1. Employees must immediately report their knowledge of the incident to their immediate supervisor in writing.
 - 2. If their supervisor is the subject of the report or in the absence of their supervisor, the employee must report it to another supervisor, the next level in the chain of command or directly to the internal affairs supervisor.
- D. All officers will receive periodic training regarding cultural diversity and the prohibition against racially influenced policing, including legal aspects. Periodic shall mean minimally once every three years.

IV. PROFILING COMPLAINTS

- A. Any person may file a complaint with the Lakehurst Police Department if the individual feels that any law enforcement action was based solely on racially influenced policing or discriminatory profiling. In addition, no one shall be discouraged, intimidated, coerced from filing, or discriminated against because they have filed a profiling complaint.
- B. If a person makes an allegation that they have been subjected to racially influenced policing or discriminatory profiling, the duty OIC shall allow the individual to complete a complaint form regarding the incident. The reports shall then be submitted to the Chief of Police or the internal affairs supervisor.
- C. All investigations of racially influenced policing, profiling, and/or discriminatory practices shall be conducted in accordance with this department's SOP on internal affairs investigations.

- D. Whenever this department conducts a criminal investigation into possible commission of the crime of official deprivation of civil rights in violation of N.J.S.A. 2C: 30-6, or pattern of official misconduct in violation of N.J.S.A. 2C: 30-7, which is based on two or more violations of N.J.S.A. 2C: 30-6, the Chief of Police or his/her designee shall promptly notify the Ocean County Prosecutor's Office and shall provide such information as the prosecutor's office may require.