



## POLICY AND PROCEDURE

SUBJECT: Racial Profiling Policy

DATE: September 5, 2001

NUMBER: 100-42

### **STATEMENT OF POLICY:**

This policy will establish fair and nondiscriminatory practices to be utilized by the Public Safety Departments in Fulton County.

### **PURPOSE:**

To ensure that Fulton County law enforcement officers do not stop, detain, search or attempt to initiate asset-forfeiture efforts against an individual based *solely* upon that person's race, color, ethnicity, religion, socioeconomic status, disability, age, gender and/or sexual orientation.

### **POLICY:**

It is the policy of Fulton County to prohibit the practice of enforcement profiling, or any other discriminatory practice, by law enforcement officers. Therefore, law enforcement actions, including, but not limited to, searches, seizures, stops and frisks of an individual, vehicle stops, arrests, applications of force, field and criminal investigations, citations and the initiation of forfeiture proceedings, shall not be based *solely* upon an individual's race, color, ethnicity, religion, socioeconomic status, disability, age, gender and/or sexual orientation.

In addition, no Fulton County law enforcement officer will participate in any federal, state or local joint task force unless that task force has acknowledged by policy that it prohibits any type of profiling.

### **DEFINITIONS:**

***Racial Profiling*** - Any law enforcement-initiated action, such as stopping, detaining, searching, taking enforcement and/or investigative action against an individual, that relies *solely* upon the race, color, ethnicity, religion, socioeconomic status, disability, age, gender or sexual orientation of that individual. Profiling may also be defined as characterizing any of the aforementioned groups with a tendency to participate in criminal behavior.

**NOTE:** Targeting suspected criminals based upon their *conduct*, or focusing suspicion on a person of a particular race, color, ethnicity, religion, socioeconomic status, disability, age, gender or sexual orientation, given that the law enforcement officer has *specific* suspect information, is *not* considered *profiling*.

**LEGAL BASIS:**

***Constitutional***

**United States Constitution, Fourth Amendment**, which provides that: "The right of the people to be secure in their person, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

**Georgia Constitution, Article 1, Section 1, Paragraph 13**, which is virtually identical to the U.S. Constitution Fourth Amendment and has been interpreted as such by Georgia Appellate Courts.

***Federal Statutes***

**Title 42, U.S.C., § 14141**, makes it unlawful for state or local law enforcement agencies to allow officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States. This law is commonly referred to as the ***Police Misconduct Statute***. This law gives the Department of Justice the authority to seek civil remedies in cases where it is determined that law enforcement agencies have policies or practices which foster a pattern of misconduct by employees. This action is directed against an agency, not against individual officers. The types of issues which may initiate a Pattern and Practice investigation include:

- § Lack of supervision/monitoring of officers' actions.
- § Officers not providing justification or reporting incidents involving the use of force.
- § Lack of, or improper training of officers.
- § A department having a citizen complaint process which treats complainants as an adversary.

**Title 42, U.S.C., § 1983, Federal Civil Rights Act**, which creates a right to sue law enforcement officers civilly and personally for a violation of a federal constitutional right or statute. The violation must be committed by one acting under "color of law." ["color of law" means that the person is acting under power possessed by virtue of law and under the cloak of authority -- it does not reach private citizens.]. Examples of rights protected include:

- § Arrest or detention without probable cause.
- § Failure to inform person arrested of charges.
- § Illegal search or seizure of home, automobile, or other personal property.

**Title 18, U.S.C. § 242 - Substantive Civil Rights Statute**, which can be violated by one person acting alone or by more than one. The violation must be committed by one acting under color of law (either on or off-duty, as long as one gives the impression that they are acting in an official capacity). There must be a deprivation of a federal constitutional right or statute. The violator must have acted willfully (knowingly committed the act). Examples of rights protected include:

- § The right to be free of illegal restraint of the person.
- § The right to be free from interference with the free exercise of speech, press, assembly, and religion.

*State Statutes*

**16-5-42 (Georgia) - False imprisonment under color of legal process**, which states that "When the arrest, confinement or detention of a person by warrant, mandate, or process is manifestly illegal and shows malice and oppression, an officer issuing or knowingly and maliciously executing the same shall, upon conviction thereof, be removed from office and punished by imprisonment for not less than one nor more than ten years."

*Case Law*

There exists a large body of case law relevant to searches and seizures, both federal and state. They deal primarily with traffic stops, and whether or not the stops were based upon reasonable articulable suspicion and/or probable cause.

**PROCEDURES:**

Racial profiling of individuals is prohibited. All investigatory detentions, traffic stops, arrests, searches and seizures shall be based upon the standard of reasonable and articulable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and/or state statutes.

§ Race, color, ethnicity, religion, socioeconomic status, disability, age, gender or sexual orientation is ***not, in and of itself***, sufficient to constitute a reasonable and articulable suspicion that an offense has been or is being committed, and does not justify such actions as stopping a vehicle, issuing a citation, making an arrest, conducting a field interview, investigative detention, seizing assets, seeking asset forfeiture, or conducting a search.

§ Race, color, ethnicity, religion, socioeconomic status, disability, age, gender or sexual orientation ***shall not be the sole factor*** in determining the existence of probable cause to arrest or place an individual in custody.

An individual may only be detained based on factors related to a violation or the investigation of a violation of:

- § Federal law
- § Georgia statutes (***O.C.G.A.***)
- § Local ordinances

Fulton County law enforcement officers/deputies shall treat all citizens with courtesy and respect when making contact. Officers/Deputies are forbidden from using language, or displaying symbols and gestures, that are commonly viewed as offensive to, or are indicative of bias towards, any group.

All persons stopped by an officer/deputy shall be provided with an explanation for why they were stopped, unless disclosure of such information would undermine an investigation or jeopardize the officer's/deputy's safety. Motorists are entitled to both a verbal explanation and written documentation of the stop (e.g. Uniform Citation, Warning Notice, etc.). Providing citizens with an explanation for why they were stopped fosters better relations with the community and reduces the perception of bias on the part of law enforcement. Nothing in this Policy shall limit an officer's/deputy's ability to interview witnesses, or discourage routine conversations with citizens not suspected of an offense.

### **Supervisory Responsibilities**

Supervisors shall:

- § ensure that their personnel are familiar with this policy and support its provisions, and
- § receive all citizen complaints or allegations of profiling on the part of individual officers/deputies, Units, Sections or the Division, and forward such information for further inquiry to Internal Affairs/Professional Standards, and
- § monitor the practices of officers/deputies to ensure profiling tactics are not utilized.

**NOTE:** Supervisors are authorized to request from the Fulton County Emergency Communications Center (FCCC) database information on the documented stops and searches performed by their personnel at any time.

### **REPORTING REQUIREMENTS:**

Officers/deputies failing to report any observed or known violations of this policy may be subject to disciplinary action.

The Internal Affairs/Professional Standards Section shall investigate all complaints of profiling and/or other discriminatory practices.

Internal Affairs/Professional Standards shall maintain all complaints and records of the disposition of profiling investigations in a secure location.

Internal Affairs/Professional Standards shall issue to the Chief Executive Officer of the Agency a summary report of all complaints of profiling and/or discrimination at least annually, including but not limited to:

- § A listing of each complaint
- § An explanation of action(s) taken
- § Recommendations for training
- § Recommendations for changes in policy

**APPEAL PROCESS:**

If a citizen who made a racial profiling complaint is dissatisfied with the law enforcement agency's disposition of the complaint, the citizen has ten working days after being informed of the disposition to file a written appeal with the County Manager. The County Manager will select a Senior Judge for the appeal process, among the list of judges approved to work in Fulton County. The Senior Judge will be paid the daily rate as set by Georgia law. The Senior Judge has 30 days to review the internal affairs investigation conducted by the law enforcement agency to determine if the disposition is supported by the evidence and to forward findings to the County Manager. The County Manager has ten working days to issue a final disposition of the complaint and inform the citizen.

**TRAINING:**

Each agency's training director shall ensure that officers/deputies receive periodic training on subjects such as profiling, cultural diversity, interaction with citizens including interview techniques, search and seizure, asset seizure and forfeiture, ethics and related topics, as well as training on this policy. Training may be conducted through in-service, special courses, or roll-call training, and documentation of the completed training shall be placed in each officer's/deputy's training file.

Additional training shall be given to any officer/deputy as circumstances may warrant and as deemed appropriate by that officer's/deputy's supervisor.

**COMMUNITY OUTREACH:**

The Community Oriented Policing (COPS)/Community Relations Commander is the community liaison for profiling and/or discrimination issues.

COPS/Community Relations officers/deputies, when requested, or as appropriate, shall meet with any group affected by this policy, and should seek their input.

**DATA COLLECTION AND ANALYSIS:**

Data will be collected from various sources such as the agency's Internal Affairs/Professional Standards Section/Division and the Fulton County Communications Center (FCCC) (which will have the primary responsibility for collecting the enforcement data). Enforcement data to be collected that will specifically address the issue of profiling includes: (1) name and identification number of law enforcement official(s) who initiated the enforcement action; (2) name and identification number of other law enforcement official(s) who participated in the enforcement action; (3) date, time, and location of the action; (4) time at which the action commenced and at which it ended; (5) the gender and race of the driver; (6) the gender and race of any passenger who was requested to exit the vehicle, frisked, searched, requested to consent to a vehicle search or arrested; (7) whether the driver was issued a summons or warning and the category of the violation (i.e., moving violation or non-moving violation); (8) specific violations cited or warned; (9) the reason for the stop (i.e., moving violation or nonmoving violation, other [probable cause/BOLO]); (10) whether the vehicle occupant(s) was (were) frisked/searched; (11)

whether any contraband or other property was seized; and, (12) whether the vehicle occupant(s) was (were) arrested, and if so, the specific charges.

Other data that might be gathered could include: license number/state of vehicle (where applicable); description of stopped vehicle; and the driver's date of birth if known.

On a periodic basis, but no less than once each year, each agency shall analyze the data collected from the various sources. This analysis will be presented to the Chief Executive Officer (CEO) to determine if any pattern of racial profiling does exist. By analyzing this data, patterns of racial profiling, should they exist, can be discovered and corrective action taken.

**DISCIPLINARY ACTION:**

All disciplinary action for violation of this policy shall be governed by the guidelines set forth in Personnel Regulations of Fulton County. Appeals of disciplinary actions by permanent classified employees shall be made to the Personnel Board or to the Grievance Review Committee in accordance with the provisions of the Personnel Regulations of Fulton County. Department Heads and non-classified employees may seek redress for any disciplinary action through the Grievance Review Committee. Officials appointed by the Board of Commissioners of Fulton County may seek redress for any disciplinary action before the Board. Nothing in this policy shall be construed to prohibit any person from seeking redress with any federal or state agency, or the courts.

**Departmental Sponsor:** Office of the County Manager

**Policy Review Date:** October 2003

**References:**

- Resolution of the Fulton County Board of Commissioners dated September 20, 2000
- Racial Profiling Overview
- Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) Forum II
- New Jersey State Police Policy
- Georgia Police Accreditation Coalition (GPAC)
- San Diego Police Profile Policy
- Hartford, CT Police Analytical Profile Form
- Miami Beach Police Profile Policy
- Miami-Dade Police Profile Policy
- Lexington
- Fayette Urban County Police Profile Policy
- Federal Law Title 42 U.S.C. 1983
- Title 18 U.S.C.-14141 "Police Misconduct Statute"
- Title 18 U.S.C. 242
- Fourth Amendment Bill of Rights of the U.S. Constitution
- Georgia Case Laws - U.S. Attorney's Office, Northern District of Georgia
- Federal Case Laws - U.S. Attorney's office, Northern District of Georgia
- Minutes of the Board of Commissioners, December 20, 2000
- Minutes of the Board of Commissioners, September 5, 2001

**Departments Affected:** All Public Safety Departments and Agencies of Fulton County