

Unit Goal: Legal Foundations

Instructor Note: This course exists as a part of the passage of SB 1849, also known as the Sandra Bland Act. Discuss the circumstances that led to the passage of SB 1849, including but not limited to changes regarding law enforcement interactions with individuals, reporting requirements, and training towards de-escalation methods.

6.1. Identify the three levels of encounters between peace officers and individuals.

- A. Consensual encounters: Require no justification, voluntary conversations with individuals who are free to leave
- B. Investigative detentions/“Terry Stops”: Reasonable suspicion required, permit officers to briefly detain individuals for investigation
 - i. Reasonable Suspicion
 - 1. An officer can briefly detain an individual or make a traffic stop if there is reasonable suspicion that a person:
 - a. Committed a crime
 - b. Is currently committing a crime
 - c. Plans to engage in criminal activity—based on certain facts or circumstances.
 - 2. Having a gut feeling or a hunch does not qualify as reasonable suspicion.
 - ii. Theories for stop
 - 1. Traffic violations
 - 2. “Pretext” stops
 - 3. Community caretaking
 - 4. Citizen calls
 - 5. Roadblocks/checkpoints
 - iii. Justification of stop
 - 1. Once a traffic stop is initiated, officers must have independent justification for searching vehicles or occupants.
 - 2. Justifications include:
 - a. Consent
 - b. Search incident to arrest
 - c. Probable cause
 - d. Inventory search of impounded vehicles
 - iv. Temporary detention options
 - 1. Detain individual for a reasonable period of time to satisfactorily account for their activity.
 - 2. Make reasonable investigative inquiries, i.e., request identity, reason for being in area, explanation of suspicious conduct.
 - 3. Seek consent for pat down or search.
- C. Arrest: Probable cause required, belief that a crime has been committed and that the individual arrested has committed it
 - i. Probable Cause
 - 1. An officer can make an arrest or conduct a search or seizure if probable cause is established.

2. Higher standard than reasonable suspicion
3. Must demonstrate there are facts or evidence that would lead a reasonable person to believe that a crime:
 - a. Has been committed
 - b. Is being committed
 - c. Will be committed in the future.
4. Making an illegal turn, having a taillight out and expired registration are probable cause reasons for a vehicle stop under the transportation code.
5. Sufficient probable cause can develop after the police detain someone based on reasonable suspicion.

6.2. Identify the legislative requirements regarding racial profiling.

- A. Fourth Amendment: Unreasonable searches and seizures
- B. Fourteenth Amendment: Equal protection under law
- C. Code of Criminal Procedure
 - i. 2B.0051 – Definitions
 - ii. 2B.0052 – Racial Profiling Prohibited
 - iii. 2B.0053 – Law Enforcement Policy on Racial Profiling
 - iv. 2B.0054 – Reports Required for Motor Vehicle Stops
 - v. 2B.0055 – Compilation and Analysis of Information Collected
 - vi. 2B.0057 – Liability
 - vii. 2B.0152 – Provision of Money or Equipment
 - viii. 2B.0058 – Civil Penalty
 - ix. 2B.0059 – Rules
- D. Education Code
 - i. 96.641(a) & (k) – Initial Training and Continuing Education for Police Chiefs and Command Staff
- E. Occupations Code
 - i. 1701.253(c) & (h) – School Curriculum
 - ii. 1701.402(e) – Proficiency Certificates
- F. Transportation Code
 - i. 543.202(a) – Form of Record

REQUIRED ACTIVITY: Review and discuss the Sample General Order for a police department's racial profiling form, found in Appendix A.

6.3. Explain Supreme Court decisions and other court decisions regarding traffic stops and prohibited racial profiling.

- A. Supreme court cases
 - i. Whren v. United States, 517 U.S. 806, 116 S. Ct. 1769 (1996)
 - ii. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968)
- B. Other cases
 - i. Pennsylvania v. Mimms, 434 U.S. 106, 98 S. Ct. 330 (1977)
 - ii. Maryland v. Wilson, 519 U.S. 408, 117 S. Ct. 882 (1997)

- iii. *Graham v. State*, 119 Md. App 444, 705 A.2d 82 (1998)
- iv. *Pryor v. State*, 122 Md. App. 671 (1997), cert. denied 352 Md. 312, 721 A.2d 990 (1998) (other citations omitted)
- v. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999)
- vi. *New York v. Belton*, 453 U.S. 454 (1981)
- vii. *Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400 (2007)
- viii. *Virginia v. Moore*, 553 U.S. 164, 128 S. Ct. 1598 (2008)
- ix. *Arizona v. Johnson*, 555 U.S. 323, 129 S. Ct. 781 (2009)

Unit Goal: Legal Liabilities and Consequences

6.4. Identify the legal liabilities of racial profiling.

- A. Qualified Immunity Limitations
 - i. Does not apply for racial profiling cases
 - ii. Qualified immunity shields officers from liability unless they violate established constitutional rights
- B. Criminal Liability
 - i. Basic violations: Up to one year in prison
 - ii. If bodily injury occurs: Up to ten years in prison
 - iii. If death occurs: Life imprisonment or death penalty
- C. Civil Liability:
 - i. 42 U.S.C. § 1983
 - ii. Under Color of State Law
 - iii. Constitutional Deprivation
- D. Municipal Liability
 - i. Municipalities can be liable if it is shown that constitutional violations resulted from official policy or custom.
 - ii. Includes law enforcement agencies

6.5. Explain the impact of racial profiling.

- A. Racial profiling violations can destroy careers, result in personal financial liability, and cause lasting harm to communities.
 - i. Does not enhance public safety
 - ii. Erodes community trust and cooperation with law enforcement
 - iii. Shows disparities in reporting numbers to hit rates
 - 1. When officers search people of color at higher rates but find contraband less frequently, this pattern may suggest searches are based on factors other than legitimate evidence of criminal activity.
 - iv. Hinders officer's ability to rely on professional training and experience
 - v. Compensatory damages such as lost wages, medical expenses, emotional distress, humiliation etc.
 - vi. Punitive damages
 - vii. Can lead to suspension/revocation of license from TCOLE

SUGGESTED ACTIVITY: Have students discuss other ways racial profiling may impact one's actions in the workforce and beyond.

Unit Goal: Recognizing and Preventing Racial Profiling

6.6. Identify forms of racial profiling.

- A. Racial profiling manifests in different ways depending on the context and the officer's level of awareness.
- B. Conscious discrimination: Deliberately targeting individuals based on race, ethnicity, or national origin
- C. Implicit bias
 - i. Unconscious attitudes and stereotypes that affect a person's perceptions and decisions.
 - ii. More likely to perceive nervous or ambiguous behavior as suspicious when exhibited by a person of color.
 - iii. Can lead to disparate treatment even when the officer believes they are making neutral, objective decisions.
- D. Statistical discrimination: Relying on demographic generalizations rather than individual behavior.
- E. Examples of racial profiling include, but are not limited to:
 - i. Citing a driver who is speeding in a stream of traffic where most other drivers are speeding, solely because of the cited driver's race, ethnicity, or national origin.
 - ii. Stopping or detaining the driver of a vehicle solely based on the determination that a person of that race, ethnicity, or national origin is unlikely to own or possess that specific make or model of vehicle.
 - iii. Stopping or detaining a person solely based on the determination that a person of that race, ethnicity, or national origin does not belong in a specific geographic area or a specific place.

REQUIRED ACTIVITY: Using the scenario below, have students discuss ways in recognizing and preventing unconscious bias or discrimination during day-to-day patrols. Questions are provided to help facilitate discussion; however, the instructor is encouraged to create their own.

- Officer Garcia notices a young Black male walking through a shopping district at night, looking at storefronts and occasionally glancing around. Officer Garcia feels the behavior seems "suspicious."
- Bias Check Questions:
 - Would this behavior seem suspicious if exhibited by a young white male?
 - What specific facts suggest criminal activity rather than normal browsing?
 - Am I applying different standards based on demographic assumptions?

6.7. Identify the four principles of procedural justice.

- A. Procedural justice focuses on the fairness of the process by which law enforcement make decisions and treat individuals.
- B. Principles of procedural justice:

- i. Voice: Give individuals the opportunity to explain their perspective
 1. "I understand you disagree. Let me explain what I observed..."
- ii. Respect: Treat everyone with dignity regardless of race or ethnicity
 1. Maintain courteous tone despite individual's attitude
- iii. Neutrality: Base decisions on objective facts and legal standards
 1. "I stopped you because I observed your vehicle traveling 55 in a 35-mph zone"
- iv. Trustworthy motives: Demonstrate that actions are guided by legitimate law enforcement concerns
 1. "My concern is traffic safety in this school zone"

6.8. Demonstrate effective strategies in preventing racial profiling.

- A. Perspective taking
 - i. Consciously consider how enforcement decisions may appear from different viewpoints.
 - ii. Ask perspective-taking questions before major decisions. Ex: "Would I make the same decision if this person were of a different race?"
- B. Structured decision making
 - i. Using checklists and protocols requires officers to identify specific factors before taking enforcement action.
 - ii. Example of a mental checklist:
 1. Is there specific observable evidence of criminal activity? (Yes/No)
 2. Are there articulable facts beyond general nervousness? (Yes/No)
 3. Would I make this request regardless of driver's race? (Yes/No)
 4. Can I clearly explain my reasoning in a report?
 - iii. Document objective observations rather than subjective impressions.
 - iv. When uncertain, seek supervisor guidance.
- C. Technology
 - i. Body-worn cameras and in-car video systems add documentation layers that can either corroborate or contradict written reports.
 - ii. For recorded encounters:
 1. Clearly narrate observations and reasoning
 2. Maintain professional demeanor throughout
 3. Explain actions to citizens when possible
 4. Ensure consistency between video evidence and written reports
- D. Training
 - i. Comprehensive training is fundamental to effective policing. Training should integrate constitutional principles, procedural justice, community engagement, and tactical skills.
 - ii. Key components may include:
 1. Constitutional decision-making under pressure
 2. De-escalation and conflict management
 3. Cultural competency and community relations
 4. Communication skills for building cooperation

5. Bias recognition and intervention techniques

INSTRUCTOR NOTE: See Appendix B for examples of Quick Reference Cards.

REQUIRED ACTIVITY: Present students with the below required scenarios and discuss the encounters. Ensure that the discussion covers the legal and ethical considerations needed to guide the decision-making process for traffic stops. Each scenario comes with its own analysis to help guide the discussion. Optional scenarios are provided for additional classroom discussion.

Required Scenario: Consent Search Decision

Officer Davis stops a vehicle for speeding and approaches the driver. The driver seems nervous, is breathing rapidly, and has shaking hands. The vehicle has air fresheners, and Officer Davis notices out-of-state plates.

Constitutional Analysis:

- Nervousness: Extremely common during traffic stops, not indicative of criminal activity
- Air fresheners: Legal and commonly used, not suspicious
- Out-of-state plates: Perfectly legal, may indicate travel or recent move
- Assessment: No probable cause or reasonable suspicion for search
- Bias Check: Would Officer Davis request consent from a nervous white driver with same characteristics?
- Recommendation: Issue citation for speeding violation and conclude stop

Required Scenario: Probable Cause Search

Officer Hamdan stops a vehicle for improper lane change. During conversation, detects strong marijuana odor from vehicle. Driver admits to smoking marijuana earlier but claims no marijuana in vehicle. The driver's eyes are red and bloodshot.

Constitutional Analysis:

- Probable Cause Elements:
 - Strong marijuana odor (objective observation)
 - Driver's admission to recent use
 - Physical signs consistent with impairment (red eyes)
- Search Justification: Totality of circumstances provides probable cause
- Documentation: Record specific observations that justified search
- Result: Constitutional search regardless of driver's demographics

Optional Scenario: Force Documentation

Officer Martinez conducts a traffic stop. The driver becomes argumentative, exits vehicle despite orders to remain inside. Officer Williams uses physical control to complete arrest after the driver resists. Driver sustains minor injuries.

Required Documentation:

- Underlying traffic violation justifying stop
- Specific circumstances necessitating force (driver's non-compliance, resistance)
- Type and degree of force used

- Injuries sustained
- Objective justification for force level

Optional Scenario: Neighborhood Patrol Stop

Officer Johnson patrols an affluent neighborhood and notices a late-model sedan with temporary plates driving slowly, making several turns, and appearing to slow down near certain houses. Officer Johnson initiates a stop.

Constitutional Analysis:

- Fourth Amendment: Requires specific traffic violation or reasonable suspicion of criminal activity
- Observations: Slow driving, turning, and looking at houses are not inherently suspicious
- Problem: No articulable facts suggesting criminal activity
- Risk: If stop was influenced by driver's race or assumptions about who "belongs," equal protection violation likely
- Better Approach: Continue observation until specific violation occurs or additional suspicious behavior develops

Optional Scenario: Drug Interdiction Stop

Officer Zahn patrols a highway known for drug trafficking. Observes vehicle with heavily tinted windows, driving exactly at speed limit, following traffic laws precisely. Vehicle has out-of-state plates from known source state.

Constitutional Analysis:

- Legal driving: Following traffic laws is not suspicious
- Tinted windows: Legal in most cases, not grounds for stop
- Out-of-state plates: Not suspicious without additional factors
- "Perfect" driving: Not reasonable suspicion
- Risk: Stop based on these factors alone likely violates Fourth Amendment
- Alternative: Continue observation for actual violations or additional suspicious behavior

Optional Scenario: Pattern Recognition

Officer William's monthly data review shows:

- Total stops: 45
- Hispanic drivers stopped: 28 (62%)
- White drivers stopped: 17 (38%)
- Searches conducted: Hispanic drivers 18/28 (64%), White drivers 3/17 (18%)
- Contraband found: Hispanic drivers 4/18 (22%), White drivers 2/3 (67%)

Pattern Analysis:

- Disproportionate stop rates for Hispanic drivers
- Much higher search rates for Hispanic drivers
- Lower hit rates for Hispanic drivers
- Conclusion: Pattern suggests potential bias in enforcement decisions
- Action Required: Supervisor intervention, additional training, closer monitoring

APPENDIX A: SAMPLE GENERAL ORDER

	Police Department	
	Section 300: Operations	
	General Order 303: Racial and Bias-based Profiling	
	Effective Date:	Revision Date:
	Issued By:	
	TX Best Practices: 2.01	

A. Purpose

The Department is committed to providing law enforcement services to the community with due regard for the racial, cultural, or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group. Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability, or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law (Tex. Code of Crim. Pro., Art. 2B.0052) (*TCPA TBP: 2.01*)

This policy provides guidance to department members and establishes appropriate controls to ensure that employees of the Police Department do not engage in racial- or bias-based profiling or violate any related laws while serving the community.

B. Definitions

Racial profiling is a form of discrimination defined by the Texas Code of Criminal Procedure as “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.” (*CCP 2B.0051*) The following are implicit in the definition.

- (1) Racial profiling only becomes an issue as it pertains to contacts with citizens who are viewed as suspects or as potential suspects. It is not relevant as it pertains to witnesses, complainants, or other citizen contacts.
- (2) Racial profiling does not preclude race, ethnicity, or national origin as factors in a detention decision. Race, ethnicity, or national origin may be legitimate factors in a detention decision when used as part of an actual description of a specific suspect for whom an officer is searching. They may not, however, be the only factors in determining whom to detain.
- (3) Detaining an individual and conducting an inquiry into that person’s activities because that person is of a specific race, ethnicity or national origin is racial profiling.

Examples of racial profiling include but are not limited to the following:

- (1) Citing a driver who is speeding in a stream of traffic where most other drivers are speeding because of the driver's race, ethnicity, or national origin.
- (2) Detaining the driver of a vehicle based upon the supposition that a person of that race, ethnicity or national origin is unlikely to own or possess that specific make or model of vehicle.
- (3) Detaining an individual based upon the supposition that a person of that race, ethnicity or national origin does not belong in a specific part of town or in a specific place.

Bias based profiling occurs when enforcement decisions, the decision to render service or aid, or the willingness to engage is based upon the officer's bias either for or against an individual or group because of characteristics, beliefs or values, or legal practices associated with the individual or group.

Bias based profiling is often associated with a person's, race, ethnicity, national origin, religion, age, gender, sexual preference, political affiliation, economic status, cultural group, and/or other identifiers.

C. Prohibition

Racial and/or bias-based profiling is strictly prohibited. Violations of racial and/or bias-based profiling are subject to disciplinary action up to and including termination. Allegations of racial and/or bias based profiling will be investigated consistent with the procedures set forth in 204: Personnel Complaints. (*TCPA TBP: 2.01*)

Nothing in this policy prohibits an officer from using any unique identifier along with other factors that are part of a legitimate description as a reason to detain a possible suspect.

D. Responsibilities

Texas Code of Criminal Procedure Article 2B.0054 requires law enforcement agencies to collect data from traffic stops in which a ticket, citation, or warning is issued to facilitate the state's reporting requirements. Patrol officers who issue tickets, citations, or warnings are required to collect data on traffic citations to include the race/ethnicity of the detainee; whether a search was conducted, and if so, whether the individual detained signed an acknowledgement or made a recorded verbal statement that the individual consented to the search; whether the peace officer knew the race or ethnicity of the individual before detaining the individual; whether the police officer used physical force that resulted in bodily injury during the stop, and if so, the location and reason for the stop; and whether the citation resulted in a physical arrest. Officers shall ensure the required information is captured on the citation form. All traffic stops shall be audio and video recorded whether a citation was issued or whether a citation was not issued. (*TBP: 2.01*)

Officers detaining a person shall be prepared to articulate sufficient reasonable suspicion to justify a detention, independent of the individual's membership in a protected class. To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview (FI) card), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention, as applicable.

Supervisors shall monitor those individuals under their command for any behavior that may conflict with the purpose of this policy and shall handle any alleged or observed violation of this policy in accordance with the Personnel Complaints Policy. Supervisors will discuss any issues with the involved officer(s) and their supervisor in a timely manner.

Supervisors will review at least three random videos each quarter (3 months) per officer to gain an understanding of that officer's performance and adherence with racial profiling laws (Tex. Code Crim. Pro. Art. 2B.0151(c)) and this policy. Supervisors will document these reviews in the comments section of the video details section within the video database and make note of the review in the Daily Shift Report. The reviews will encompass all contacts, not just traffic stops [see CP Subchapter C: Body Worn Camera Program]. (*TCPA TBP: 2.01*)

In instances where officers record their public contacts, supervisors will review the recordings every 30 days to ensure compliance with racial profiling laws (Tex. Code Crim. Pro. Art.-2B.0151(c)) and this policy. Supervisors will document these monthly reviews in the Daily Shift Report and are responsible for their log maintenance. Thereviews will encompass all contacts, not just traffic stops [see General Order 602: Body Worn Cameras]. CCP Subchapter C: Body Worn Camera Program]. (*TCPA TBP: 2.01*)

All recording will be maintained for 90 days. However, recordings that capture a potential instance of racial- or bias-based profiling will be appropriately retained for administrative investigation purposes. Supervisors shall initiate investigations of any actual or alleged violations of this policy and ensure that no retaliatory action is taken against any member of this department who discloses information concerning racial- or bias-based profiling.

E. State Report

The Police Chief shall submit to the Texas Commission on Law Enforcement (TCOLE) and to City Council an annual report of the information required in Tex. Code of Crim. Pro. Art. 2B.0053(b)(6). These reports may not include identifying information about any officer who made a motor vehicle stop or about an individual who was stopped or arrested by any officer (Tex. Code of Crim. Pro. Art. 2B.0053; Tex. Code of Crim. Pro. Art. 2B.0055). (*TBP: 2.01*)

F. Training

All sworn members of this department will be scheduled to attend TCOLE-approved training on the subject of racial- and bias-based profiling. Each member of this department undergoing initial TCOLE-approved training will thereafter be required to complete an approved refresher course every five years or sooner if deemed necessary, to keep current with changing racial issues and

cultural trends. (*TCPA TBP: 2.01*)

APPENDIX B: Quick Reference Cards

Card 1: Constitutional Stop Checklist

- ☐ Specific traffic violation observed?
- ☐ Articulable facts suggest criminal activity?
- ☐ Decision based on behavior, not demographics?
- ☐ Would I make same decision regardless of race?

Card 2: Search Decision Checklist

- ☐ Probable cause or reasonable suspicion exists?
- ☐ Consent freely given if consent search?
- ☐ Based on specific evidence, not general nervousness?
- ☐ Can I clearly articulate justification?

Card 3: Sandra Bland Act Documentation

- ☐ Race/ethnicity determination recorded
- ☐ Pre-stop knowledge documented
- ☐ Specific reason for stop noted
- ☐ Search justification and results documented
- ☐ Force usage and injuries recorded