WEBSTER POLICE DEPARTMENT

2022

RACIAL PROFILING ANALYSIS

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Executive Summary

Article 2.132-2.134 of the Texas Code of Criminal Procedure (CCP) requires the annual reporting to the local governing body of data collected on motor vehicle stops in which a ticket, citation, or warning was issued and to arrests made as a result of those stops, in addition to data collection and reporting requirements. Article 2.134 of the CCP directs that "a comparative analysis of the information compiled under 2.133" be conducted, with specific attention to the below areas:

1. 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;
2. examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and
3. evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and
4. information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

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

- **A COMPREHENSIVE REVIEW OF THE WEBSTER POLICE DEPARTMENT'S RACIAL PROFILING POLICY (POLICY 401 AND PERSONNEL COMPLAINTS POLICY 1009) SHOWS THAT THE WEBSTER 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 WEBSTER 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 IN BOTH PRINT AND ELECTRONIC FORM 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 RACIAL PROFILING DATA.**

- **THE WEBSTER POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW CONCERNING THE REPORTING OF INFORMATION TO TCOLE.**

- **THE WEBSTER POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW REGARDING CCP ARTICLES 2.132-2.134.**

Introduction

This report details an analysis of the Webster Police Department's policies, training, and statistical information on racial profiling for the year 2022. This report has been prepared to specifically comply with Article 2.132, 2.133, and 2.134 of the Texas Code of Criminal Procedure (CCP) regarding the compilation and analysis of traffic stop data. Specifically, the analysis will address Articles 2.131 – 2.134 of the CCP and make a determination of the level of compliance with those articles by the Webster Police Department in 2022. The full copies of the applicable laws pertaining to this report are contained in Appendix A.

This report is divided into six sections: (1) Webster Police Department's policy on racial profiling; (2) Webster Police Department's training and education on racial profiling; (3) Webster Police Department's complaint process and public education on racial profiling; (4) analysis of Webster Police Department's traffic stop data; (5) additional traffic stop data to be reported to TCOLE; and (6) Webster Police Department's compliance with applicable laws on racial profiling.

For the purposes of this report and analysis, the following definition of racial profiling is used: 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 (Texas CCP Article 3.05).

Webster Police Department Policy on Racial Profiling

A review of Webster Police Department's racial 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 Webster Police Department's racial profiling policy (Policy 401 and Personnel Complaints Policy 1009). Webster Police Department policies provide clear direction that bias-based profiling is prohibited and all violations of the policy will be investigated. 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 Webster Police Department regulation.

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

Webster 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 racial profiling for all Texas peace officers. Documentation provided by Webster Police Department reveals that racial profiling training and certification is current for all officers in 2022. All Webster Police Department officers are trained and instructed on the racial profiling law in Texas. All officers have been instructed on the policies and procedures regarding racial profiling and the accompanying complaint process as well.

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

Webster Police Department Complaint Process and Public Education on Racial Profiling

Article 2.132 §(b)3-4 of the Texas Code of Criminal Procedure requires that law enforcement agencies implement a complaint process on racial profiling and that the agency provide public education on the complaint process. Webster Police Department's racial profiling policy Section 401.8 (Compliments and Complaints) covers this requirement. The City of Webster Police Department has also provided information on racial profiling and the complaint process on the City of Webster website (https://www.cityofwebster.com/750/Racial-Profiling). The website also provides access to several yearly racial profiling reports.

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.

Webster Police Department Statistical Data on Racial Profiling

Article 2.132(b) 6 and Article 2.133 requires that law enforcement agencies collect statistical information on motor vehicle stops in which a ticket, citation, or warning was issued and to arrests made as a result of those stops, in addition to other information noted previously. Webster Police Department submitted statistical information on all motor vehicle stops in 2022 and accompanying information on the race/ethnicity of the person stopped. Accompanying this data was the relevant information required to be collected and reported by law.

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

Analysis of the Data

Comparative Analysis #1:

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. Texas Code of Criminal Procedure Article 2.134(c)(1)(A)

The first chart depicts the percentages of people stopped by race/ethnicity among the total 6,790 motor vehicle stops in which a ticket, citation, or warning was issued, including arrests made, in 2022.[1]

[1] There were 64 motor vehicle stops of drivers considered Alaska Native/American Indian. These motor vehicle stops were not charted in the first figure of this report due to the small number of cases relative to the population in Webster and relative to the total number of motor vehicle stops among all drivers (6,790).

Chart 1: Percentage of Motor Vehicle Stops in Comparison to Benchmarks

	White	Black	Hispanic	Asian
City Population	40.00%	15.50%	32.75%	7.14%
County Population	27.68%	18.72%	43.01%	7.29%
Percent of Stops	50.52%	21.83%	22.18%	4.54%

White drivers constituted 50.52 percent of all drivers stopped, whereas Whites constituted 40.00 percent of the city population and 27.68 percent of the county population.[2]

Black drivers constituted 21.83 percent of all drivers stopped, whereas Blacks constituted 15.50 percent of the city population and 18.72 percent of the county population.

Hispanic drivers constituted 22.18 percent of all drivers stopped, whereas Hispanics constituted 32.75 percent of the city population and 43.01 percent of the county population.

Asian drivers constituted 4.54 percent of all drivers stopped, whereas Asians constituted 7.14 percent of the city population and 7.29 percent of the county population.

The chart shows that White drivers are stopped at rates higher than the percentage of Whites found in the city and county populations. Black drivers are stopped at rates higher than the percentage of Blacks found in the city and county populations. Hispanic drivers are stopped at rates lower than the percentage of Hispanics found in the city and county populations. Asian drivers are stopped at rates lower than the percentage of Asians found in the city and county populations.

[2] City and County populations were derived from 2020 Decennial Census Redistricting Data (DEC) of the U.S. Census Bureau. City and County populations by gender noted later in this report are based on 2019 American Community Survey estimates.

Methodological Issues

Upon examination of the data, it is important to note that differences in overall stop rates of a particular racial or ethnic group, compared to that racial or ethnic group's proportion of the population, cannot be used to make determinations that officers have or have not racially profiled any given individual motorist. Claims asserting racial profiling of an individual motorist from the aggregate data utilized in this report are erroneous.

For example, concluding that a particular driver of a specific race/ethnicity was racially profiled simply because members of that particular racial/ethnic group as a whole were stopped at a higher rate than their proportion of the population—are as erroneous as claims that a particular driver of a specific race/ethnicity could NOT have been racially profiled simply because the percentage of stops among members of a particular racial/ethnic group as a whole were stopped at a lower frequency than that group's proportion of the particular population base (e.g., city or county population). In short, aggregate data as required by law and presented in this report cannot be used to prove or disprove that a member of a particular racial/ethnic group was racially profiled. Next, we discuss the reasons why using aggregate data—as currently required by the state racial profiling law—are inappropriate to use in making claims that any individual motorist was racially profiled.

Issue #1: Using Group-Level Data to Explain Individual Officer Decisions

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 "racially 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 stop data. **In short, one cannot *prove* that an *individual* officer has racially profiled any *individual* motorist based on the rate at which a department stops any given *group* of motorists.** In sum, aggregate level data cannot be used to assess individual officer decisions, but the state racial profiling law requires this assessment.

Issue #2: Problems Associated with Population Base-Rates

There has been considerable debate as to what the most appropriate population "base-rate" is in determining whether or not racial/ethnic disparities exist. The base-rate serves as the benchmark for comparison purposes. The outcome of analyses designed to determine whether or not disparities exist is dependent on which base-rate is used. While this report utilized the most recent 2020 Census as a population base-rate, this population measure can become quickly outdated, can be inaccurate, and may not keep pace with changes experienced in city and county population measures. Utilizing a different base rate can make differences regarding whether disproportionality exists or not. Even then, as noted above, disproportionality in the rate of stops among different racial/ethnic groups does not automatically equate to a finding of racial profiling.

In addition, the validity of the benchmark base-rate becomes even more problematic if analyses fail to distinguish between residents and non-residents who are stopped. This is 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 sum, a valid measure of the driving population does not exist. As a proxy, census data is used which is**

problematic as an indicator of the driving population. In addition, stopped motorists who are not residents of the city or county where the motor vehicle stop occurred are not included in the benchmark base-rate.

Issue #3: Officers Do Not Know the Race/Ethnicity of the Motorist Prior to the Stop

As illustrated in Table 3 near the end of this report, of the 6,790 motor vehicle stops in 2022, the officer knew the race/ethnicity of the motorist prior to the stop in 1.77% of the stops (120/6,790). This percentage is consistent across law enforcement agencies throughout Texas. An analysis of all annual racial profiling reports submitted to the Texas Commission on Law Enforcement, as required by the Texas racial profiling law, found that in 2.9% of the traffic stops in Texas, the officer knew the race/ethnicity of the motorist prior to the stop.[3] The analysis included 1,186 Texas law enforcement agencies and more than 3.25 million traffic stops.

As noted, the legal definition of racial profiling in the Texas Code of Criminal Procedure Article 3.05 is "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."

Webster PD officers rarely know the race/ethnicity of the motorist prior to the stop. This factor further invalidates any conclusions drawn from the stop data presented in Chart 1. If an officer does not know the race/ethnicity of the motorist prior to the stop, then the officer cannot, by legal definition, be racial profiling. Racial profiling is a law-enforcement action based on the race/ethnicity of an individual. If the officer does not know the person's race/ethnicity before the action (in this case, stopping a vehicle), then racial profiling cannot occur.

Based on this factor, post-stop outcomes are more relevant for a racial profiling assessment, as presented later in this report, in comparison to initial motor vehicle stop data disaggregated by race/ethnicity. Once the officer has contacted the motorist after the stop, the officer has identified the person's race/ethnicity and all subsequent actions are more relevant to a racial profiling assessment than the initial stop data.

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 racial profiling exists within a given jurisdiction.

Table 1 reports the summaries for the total number of motor vehicle stops in which a ticket, citation, or warning was issued, and to arrests made as a result of those stops, by the Webster Police Department in 2022. Table 1 and associated analyses are utilized to satisfy the comparative analyses as required by Texas law, and specific, Article 2.134 of the CCP.

Comparative Analysis #2:

Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of affected persons, as appropriate, including any

[3] Winkler, Jordan M. (2016). *Racial Disparity in Traffic Stops: An Analysis of Racial Profiling Data in Texas.* Master's Thesis. University of North Texas.

searches resulting from stops within the applicable jurisdiction. Texas Code of Criminal Procedure Article 2.134(c)(1)(B)

As shown in Table 1, there were a total of 6,790 motor vehicle stops in 2022 in which a ticket, citation, or warning was issued. The table also shows arrests made as a result of those stops. Roughly 44 percent of all stops resulted in a verbal warning (2,954/6,790) and 45 percent of stops resulted in a citation (3,030/6,790). Together, these actions account for roughly 89 percent of all stop outcomes and will be discussed in greater detail below.

Regarding **verbal warnings**, White motorists received a verbal warning in roughly 46 percent of stops involving White motorists (1,579/3,430), Black motorists received a verbal warning in roughly 48 percent of stops of Black motorists, Hispanic motorists received a verbal warning in roughly 32 percent of stops of Hispanic motorists, and Asian motorists received a verbal warning in roughly 50 percent of stops of Asian motorists.

Regarding **citations**, White motorists received a citation in roughly 41 percent of stops involving White motorists (1,407/3,430), Black motorists received a citation in roughly 39 percent of stops of Black motorists, Hispanic motorists received a citation in roughly 58 percent of stops of Hispanic motorists, and Asian motorists received a citation in roughly 44 percent of stops of Asian motorists.

Of the 6,790 total stops in 2022, 313 **arrests** [written warning and arrest (2), citation and arrest (98) and arrest only (213)] were made, and this accounts for 4.6 percent of all stops. White motorists were arrested in roughly 4 percent of stops involving White motorists (139/3,430), Black motorists were arrested in roughly 7 percent of stops involving Black motorists, Hispanic motorists were arrested in roughly 5 percent of stops involving Hispanic motorists, and Asian motorists were arrested in less than 1 percent of stops involving Asian motorists (1 arrest out of a total 308 stops of Asian motorists).

As illustrated in Table 1, most arrests were based on a **violation of the penal code** (47.3%; 148/313) or an **outstanding warrant** (36.7%; 115/313).

Finally, as presented in Table 1, **physical force resulting in bodily injury** was not used in 2022. Of the 6,790 total stops, no stops involved physical force resulting in bodily injury.

Table 1: Traffic Stops and Outcomes by Race/Ethnicity

Stop Table	White	Black	Hispanic /Latino	Asian /Pacific Islander	Alaska Native /American Indian	Total
Number of Stops	3,430	1,482	1,506	308	64	6,790
Gender						
Female	1,273	557	431	96	18	2,375
Male	2,157	925	1,075	212	46	4,415
Reason for Stop						
Violation of Law	36	8	16	1	2	63
Preexisting Knowledge	99	58	24	4	0	185
Moving Traffic Violation	1,602	558	609	180	46	2,995
Vehicle Traffic Violation	1,693	858	857	123	16	3,547
Result of Stop						
Verbal Warning	1,579	718	484	155	18	2,954
Written Warning	305	92	69	18	9	493
Citation	1,407	571	881	134	37	3,030
Written Warning and Arrest	1	1	0	0	0	2
Citation and Arrest	27	36	35	0	0	98
Arrest	111	64	37	1	0	213
Arrest Based On						
Violation of Penal Code	74	48	26	0	0	148
Violation of Traffic Law	19	9	21	1	0	50
Violation of City Ordinance	0	0	0	0	0	0
Outstanding Warrant	46	44	25	0	0	115
Physical Force Resulting in Bodily Injury Used?						
No	3,430	1,482	1,506	308	64	6,790
Yes	0	0	0	0	0	0

Comparative Analysis #3:

Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches. Texas Code of Criminal Procedure Article 2.134(c)(1)(C)

In 2022, a total of 571 **searches** of motorists were conducted, or roughly 8 percent of all stops resulted in a search (571/6,790). Among searches within each racial/ethnic group, White motorists were searched in roughly 7 percent of all stops of White motorists (231/3,430), Black motorists were searched in roughly 13 percent of all stops of Black motorists, Hispanic motorists were searched in roughly 9 percent of all stops of Hispanic motorists, and Asian motorists were searched in roughly 4 percent of all stops of Asian motorists (11 searches out of a total 308 stops of Asian motorists).

As illustrated in Table 2, the most common reason for a search was probable cause (41.0%; 234/571). Among **searches based on probable cause** within each racial/ethnic group, White motorists were searched based on probable cause in roughly 32 percent of all searches of White motorists (74/231), Black motorists were searched based on probable cause in roughly 59 percent of all searches of Black motorists, Hispanic motorists were searched based on probable cause in roughly 33 percent of all searches of Hispanic motorists, and Asian motorists were searched based on probable cause in 18 percent of all searches of Asian motorists (2 probable cause searches out of a total 11 searches of Asian motorists).

Regarding searches, it should be further noted that 164 out of the 571 searches (see Table 2), or roughly 29 percent of all searches, were based on **consent**, which are regarded as discretionary as opposed to non-discretionary searches. Relative to the total number of stops (6,790), discretionary consent searches occurred in 2.4 percent of stops.

Among **consent searches** within each racial/ethnic group, White motorists were searched based on consent in roughly 43 percent of all searches of White motorists (100/231), Black motorists were searched based on consent in roughly 19 percent of all searches of Black motorists, Hispanic motorists were searched based on consent in roughly 15 percent of all searches of Hispanic motorists, and Asian motorists were searched based on consent in 64 percent of all searches of Asian motorists (7 consent searches out of a total 11 searches of Asian motorists).

Of the searches that occurred in 2022, and as shown in Table 2, **contraband was discovered** in 275 or roughly 48 percent of all searches (275/571 total searches). Among the searches in which contraband was discovered, roughly 64 percent of the time the contraband discovered was drugs (177/275). Finally, as illustrated in Table 2, when contraband was discovered, motorists were arrested roughly 54 percent of the time (149/275).

Table 2: Search Outcomes by Race/Ethnicity

Search Table	White	Black	Hispanic /Latino	Asian /Pacific Islander	Alaska Native /American Indian	Total
Search Conducted						
Yes	231	187	142	11	0	571
No	3,199	1,295	1,364	297	64	6,219
Reason for Search						
Consent	100	35	22	7	0	164
Contraband in Plain View	8	4	1	0	0	13
Probable Cause	74	111	47	2	0	234
Inventory	26	24	55	2	0	107
Incident to Arrest	23	13	17	0	0	53
Was Contraband Discovered						
Yes	104	108	62	1	0	275
No	127	79	80	10	0	296
Description of Contraband						
Drugs	72	72	32	1	0	177
Weapons	6	14	4	0	0	24
Currency	1	1	1	0	0	3
Alcohol	6	5	3	0	0	14
Stolen Property	1	1	1	0	0	3
Other	18	15	21	0	0	54
Did Discovery of Contraband Result in Arrest?						
Yes	74	48	26	1	0	149
No	30	60	36	0	0	126

Comparative Analysis #4:

Information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. Texas Code of Criminal Procedure Article 2.134(c)(2)

In 2022, internal records indicate that the Webster Police Department received no complaints alleging that a peace officer employed by the agency engaged in racial profiling.

Additional Analysis:

Statistical analysis of motor vehicle stops relative to the gender population of the agency's reporting area. This analysis is presented in the report based on a December 2020 email sent from TCOLE to law enforcement executives in Texas.

In 2022, 6,790 motor vehicle stops were made by the Webster Police Department. Of these stops, 2,375 or roughly 35 percent were female drivers (2,375/6,790), and roughly 65 percent were male drivers (see Table 1).

According to 2019 American Community Survey (ACS) city and county population estimates of the U.S. Census Bureau, the City of Webster was composed of 51.1 percent females and 48.9 percent males. County population 2019 ACS estimates indicate that females accounted for 50.4 percent of the county population and males accounted for 49.6 percent of the county population.

Overall, in 2022, males were stopped at rates higher than their proportion of the city and county populations.

Additional Information Required to be Reported to TCOLE

Table 3 provides additional information relative to motor vehicle stops in 2022 by the Webster Police Department. These data are required to be collected by the Webster Police Department under the Texas Code of Criminal Procedure Article 2.133.

As previously noted, the Webster Police Department received no complaints alleging that a peace officer employed by the agency engaged in racial profiling in 2022. Furthermore, as previously discussed, of the 6,790 motor vehicle stops in 2022, the officer knew the race/ethnicity of the motorist prior to the stop in 1.77% of the stops (120/6,790).

Table 3: Additional Information

Additional Information	Total
Was Race/Ethnicity Known Prior to Stop	
Yes	120
No	6,670
Approximate Location of Stop	
City Street	4,840
US Highway	1,307
County Road	0
State Highway	600
Private Property/Other	43
Number of Complaints of Racial Profiling	**0**
Resulted in Disciplinary Action	0
Did Not Result in Disciplinary Action	0

Analysis of Racial Profiling Compliance by Webster Police Department

The foregoing analysis shows that the Webster Police Department is fully in compliance with all relevant Texas laws concerning racial profiling, including the existence of a formal policy prohibiting racial profiling by its officers, officer training and educational programs, a formalized complaint process, and the collection of data in compliance with the law.

In addition to providing summary reports and analysis of the data collected by the Webster Police Department in 2022, 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 Webster Police Department as well as police agencies across Texas.

Appendix A

Racial Profiling Statutes and Laws

Texas Racial Profling Statutes

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 the following categories:

(A) Alaska native or American Indian;

(B) Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino.

(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 compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(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 ticket, citation, or warning 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;

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;

(D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;

(E) the location of the stop; and

(F) the reason for the stop; 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 Texas Commission on Law Enforcement; 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. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras 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 Texas Commission on Law Enforcement 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.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 25, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.05, eff. May 18, 2013.

Acts 2017, 85th Leg., R.S., Ch. 173 (H.B. 3051), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 5.01, eff. September 1, 2017.

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;

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b) to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 26, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 5.02, eff. September 1, 2017.

Art. 2.134. COMPILATION 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 Texas Commission on Law Enforcement 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;

(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

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; 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 Texas Commission on Law Enforcement, 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 Texas Commission on Law Enforcement 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 (H.B. 3389), Sec. 27, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.06, eff. May 18, 2013.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 5.03, eff. September 1, 2017.

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 in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras, 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 in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras. 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 in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras, 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 in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras, 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 taken the necessary actions to use and is using video and audio equipment and body worn cameras for those purposes.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 5.04, eff. September 1, 2017.

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 an amount not to exceed $5,000 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 (H.B. 3389), Sec. 29, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 5.05, eff. September 1, 2017.

Appendix B

Webster Police Department
Bias Based Policing Policy

Bias-Based Policing

401.1 PURPOSE AND SCOPE

This policy provides guidance to department members that affirms the Webster Police Department's commitment to policing that is fair and objective.

Nothing in this policy prohibits the use of specified characteristics in law enforcement activities designed to strengthen the department's relationship with its diverse communities (e.g., cultural and ethnicity awareness training, youth programs, community group outreach and partnerships).

401.1.1 DEFINITIONS

Definitions related to this policy include:

Bias-based policing - An inappropriate reliance on actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement (Tex. Code of Crim. Pro. art. 3.05). The term "Bias-Based Policing" is also sometimes referred to as Racial Profiling.

401.2 POLICY

The Webster Police 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, objectively and without discrimination toward any individual or group.

401.3 BIAS-BASED POLICING PROHIBITED

Bias-based policing is strictly prohibited.

However, nothing in this policy is intended to prohibit an officer from considering protected characteristics in combination with credible, timely and distinct information connecting a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes.

401.4 MEMBER RESPONSIBILITIES

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any suspected or known instances of bias-based policing to a supervisor. Members should, when reasonable to do so, intervene to prevent any bias-based actions by another member.

401.4.1 REASON FOR CONTACT

Officers contacting a person shall be prepared to articulate sufficient reason for the contact, independent of the protected characteristics of the individual.

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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 contact, as applicable.

Except for required data-collection forms or methods, nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

401.4.2 REPORTING TRAFFIC STOPS

The Operations Division Commander should ensure that the Department has appropriate systems in place to collect information required by state racial profiling laws (Tex. Code of Crim. Pro. art. 2.132 (Tier One); Tex. Code of Crim. Pro. art. 2.133 (Tier Two)).

Each time an officer makes a traffic stop, the officer shall gather the required information using the system in place for racial profiling reporting.

401.5 SUPERVISOR RESPONSIBILITIES

Supervisors should monitor those individuals under their command for compliance with this policy and shall handle any alleged or observed violations in accordance with the Personnel Complaints Policy.

(a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.

  1. Supervisors should document these discussions, in the prescribed manner.

(b) Supervisors should periodically review Mobile Audio/Video (MAV) recordings, portable audio/video recordings, Mobile Computer Terminal (MCT) data and any other available resource used to document contact between officers and the public to ensure compliance with this policy.

  1. Supervisors should document these periodic reviews.
  2. Recordings or data that capture a potential instance of bias-based policing should be appropriately retained for administrative investigation purposes.

(c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.

(d) Supervisors should take prompt and reasonable steps to address any retaliatory action taken against any member of this department who discloses information concerning bias-based policing.

401.5.1 MINIMUM REVIEW REQUIREMENTS

Supervisors will ensure officers of this department are recording their traffic and pedestrian stops by using in car and body worn cameras. A random recording of each officer’s body camera video and in car video will be reviewed at least once every thirty (30) days. Supervisor video reviews will be documented in the RMS system.

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401.6 STATE REPORTING

The Chief of Police shall annually submit a report of the information required in Tex. Code of Crim. Pro. art. 2.132 to the Texas Commission on Law Enforcement (TCOLE) and to each governing body served by the Department.

The Chief of Police shall also provide to TCOLE and each governing body served by the Department a report containing an analysis of the information required by Tex. Code of Crim. Pro. art. 2.133. The report must be submitted by March 1 of each year (Tex. Code of Crim. Pro. art. 2.134).

The reports may not include identifying information about any officer who made the traffic stop or about any individual who was stopped or arrested (Tex. Code of Crim. Pro. art. 2.132; Tex. Code of Crim. Pro. art. 2.134).

401.7 ADMINISTRATION

The Operations Division Commander should review the efforts of the Department to provide fair and objective policing and submit an annual report, including public concerns and complaints, to the Chief of Police. The annual report should not contain any identifying information about any specific complaint, member of the public or officer. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service (Tex. Code of Crim. Pro. art. 2.132).

Supervisors should review the report submitted to TCOLE and the governing body and the annual report and discuss the results with those they are assigned to supervise.

401.8 COMPLIMENTS AND COMPLAINTS

The Office of Professional Standards is responsible for educating the public on the Department's compliment and complaint process (see the Personnel Complaints Policy). This education may be achieved by information provided through the Department website. This information shall include the telephone number, mailing address and e-mail address to make a compliment or complaint regarding a ticket, citation or warning issued by an officer.

In the event that an investigation is initiated against an officer for a violation of this policy, the Office of Professional Standards should ensure that a copy of any related recording is provided as soon as practicable to the officer upon written request (Tex. Code of Crim. Pro. art. 2.132).

401.9 TRAINING

Training on fair and objective policing and review of this policy should be conducted as directed by the Training Coordinator.

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Personnel Complaints

1009.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Webster Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1009.2 POLICY

The Webster Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law and municipal and county rules and the requirements of any collective bargaining agreements or memorandum of understanding.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1009.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1009.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Minor Nature Complaints - Complaints originating internally or externally against employees that are best investigated by supervisors in the employee's chain of command, including, but not limited to: substandard work performance including improper prisoner searches that do not result in injury to any person, improper or inaccurate investigations of crimes or accidents; failure to complete required paperwork properly; discourtesy toward the public or employees that does not include statements regarding race, gender, ethnicity, or religion; actions regarding the operation or care of Department vehicles; motor vehicle accidents; missed assignments, tardiness or abuse of sick time.

Serious Nature Complaints - A complaint received from sources, either inside or outside the Department that, by its very nature, requires investigation separate from the accused employee's

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chain of command. Serious Nature Complaints include, but are not limited to allegations of criminal conduct; excessive use of force; violations of Department Policy that, if sustained, would normally result in substantial disciplinary action; discourtesy that includes statements regarding race, gender, ethnicity, or religion; and those that are of such a sensitive nature, they threaten the Department's relationship with the community and the organization's integrity.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Office of Professional Standards, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

1009.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

(a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.

(b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.

(c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.

(d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.

(e) Tort claims and lawsuits may generate a personnel complaint.

The Department will hear all complaints against its members, which have been initiated by any person that is found to have "standing" for such a complaint. A person shall be considered to have standing in complaints including, but not limited to: the actual recipient of inappropriate behavior on the part of the Departmental employees; a witness to unlawful acts, including excessive force; the subject of an officer's speech or actions that adversely affects them, whether they were present or not; legal guardians acting on behalf of persons defined as juveniles by State Law.

Complainants that are intoxicated or under the influence of alcohol or a controlled substance at the time of the making of the complaint should be advised to contact the assigned investigator when they are sober unless special circumstances dictate that the complaint should be addressed immediately.

1009.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1009.4.1 COMPLAINT FORMS

Personnel complaint forms will be made available upon request and be accessible through the department website. Forms may also be available at other City facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

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1009.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary. Officers shall never attempt to dissuade a citizen from filing a complaint against any member of the Department.

1009.5 DOCUMENTATION

Supervisors shall ensure that all serious nature and minor nature complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries shall also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, an analysis will be completed and forwarded to the Chief of Police.

1009.5.1 COPY OF COMPLAINT TO PEACE OFFICER

If the complaint is against an officer, the receiving supervisor shall ensure that a copy of the signed complaint form is given to the officer within a reasonable time after it is filed (Tex. Gov't Code § 614.023).

1009.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1009.6.1 AUTHORITY

The assigned investigator is a direct representative of the Chief of Police. The assigned investigator shall receive the full cooperation of the members of the Department, regardless of rank or assignment, when conducting investigations, which are specifically related to the performance of the member’s official duties or fitness for office. The assigned investigator has the authority to conduct preliminary investigations regarding information that is received, but nothing in this policy is intended to provide carte blanche for “fishing expeditions” or surveillance without reasonable suspicion. In every case, the assigned investigator shall notify the Chief of Police and the Assistant Chief of Police of any investigations as soon as possible.

1009.6.2 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement

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regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

(a) Ensuring that upon receiving or initiating any formal complaint, a complaint entry is completed.

1. The original complaint form will be directed to the shift supervisor of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.

2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Division Commander or the Chief of Police, who will initiate appropriate action.

(b) Responding to all complaints in a courteous and professional manner.

(c) Resolving those personnel complaints that can be resolved immediately.

1. Follow-up contact with the complainant should be made as soon as practicable upon the Department receiving the complaint.

2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint entry and notify the form to the Division Commander.

(d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Division Commander and Chief of Police are notified via the chain of command as soon as practicable.

(e) Promptly contacting the Chief of Police for direction regarding the supervisor's role in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.

(f) Forwarding unresolved personnel complaints to the Division Commander, who will determine whether to contact the complainant or assign the complaint for investigation.

(g) Informing the complainant of the investigator’s name and the complaint number within three days after assignment.

(h) Investigating a complaint as follows:

1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.

2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.

(i) Ensuring that the procedural rights of the accused member are followed.

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(j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1009.6.3 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Office of Professional Standards, the following applies to employees:

(a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.

(b) Unless waived by the employee, interviews of an accused employee shall be at the Webster Police Department or other reasonable and appropriate place.

(c) No more than two interviewers should ask questions of an accused employee.

(d) Prior to any interview, an employee should be informed of the nature of the investigation.

(e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.

(f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.

(g) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.

1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the employee in a criminal matter only after the employee has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

(h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.

(i) All employees shall provide complete and truthful responses to questions posed during interviews.

(j) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.

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1009.6.4 ADMINISTRATIVE INVESTIGATION FORMAT

The investigator's report shall be in memorandum form, addressed to the Assistant Chief via the appropriate chain of command, and written in the following format:

Incident - A short summary of the basic facts of the case. Example: On January 1, 2002, at approximately 6:42 pm, Officer X was dispatched to 100 W. NASA Rd. 1 in reference to a domestic disturbance. Upon arrival, he contacted Mr. Y, a physical confrontation ensued, and Mr. Y was subsequently arrested on charges of Public Intoxication and Disorderly Conduct.

Allegation - The alleged actions by the employee and the rule, regulation, or statute that was allegedly violated. If there are multiple allegations, number them accordingly. Example: Mr. Y alleges that Officer X struck him in the face with his fist unnecessarily and without provocation, thereby violating General Order 8.0, Sec. 8.1 b (1), employ the minimum force necessary to accomplish a legal purpose.

Investigation - List everything you did as an investigator, date of assignment, dates you talked with people, received evidence, department reports, etc.

Findings - Any and all information you obtained from witnesses, list conflicts in testimony or evidence, etc.

Conclusion - Conclusions shall be based upon fact and classified as one of the following dispositions.

1009.6.5 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Sustained Misconduct Not Based on Complaint - Investigation established that the misconduct did occur, but was not part of the original complaint. If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

Policy Failure - The investigation reveals that the conduct did occur and may or may not comply with department policy. However, it is also determined that the allegation of misconduct could have been prevented had the policy been more clear or complete or in the cases where policy fails to address the issue. When the conclusion is Policy Failure, the Chief of Police will refer the

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issue to the Policy Review Committee for recommendations of procedure additions, corrections, clarifications, or amendment.

The investigator will not make or offer a formal disciplinary recommendation. Any input will be strictly limited to a summary of precedents and parameters established by prior disciplinary actions.

The Chief of Police will have the final authority regarding the conclusions of investigations and may re-assign the investigation or order further investigation if he deems it necessary.

1009.6.6 COMPLETION OF INVESTIGATIONS
Administrative investigations should be thorough and completed as soon as possible, and within thirty working days under normal circumstances. If it becomes evident that the investigation will take longer than thirty working days, the investigator shall notify the Chief of Police via a memo requesting an extension and the reason why. The complainant will be contacted by the Office of Professional Standards and advised of the delay. However, all Investigations will be completed within 60 days to include the taking of disciplinary action when necessary.

1009.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1009.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

(a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.

(b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.

(c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee shall be required to remain available for contact at all times during such shift, and will report as ordered.

1009.9 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

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The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Webster Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1009.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the Assistant Chief. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1009.10.1 NOTIFICATION OF COMPLAINANT

Upon approval of the conclusion of the investigation, the assigned investigator shall notify the complainant in writing of the receipt of the complaint and its disposition.

1009.10.2 ASSISTANT CHIEF RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Assistant Chief of Police shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Assistant Chief of Police may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Assistant Chief of Police may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Assistant Chief of Police shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

The Assistant Chief of Police shall make his/her recommendation to the Chief of Police as soon as possible, or within five (5) working days of receipt of the investigation and documentation. However if additional time is needed a memo will be submitted to the Chief of Police explaining why an extension is necessary.

1009.10.3 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Assistant Chief of Police for further investigation or action.

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Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Assistant Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Assistant Chief of Police shall provide the member with a written notice and the following:

(a) Access to all of the materials considered by the Assistant Chief of Police in recommending the proposed discipline.

(b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.

1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.

2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response, or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1009.10.4 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee should ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint.

1009.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1009.12 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension or termination. The Chief of Police or authorized designee will complete a notice of disciplinary action, indicating the reason for the suspension, the duration, and that the “leave is without pay”, or termination. The memorandum will be forwarded to Office of Professional Standards with a copy going to Human Resources. The employees can appeal the disciplinary action to the City Manager, per City Policy.

1009.13 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

Probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy.

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In cases where an individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate, the probationary period may be extended at the discretion of the Chief of Police.

1009.14 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

Evidence related to administrative investigations. Photographs, audio or video cassettes, dispatch logger recorder tapes, etc will be stored by the Office of Professional Standards Sergeant.

1009.15 EXCEPTIONS

The Chief of Police may initiate an administrative investigation regarding any allegation of employee misconduct whether reported externally or internally.

Mitigating circumstances, as determined by the Chief of Police, do not have to go through procedures as set out by department policy.

The Chief of Police will have absolute and final authority in determining the assignment and disposition of any investigation and any disciplinary actions taken resulting from an investigation.

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Appendix C

Racial Profiling Laws and Corresponding Department Policies

Texas CCP Article	WEBSTER POLICE DEPARTMENT Racial Profiling Policy (Policy 401 and Personnel Complaints Policy 1009)
2.132(b)1	Section 401.1.1 Definitions
2.132(b)2	Section 401.3 Bias-Based Policing Prohibited
2.132(b)3	Section 401.8 Compliments and Complaints
2.132(b)4	Section 401.8 Compliments and Complaints
2.132(b)5	Section 401.5 Supervisory Responsibility and Personnel Complaints Policy 1009
2.132(b)6	Section 401.4.2 Reporting Traffic Stops
2.132(b)7	Section 401.6 State Reporting