
**MONMOUTH COUNTY
UNIFORM POLICY**

Racial Profiling

Revised: May, 2012

I. Purpose

The purpose of this policy is to unequivocally remind police officers that racial and ethnic profiling in law enforcement are totally unacceptable, to provide guidelines for officers to prevent such occurrences, and to protect officers when they act within the dictates of the law and policy from unwarranted accusations. This policy also incorporates Attorney General Directive 2005-1 prohibiting racially influenced policing and Attorney General Directive 2007-3 which generally forbids police officers from inquiring into the immigration status of victims, witnesses or others receiving police assistance.

II. Discussion

A fundamental right guaranteed by the Constitution of the United States to all who live in this nation is equal protection under the law. Along with this right to equal protection is the fundamental right to be free from unreasonable searches and seizures by government agents. Citizens are free to walk and drive our streets, highways, and other public places without police interference so long as they obey the law. They also are entitled to be free from crime, and from the depredations of criminals, and to drive and walk our public ways safe from the actions of reckless and careless drivers.

The law enforcement community of Monmouth County is charged with protecting these rights, for all, regardless of race, color, ethnicity, sex, sexual orientation, physical handicap, religion or other belief system.

Because of the nature of law enforcement, officers are required to be observant, to identify unusual occurrences and law violations, and to act upon them. It is this proactive enforcement that keeps our citizens free from crime, our streets and highways safe to drive upon, and that detects and apprehends criminals.

This policy is intended to assist law enforcement in accomplishing this total mission in a way that respects the dignity of all persons and yet sends a strong deterrent message to actual and potential lawbreakers that if they break the law, they are likely to encounter the police.

III. Policy

Racial and ethnic prejudices have no place in law enforcement. Traffic enforcement, and all aspects of law enforcement, must and shall continue to be conducted in full compliance with the constitutional and statutory safeguards to preserve the rights of all citizens.

It is the policy of this county to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws, while insisting that citizens will only be stopped or detained when there exists reasonable suspicion to believe they have committed, are committing, or are about to commit, an infraction of the law.

Effective and professional traffic enforcement protects the public from death and injury, and diminishes the supplies of illegal drugs and weapons which damage our neighborhoods. Proper traffic enforcement helps to maintain an orderly and law-abiding society.

However, to stop and/or search an individual solely because of the person's race, ethnicity, economic level, age, or gender is unlawful. This strategy of policing will not be tolerated in any police organization in Monmouth County.

IV. Definition

Racial profiling: selective law enforcement based solely on an individual's race or ethnicity. The detention, interdiction, or other disparate treatment of any person on the sole basis of their racial or ethnic status or characteristics.

Racial profiling violates the values and principles of our law enforcement community, and is not a legitimate or defensible public protection strategy. Racial profiling cannot, is not, and shall not be tolerated in Monmouth County. It should be noted that depending upon the circumstances, racial profiling can be considered a violation of N.J.S.A. 2C:30-6.

A police officer need not be a racist to engage in “Racially-influenced Policing”. Any officer can unwittingly or subconsciously fall prey to racial or ethnic stereotypes about who is more likely to be involved in criminal activity.

All Chief Executives of police departments shall make their best good faith effort to periodically train, cultivate and develop the following:

1. Clear written directives to enhance lawful traffic stops.
2. Establish a departmental culture that regards constitutional protection as paramount and unmistakably treats biased/prejudiced behavior as intolerable.
3. Seek and provide training for first-line supervisors who focus on and encourage appropriate enforcement tactics of subordinates.
4. Hold field supervisors and their commanders strictly accountable for the quality, outcome and constitutionality of all traffic stops.
5. Provide proper supervision so that any improper practices are corrected.
6. Monitor traffic stop patterns as well as allegations of biased activity.
7. Make certain that the actual purpose of a traffic stop is either readily apparent or revealed to a motorist.
8. Educate the public about traffic enforcement programs, rationales and the true objectives of such programs.

9. Explore equipping patrol cars with video cameras and audio recording machinery.
10. Clearly disseminate to all law enforcement personnel that violation of this policy will subject the law enforcement officer to disciplinary action up to and including termination of employment.

NOTE:

Nothing in this policy should be construed as precluding officers from carrying out their legitimate duties in the appropriate circumstances where stops, detentions, etc... are made due to a witness/victim provided description which is race or ethnicity based. (See Appendix A – Overview of New Jersey Racial Profiling Policy).

V. Attorney General Law Enforcement Directive 2005-1.

In 2005, the Attorney General's Office issued the above directive establishing an official statewide policy defining and prohibiting "racially influenced policing". (See Appendix B). This directive prohibits police from considering a persons race or ethnicity as a factor in drawing inferences of criminality or in exercising police discretion. As such, police officers need to be focused on "suspicious conduct" rather than "suspicious looking persons" in assessing possible criminal conduct.

1. B.O.L.O. Exception – unless an officer is responding to a suspect specific or investigation specific B.O.L.O. ("Be on the Lookout") situation, a person's race or ethnicity may play no part in the exercise of police discretion. However, when confronted with a B.O.L.O. situation and when such information is being considered as a part of a detailed description to identify a given individual, the person's skin color is being used no differently than information about the pants or jacket that the suspect was said to be wearing. (See Appendix A for Overview of New Jersey's Racial Profiling Policy).
 - a. The general rule prohibiting any consideration of race or ethnicity applies to ALL police decisions, and not just the decision by a patrol officer to initiate a "stop".
 - b. The test for determining whether an officer has complied with the State's non-discrimination policy is very simple: would the officer have treated this individual or group of individuals differently if he/she/they had been of a different race or ethnicity? If the answer to this question is yes, then unless the "B.O.L.O. exception" applies, the police conduct would constitute "Racially influenced Policing" in violation of Attorney General Law Enforcement Directive 2005-1.

- c. The key to complying with the State's non-discrimination policy is that when a police officer is trying to determine whether an individual may be engaged in criminal activity, the officer should not focus on personal characteristics that the person was born with and can't change, but rather should focus on the person's conduct.
2. What Police Officers In the State Can Do To Investigate Criminal Activity:
- Police officers can be diligent when watching out for crime and at the same time can avoid claims of discriminatory policing or other constitutional violations by carefully documenting the legitimate reasons for the exercise of police discretion. Additionally, police officers should consider the following in assessing possible criminal conduct:
- a. Police departments can consider objective conduct that may indicate that a person is engaged in criminal activity, provided that race or ethnicity is not one of the factors used to determine whether a person may be committing an offense.
 - b. Police officers may aggressively enforce motor vehicle laws, including minor moving or equipment violations, so long as they make certain that they do not rely at all on the motorist's race or ethnicity as a factor in exercising discretion.
 - c. Police officers are allowed to "run the plate" of any vehicle, even if they do not observe a motor vehicle violation, provided that race or ethnicity plays no part in the officer's decision.
 - d. The ability to ask questions remains one of the most powerful investigative tools in a police officer's arsenal. Police are permitted, indeed are expected, to pose questions during the course of a traffic stop or any other kind of encounter with private citizens, so long as those questions are reasonably related in scope to the lawful purpose of the stop and do not unduly prolong the duration of an investigative detention.
 - e. An officer can also ask follow-up questions whenever the initial answers given are suspicious or require clarification. In other words, an officer may "broaden" the investigation beyond the initial reason for the stop when the officer detects something suspicious or unusual that warrants further investigation.
 - f. Police officers during an encounter with a citizen may consider a person's unusual nervousness or "furtive" movements as part of the "totality of the circumstances".
 - g. Police officers may go up to citizens to engage them in conversations (a so-called "consensual field inquiry") without having any objective or

articulable basis to believe that the person is engaged in criminal activity, so long as the decision to approach the person is not based to any degree on the person's race or ethnicity.

- h. Officers should always be thinking about what they are doing and why they are drawing inferences of suspicion about an individual. In other words, an officer should ask himself/herself what it is about this particular person that has led the officer to suspect that this person may be up to no good.
 - i. Officers must make certain that a person's race or ethnicity play no part in the exercise of police discretion, and officers should be prepared to explain and document the legitimate, race-neutral reasons for their suspicions.
3. A police officer who fails to abide by this policy may ultimately be subject to civil and/or criminal liability if that officer's conduct deprives another person of his or her civil rights. As such, police officers should be mindful of N.J.S.A. 2C:30-6 which criminalizes the official deprivation of civil rights. In pertinent part, that statute reads as follows:

A public servant acting or purporting to act in an official capacity commits the crime of official deprivation of civil rights if, knowing that his conduct is unlawful, and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, the public servant: (1) subjects another to unlawful arrest or detention, including, but not limited to, motor vehicle investigative stops, search, seizure, dispossession, assessment, lien or other infringement of personal or property rights; or (2) denies or impedes another in the lawful exercise or enjoyment of any right, privilege, power or immunity...

VI. Attorney General Law Enforcement Directive 2007-3

In 2007, the Attorney General's Office issued Attorney General Law Enforcement Directive No. 2007-3. That directive states that no State, county, or local law enforcement officer shall inquire about or investigate the immigration status of any victim, witness, potential witness, or person requesting or receiving police assistance (See Appendix C). However, an exception to this mandate exists if:

1. the County Prosecutor or the Director of the Division of Criminal Justice determines, in writing, that good cause exists to inquire about or investigate the person's immigration status;
2. the person has been arrested for an indictable offense or for driving while intoxicated or,
3. as may be constitutionally or otherwise legally required during the criminal litigation discovery process.

The directive further states that: "Any law enforcement officer making inquiry or investigation into the immigration status of an individual arrested for an indictable offense, or for driving while intoxicated, shall document and report the inquiry to the officer's supervisor during the arrest booking process. The report shall include the individual's name, address, gender, date of birth, country/place of birth, race, ethnicity, location encountered, and shall specify the criminal offense that formed the basis for the arrest, the outcome of inquiry and investigation into immigration status, and indicate whether the individual was taken into custody or otherwise ordered detained based on immigration status. The officer shall attach the arrest report to the reporting document."

Any law enforcement officer making inquiry into the immigration status of an individual as referenced above shall notify Immigration and Customs enforcement (ICE) during the arrest booking process if the officer has reason to believe that the person may not be lawfully present in the United States. The only exception to this requirement shall be if the County Prosecutor or the Director of the Division of Criminal Justice determines, in writing, that good cause exists to refrain from notifying ICE during the arrest booking process.

Whenever a law enforcement officer notifies ICE about a suspected undocumented immigrant, notification shall also be made to the prosecuting authority that will handle the matter (e.g., the County Prosecutor in the case of an indictable charge), and to any court officer setting bail or conditions of pretrial release.

VII. Training

In conjunction with the Monmouth County Prosecutor's Office, the Monmouth County Police Academy offers Racial Profiling training to all police recruits as part of the basic training curriculum. It is the policy of the Monmouth County Prosecutor's Office that all police recruits shall avail themselves of this training, which is mandatory. Any recruit who misses class during the block of instruction on Racial Profiling shall be required to attend a future class during this block of instruction. There shall be no exceptions to this rule.

The following "Overview of New Jersey's Racial Profiling Policy" (See Appendix A) is reprinted in its entirety from the materials disseminated by the Office of the Attorney General of the State of New Jersey in conjunction with Attorney General Directives No. 2005-1 (See Appendix B), and 2007-3 (See Appendix C). Each and every Monmouth County law

enforcement officer is encouraged not only to familiarize himself or herself with the following, but also to visit www.njdcj.org for the entire Racial Profiling policy in the State of New Jersey.

APPENDIX A

OVERVIEW OF NEW JERSEY'S RACIAL PROFILING POLICY

1. The Non-Discrimination Rule in a Nutshell. Except when an officer is trying to determine whether an individual matches the physical description in a B.O.L.O. ("Be On the Lookout"), or is pursuing specific leads in an ongoing criminal investigation, a police officer in this State may not consider a person's race or ethnicity as a factor in deciding whether that person may be involved in criminal activity, or in deciding how to treat that person. Unless an officer is responding to a suspect-specific or investigation-specific B.O.L.O. situation, a person's race or ethnicity may play no part in the exercise of police discretion.

2. The Scope of the Non-Discrimination Rule. The general rule prohibiting any consideration of race or ethnicity applies to all police decisions, and not just the decision by a patrol officer to initiate a "stop." The rule applies, for example, to earlier decisions (e.g., whether to "run the plates" of a vehicle, or whether to approach a person as part of a consensual "field inquiry"), and also applies to all decisions made after a stop has begun (e.g., whether to order the driver out, whether to pose probing questions, whether to ask for consent to search, etc.).

3. The Test for Determining Compliance With the Non-Discrimination Rule. The test for determining whether an officer has complied with the State's non-discrimination policy is very simple: would the officer have treated this individual or group of individuals differently if he/she/they had been of a different race or ethnicity? If the answer to this question is yes, then unless the "B.O.L.O. exception" applies, the police conduct would constitute "Racially-Influenced Policing" in violation of Attorney General Law Enforcement Directive 2005-1.

4. The Importance of Focusing on Conduct, Rather Than on Race/Ethnicity. The key to complying with the State's non-discrimination policy is that when a police officer is trying to determine whether an individual may be engaged in criminal activity, the officer should not focus on personal characteristics that the person was born with and can't change, but rather should focus on the person's conduct -- what the person is doing, or saying, or, in certain situations, expressive forms of conduct such as the person's manner of dress (e.g., whether the person is "flying the colors" of a criminal street gang). Police officers, in other words, should be looking out for "suspicious *conduct*," not for "suspicious-looking" persons

5. Rejecting the Myth That Only Racists Can Practice Racial Profiling. A police officer need not be a racist to engage in "Racially-Influenced Policing." Any officer can unwittingly or subconsciously fall prey to racial or ethnic stereotypes about who is more likely to be involved in criminal activity. One need not be prejudiced to unwittingly "pre judge" a person based on a broad-brushed stereotype of what a typical criminal looks like.

6. The Importance of Thoughtful (Reasoned) Policing. While police officers are not prohibited from relying on a "hunch," officers should always be thinking about what they are doing, and why they are drawing inferences of suspicion about an individual. In other words, an officer should ask himself/herself what it is about this particular person that has led the officer to suspect that this person may be up to no good. (The key to being reasonable is to be reasoning, that is, to be consciously aware of and able to articulate the reasons for making important decisions.) Officers must make certain that a person's race or ethnicity plays no part in the exercise of police discretion, and officers should be prepared to explain and document the legitimate, race-neutral reasons for their suspicions.

7. Meeting the "Burden of Production" Through Careful Documentation. Police officers can protect themselves from lawsuits, legal challenges, and internal investigations by carefully documenting the legitimate reasons for the exercise of police discretion, and supervisors in turn can help to protect their subordinates by making certain that all police reports are thorough, precise and accurate. This will allow the State to meet any "burden of production" that might arise if a citizen were to claim that he or she had been the victim of discriminatory policing or an unlawful search and seizure.

8. Understanding When Courts Will Closely Scrutinize Police Decisions. Police officers and their superiors should be aware of those types of situations when reviewing courts are more likely to be skeptical and probing in terms of possible Fourth or Fourteenth Amendment issues, and in those types of situations, such as high discretion encounters, or where police appear to be "digging" or "fishing" for evidence of criminality, officers must be especially careful to document the legitimate reasons that demonstrate that their decisions were lawful and appropriate.

APPENDIX B

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2005-1

**ESTABLISHING AN OFFICIAL STATEWIDE POLICY DEFINING AND PROHIBITING
THE PRACTICE OF "RACIALLY-INFLUENCED POLICING"**

WHEREAS, selective enforcement, the discredited practice that is commonly referred to as "Racial Profiling," is a longstanding criminal justice issue that needs to be addressed by every police agency in every jurisdiction throughout the nation; and

WHEREAS, it is the sworn duty of every police agency and officer to protect the civil rights of all persons, and to safeguard the inalienable right to the equal protection of the laws; and

WHEREAS, if a police officer were to rely upon a person's race or ethnicity when making decisions and exercising law enforcement discretion, the result would be to undermine public confidence in the fairness and integrity of the criminal justice system, alienate significant segments of our society, foster disrespect for law enforcement authority and the institutions of government, and ultimately erode public support for law enforcement efforts to investigate and deter crime; and

WHEREAS, the law of selective enforcement under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution is complex and evolving. While judicial decisions interpreting the Constitution serve as important guideposts for the law enforcement community, the courts are not the sole guardians of the Constitution; the Executive Branch is equally sworn to uphold it. Furthermore, in New Jersey the Attorney General may establish law enforcement policies designed to safeguard civil rights that go beyond the requirements of federal and State constitutional law. It is, therefore, appropriate to promulgate a uniform and comprehensive statewide policy that explains in clear terms when and under what circumstances police officers are permitted to consider, and are prohibited from considering, a person's race or ethnicity; and

WHEREAS, the documented success of the New Jersey State Police in addressing the racial profiling issue by establishing a clear nondiscrimination policy, and by providing state-of-the-art training and effective management to all State Police members can and should serve as a model to be followed by other law enforcement agencies in New Jersey and throughout the nation; and

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., provides that it is the responsibility of the Attorney General, as the chief law enforcement officer of the State, to ensure the uniform and efficient enforcement of the criminal laws;

NOW, THEREFORE, I, PETER C. HARVEY, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., do hereby **DIRECT** the following:

1. Official State Policy Prohibiting Discriminatory Policing

a. No police agency or sworn officer or civilian employee of a police agency, while operating under the authority of the laws of the State of New Jersey, shall engage in or tolerate any practice or act constituting "racially-influenced policing" as described in Section 2 of this Law Enforcement Directive.

b. Every police agency operating under the authority of the laws of the State of New Jersey shall, within 60 days of the effective date of this Directive, promulgate and enforce a Rule, Regulation, Standing Operating Procedure, Directive or Order, in a form as may be appropriate given the customs and practices of the agency, which shall prohibit all sworn officers and civilian employees of the agency from engaging in or tolerating any practice or act constituting racially-influenced policing as described in Section 2 of this Law Enforcement Directive. Such Rule, Regulation, Standing Operating Procedure, Directive, or Order shall be consistent with the provisions of this Law Enforcement Directive, and with the training materials distributed by the Division of Criminal Justice in the Attorney General's Office, pursuant to Section 3a of this Directive, and shall provide that any sworn officer or civilian employee of the agency who knowingly violates the agency's Rule, Regulation, Standing Operating Procedure, Directive or Order shall be subject to discipline.

2. Conduct Constituting Racially-Influenced Policing

a. A sworn officer or civilian employee of a police agency acting under the authority of the laws of the State of New Jersey shall not consider a person's race or ethnicity as a factor in drawing an inference or conclusion that the person may be involved in criminal activity, or as a factor in exercising police discretion as to how to stop or otherwise treat the person; except when responding to a suspect-specific or investigation-specific "Be on the Lookout" (B.O.L.O.) situation as described both in this Directive and in training materials developed by the Division of Criminal Justice pursuant to Section 3a of this Law Enforcement Directive.

b. Nothing in this Law Enforcement Directive shall be construed in any way to prohibit a police agency or sworn officer or civilian employee from taking into account a person's race or ethnicity when race or ethnicity is used to describe physical characteristics that identify a particular individual or individuals who is/are the subject of a law enforcement investigation, or who is/are otherwise being sought by a law enforcement agency in furtherance of a specific investigation or prosecution.

3. Development and Dissemination of Training Materials and Curricula

a. The Division of Criminal Justice shall within 30 days of the effective date of this Law Enforcement Directive develop and disseminate initial training materials, which shall consist of a video presentation in a DVD format and accompanying written reference materials (a Companion Guide and Skills Assessment), that explain and discuss the nondiscrimination policy set forth in this Law Enforcement Directive. A copy of these initial training materials shall be provided without cost to every police agency operating under the authority of the laws of the State of New Jersey. The Division of

Criminal Justice may periodically review and update these training materials to account for new developments in the law.

b. The Division of Criminal Justice shall within 90 days of the effective date of this Law Enforcement Directive develop curricula on the subject of racially-influenced policing for use in the pre-service training of police recruits. The Division shall submit this curricula to the Police Training Commission for its approval for use at all Police Academies that are subject to the jurisdiction of the Police Training Commission.

c. In order to institutionalize and build upon the successful reforms that have already been undertaken by the New Jersey State Police, the Division of State Police shall include the curricula developed by the Division of Criminal Justice on the subject of racially-influenced policing in the pre-service training of Trooper recruits in the State Police Training Academy. This comprehensive training on racially-influenced policing shall be included for all recruits who attend the State Police Academy in any class beginning on or after September 1, 2005.

4. Confirmation of Initial In-Service Training

a. Every police officer operating under the authority of the laws of the State of New Jersey, regardless of rank or duty assignment, shall participate in the training program developed by the Division of Criminal Justice within 180 days of the employing agency's receipt of the training materials described in Section 3a of this Law Enforcement Directive. The Chief Executive of every police agency operating under the authority of the laws of the State of New Jersey shall also designate those civilian employees of the agency (e.g., dispatchers) who will participate in this initial training program. A person shall be deemed to have participated in the training program by viewing the entire video presentation developed by the Division of Criminal Justice, or by reading the entire contents of the Companion Guide. The viewing of the video presentation may be done at such location(s) or time(s) as may be approved by the Chief Executive of the law enforcement agency, and may be accomplished in multiple sessions at which one or more employees view a selected portion of the video presentation during any one session.

b. Within 180 days of receiving a copy of the training materials described in Section 3a of this Law Enforcement Directive, the Chief Executive of every police agency operating under the authority of the laws of the State of New Jersey shall confirm in writing to the Attorney General that all sworn personnel and all appropriate civilian employees of the agency have either viewed the video presentation or read the entire Companion Guide. The Division of Criminal Justice shall prepare and disseminate forms to facilitate the confirmation process for State, county and local police agencies.

5. Notification of Criminal Investigations and Prosecutions for Official Deprivation of Civil Rights

Whenever a law enforcement agency conducts a criminal investigation into possible commission of the crime of official deprivation of civil rights in violation of N.J.S.A. 2C:30-6, or pattern of official misconduct in violation of N.J.S.A. 2C:30-7 which is based on two or more violations of N.J.S.A. 2C:30-6, the law enforcement agency shall promptly notify the Director of the Office of Government Integrity, and shall provide such information as the Office of Government Integrity may require. Whenever a prosecuting authority files a complaint, accusation or indictment charging a violation of N.J.S.A. 2C:30-6, or N.J.S.A. 2C:30-7 which is based on two or more violations of N.J.S.A. 2C:30-6, the prosecuting authority shall promptly notify the Director of the Office of Government Integrity, and shall forward a copy of the charging documents to the Director. When the Director is notified of a criminal investigation or the filing of a criminal charge, the Office of Government Integrity shall promptly review the matter, and take such action as it determines to be appropriate. The Office of Government Integrity, in consultation with the Division of Criminal Justice and the County Prosecutors, may issue standards and procedures for these notifications and for its review of the offenses covered under this Section.

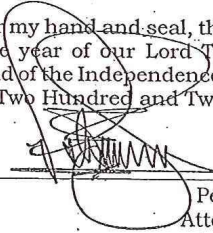
6. Questions and Controversies

All questions concerning the interpretation, implementation or enforcement of this Law Enforcement Directive shall be addressed to the Attorney General or his designee.

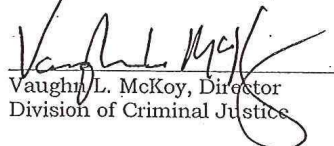
7. Effective Date

This Law Enforcement Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended, or superceded by Order of the Attorney General.

Given under my hand and seal, this 28th day of June, in the year of our Lord Two Thousand and Five, and of the Independence of the United States, the Two Hundred and Twenty-Ninth.


Peter C. Harvey
Attorney General

Attest:


Vaughn L. McKoy, Director
Division of Criminal Justice

APPENDIX C



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 080
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JON S. CORZINE
Governor

ANNE MILGRAM
Attorney General

**ATTORNEY GENERAL
LAW ENFORCEMENT DIRECTIVE NO. 2007-3**

These guidelines shall establish the manner in which local, county, and State law enforcement agencies and officers shall interact with federal immigration authorities.

While enforcement of immigration laws is primarily a federal responsibility, State, county, and local law enforcement agencies necessarily and appropriately should inquire about a person's immigration status under certain circumstances. Specifically, after an individual has been arrested for a serious violation of State criminal law, the individual's immigration status is relevant to his or her ties to the community, the likelihood that he or she will appear at future court proceedings to answer State law charges, and the interest of the federal government in considering immigration enforcement proceedings against an individual whom the State has arrested for commission of a serious criminal offense. When there is reason to believe that the arrestee may be an undocumented immigrant, the arresting agency is responsible for alerting federal immigration officials, the prosecuting agency, and the judiciary.

The overriding mission of law enforcement officers in this State is to enforce the State's criminal laws and to protect the community that they serve. This requires the cooperation of, and positive relationships with, all members of the community. Public safety suffers if individuals believe that they cannot come forward to report a crime or cooperate with law enforcement. Moreover, Article 1, Paragraph 22 of the New Jersey Constitution mandates that "a victim of a crime shall be treated with fairness, compassion and respect by the Criminal Justice System." Consistent with that constitutional mandate, as well as basic



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principles of effective policing, victims, as well as witnesses and other persons requesting police assistance, should not be discouraged from approaching police officers out of fear of inquiry into their immigration status.

In 1996, Congress authorized federal authorities to delegate civil and criminal immigration enforcement authority to local, county and State agencies that enter into a written agreement with Immigration and Customs Enforcement (ICE).¹ Regardless of any additional enforcement powers granted pursuant to an agreement with ICE, however, the primary function of local, county and State agencies must be to enforce State law and to ensure public safety in the community. The exercise of federal immigration enforcement authority by State, county or local law enforcement officers must therefore be consistent with, and in support of, their State law enforcement mission. In addition, unlike federal task forces, to which participating officers are assigned on a full-time basis and are under direct and constant federal supervision, Section 287(g) officers need not obtain federal approval before taking enforcement actions in the name of the federal government.

To further the priorities of strong relationships between law enforcement and all members of the community, as well as other fundamental principles of equal protection and civil rights, New Jersey has taken a leadership position in eliminating racially-influenced policing, or racial profiling. In 2005, the Attorney General issued Attorney General Law Enforcement Directive 2005-1, which prohibits law enforcement officers from engaging in racially-influenced policing. In that directive, the Attorney General formalized and mandated the great advances that have been made in the State in eliminating racially-influenced policing practices. Additionally, the Legislature has affirmed that it is against the policy of this State for law enforcement officers to use race or ethnicity as a basis for initiating an investigation. See N.J.S.A. 2C:30-5. Consistent with public policy, statute, and Attorney General Directive, law enforcement agencies must refrain from any law enforcement strategies that risk undermining – or which create the impression of undermining – the prohibitions on racially-influenced policing.

Accordingly, by virtue of the authority vested in me by the Constitution and the Laws of this State, and in furtherance of securing

¹ See Section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g).

the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, N.J.S.A. 52:17B-97 et. seq., I do hereby promulgate the following directives:

I. Arrest of Undocumented Immigrants for Indictable Offenses and Driving While Intoxicated (Applicable to all Agencies and Officers)

1. When a local, county, or State law enforcement officer makes an arrest for any indictable crime, or for driving while intoxicated, the arresting officer or a designated officer, as part of the booking process, shall inquire about the arrestee's citizenship, nationality and immigration status. If the officer has reason to believe that the person may not be lawfully present in the United States, the officer shall notify Immigration and Customs Enforcement (ICE) during the arrest booking process. The only exception to this requirement shall be if the County Prosecutor or the Director of the Division of Criminal Justice determines, in writing, that good cause exists to refrain from notifying ICE during the arrest booking process.
2. Notification to ICE may be made telephonically, by facsimile transmission, or by such other means as ICE may provide. The officer shall document when and by what means notification to ICE was made and the factual basis for believing that the person may be an undocumented immigrant.
3. Whenever a law enforcement officer notifies ICE about a suspected undocumented immigrant, notification shall also be made to the prosecuting authority that will handle the matter (e.g., the County Prosecutor in the case of an indictable charge), and to any court officer setting bail or conditions of pretrial release.
4. County Prosecutors shall on an annual basis report to the Director of the Division of Criminal Justice on the total number of notifications made pursuant to this Directive and the Director shall make the aggregate data public on an annual basis.

II. Prohibition on Immigration Status Inquiries of Victims and Witnesses (Applicable to all Agencies and Officers)

5. No State, county, or local law enforcement officer shall inquire about or investigate the immigration status of any victim, witness, potential witness, or person requesting or receiving police assistance. An exception to this requirement shall exist if: (a) the County Prosecutor or the Director of the Division of Criminal Justice determines, in writing, that good cause exists to inquire about or investigate the person's immigration status; (b) the person has been arrested for an indictable offense or for driving while intoxicated as set forth in Section 1 above; or, (c) as may be constitutionally or otherwise legally required during the criminal litigation discovery process.

III. Standards for Agencies and Officers Who Enter Agreements to Exercise Federal Immigration Authority Pursuant to Section 287(g) (Applicable only to Section 287(g) Agencies and Officers)

Directives 6 through 12 apply only to those local, county, and State law enforcement agencies and officers performing functions of a federal immigration officer pursuant to an agreement with federal authorities under 8 U.S.C. § 1357(g). As used in this Directive, the term "Section 287(g) agency" means a State, county or municipal law enforcement agency that is a signatory to a written agreement with Immigration and Customs Enforcement (ICE) authorized by Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g). The term "Section 287(g) officer" means a law enforcement officer employed by a Section 287(g) agency who has received the training required by Section 287(g) and is authorized by ICE to act as a federal immigration officer.

A. Provisions Applicable to Section 287(g) Officers in Detention Facilities

6. A Section 287(g) officer may invoke or exercise federal authority under Section 287(g) with respect to any undocumented immigrant who is being detained in a county jail or State detention facility.

B. Provisions Applicable to All Other Section 287(g) Officers

7. A Section 287(g) officer may not exercise federal law enforcement authority under Section 287(g) unless and until the officer has arrested an individual(s) for violation of an indictable offense, or for driving while intoxicated, under State law.
8. Any law enforcement officer making inquiry or investigation into the immigration status of an individual arrested for an indictable offense, or for driving while intoxicated, shall document and report the inquiry to the officer's supervisor during the arrest booking process. The report shall include the individual's name, address, gender, date of birth, country/place of birth, race, ethnicity, location encountered, and shall specify the criminal offense that formed the basis for the arrest, the outcome of inquiry and investigation into immigration status, and indicate whether the individual was taken into custody or otherwise ordered detained based on immigration status. The officer shall attach the arrest report to the reporting document.
9. A Section 287(g) agency shall submit on a monthly basis to the Director of the Division of Criminal Justice all reports (with arrest report attached) produced pursuant to No. 8 of this Directive to ensure that immigration enforcement efforts are being performed in compliance with all applicable State laws, directives, and guidelines. The Director shall compile the information and shall make the aggregate data public on an annual basis.
10. A Section 287(g) agency shall enter into a written agreement with an appropriate ICE-approved detention facility or facilities to ensure that there is adequate space to hold potential federal detainees in addition to local, county, or State detainees. The agreement shall set forth the procedures established to ensure that the

detention of any individual solely on the basis of immigration charges comports with the requirements of 8 C.F.R. § 287.7. No agency shall exercise the authority granted by Section 287(g) prior to reaching agreement with a detention facility that meets the requirements set forth in this paragraph.

11. Nothing in this Directive shall limit the ability of local, county, or State law enforcement agencies to enter into written agreements authorized by Section 287(g) that impose greater restrictions on the agency's performance of functions under that agreement.
12. Directives 6 through 12 inclusive shall not apply to any officer who has been detailed on a full-time basis to a federal law enforcement agency or to a task force operated under the direct supervision of a federal law enforcement agency, provided that the officer is acting exclusively under the authority of federal law.

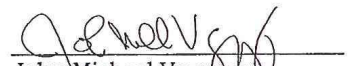
IV. General Matters

13. No law enforcement officer shall at any time engage in conduct constituting racially-influenced policing, as defined in Attorney General Law Enforcement Directive No. 2005-1. An officer or employee of a police agency in this State acting either under the authority of the laws of the State of New Jersey or pursuant to an agreement authorized by Section 287(g) shall not consider a person's race or ethnicity as a factor in drawing an inference or conclusion that the person may be an undocumented immigrant.
14. All questions concerning the interpretation, implementation or enforcement of this Directive shall be addressed to the Director of the Division of Criminal Justice, or his designee.

15. This Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended or superseded by Order of the Attorney General.


Anne Milgram
Attorney General

ATTEST:


John Michael Vazquez
First Assistant Attorney General

Dated: August 22, 2007