

The Marble Falls Police Department Annual Contact Report ~2019~



February 18, 2020

Marble Falls City Council
Marble Falls, Texas 78654

Dear Distinguished Members of the City Council,

In 2001, the Texas Legislature passed the Texas Racial Profiling Law (S.B. 1074). Since becoming effective, the Marble Falls Police Department, in accordance with the law, has collected contact data for the purpose of identifying and addressing (if necessary) concerns regarding racial profiling practices by police officers. In 2009, the Texas Racial Profiling Law was modified and new requirements are now in place.

In this report, you will find documentation that supports the fact that the Marble Falls Police Department has complied with The Texas Racial Profiling Law. This report also contains statistical data relevant to motor vehicle contacts between January 1, 2019 and December 31, 2019. The data and supporting documentation presented in this report support the notion that the Marble Falls Police Department is committed to the identification and resolution (if necessary) of all issues relevant to racial profiling according to the state law.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark N. Whitacre". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark N. Whitacre
Chief of Police

MARBLE FALLS POLICE DEPARTMENT

POLICY ON RACIAL PROFILING

I. POLICY

We are committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, sexual orientation, national origin, ethnicity, age, or religion. Respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and by statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions that support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement consensual contacts between officers and the public.

II. PURPOSE

The purpose of this order is to inform officers that bias-based policing is prohibited by the department. Additionally, this order will assist officers in identifying key contexts in which bias may influence these actions, and emphasize the importance of the constitutional guidelines within which we operate.

III. DEFINITIONS

Most of the following terms appear in this policy statement. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

- A. **Bias:** Prejudice or partiality based on preconceived ideas, a person's upbringing, culture, experience, or education.
- B. **Biased-based policing:** Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.
- C. **Ethnicity:** A cluster of characteristics that may include race but also cultural characteristics or traits that are shared by a group with a common experience or history.
- D. **Gender:** Unlike sex, a psychological classification based on cultural characteristics or traits.
- E. **Probable cause:** Specific facts and circumstances within an officer's knowledge that would lead a reasonable officer to believe that a specific offense has been or is being committed, and that the suspect has committed it. Probable cause will be determined by the courts reviewing the totality of the circumstances surrounding the arrest or search from an objective point of view.

- F. **Race:** A category of people of a particular decent, including Caucasian, African, Hispanic, Asian, Middle Eastern, or Native American descent. As distinct from ethnicity, race refers only to physical characteristics sufficiently distinctive to group people under a classification.
- G. **Racial profiling:** 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.
- H. **Reasonable suspicion:** Specific facts and circumstances that would lead a reasonable officer to believe criminal activity is afoot and the person to be detained is somehow involved. Reasonable suspicion will be determined by the courts reviewing the totality of the circumstances surrounding the detention from an objective point of view.
- I. **Sex:** A biological classification, male or female, based on physical and genetic characteristics.
- J. **Stop:** An investigative detention of a person for a brief period of time, based on reasonable suspicion.

IV. PROCEDURES

A. General responsibilities

1. Officers are prohibited from engaging in bias-based profiling or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes.
2. Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, subject stops, arrests, nonconsensual searches, and property seizures. Except as provided in number 3 below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.
3. Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity to a particular unlawful incident(s). Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion. Except as provided above, reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall be subjected to stops, seizures, or detentions only upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.
4. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
 - a. As traffic stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of

consent. How the officer disengages from a traffic stop may be crucial to a person's perception of fairness or discrimination.

- b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.
5. All personnel shall treat everyone with the same courtesy and respect that they would have others observe to department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
 - a. Personnel shall facilitate an individual's access to other governmental services whenever possible, and shall actively provide referrals to other appropriate agencies.
 - b. All personnel shall courteously accept, document, and forward to the Chief of Police any complaints made by an individual against the department.
6. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety.
7. When concluding an encounter, personnel shall thank him or her for cooperating.
8. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give their departmental identification number, name of the immediate supervisor, or any other reasonable information.
9. All personnel are accountable for their actions. Personnel shall justify their actions when required.

B. Supervisory responsibilities

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties and those of their subordinates. Supervisors shall identify and correct instances of bias in the work of their subordinates.
2. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with this order and the constitutional requirements of law enforcement.
3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are critical to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.
4. Supervisors are reminded that biased enforcement of the law engenders not only mistrust of law enforcement, but increases safety risks to personnel as well as exposing the employee(s) and department to liability.
5. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates if the supervisor knew, or should have known, of the subordinate's actions.
6. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable. Any enforcement action that begins as a consensual encounter will also have the circumstances of the initial encounter documented.
7. Supervisors shall facilitate the filing of any complaints about law- enforcement service.

8. Supervisors will randomly review at least three video tapes per officer (either body camera and/or in-car camera video) per quarter. For this policy a "quarter" is defined as a 3-month period of time. Supervisors are not required to watch each incident of an entire shift; however, reviewing the footage in a manner intended to gain an understanding of that officer's performance and adherence to policy and law is required. Supervisors will document the random review of the video in Guardian Tracking and any violations of policy or law will be addressed through the use of Policy 2.08 Professional Standards & Internal Compliance Enforcement.
9. Section 8 above applies only to first-line uniformed officers and their immediate supervisors. In the absence of a first-line supervisor this responsibility will move to the Patrol Captain.

C. Disciplinary consequences

1. Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

D. Training

1. Officers shall complete all training required by state law regarding bias-based profiling.

V. COMPLAINT INVESTIGATION

- A. The department shall accept complaints from any person who believes he or she has been stopped or searched based on biased based policing. No person shall be discouraged, intimidated or coerced from filing a complaint, nor discriminated against because he or she filed such a complaint.
- B. Any employee who receives an allegation of biased based policing, including the officer who initiated the stop, shall record the person's name, address and telephone number, and forward the complaint through the appropriate channel or direct the individual(s). Any employee contacted shall provide to that person a copy of a complaint form or the department process for filing a complaint. All employees will report any allegation of biased based policing to their superior before the end of their shift.
- C. Investigation of a complaint shall be conducted in a thorough and timely manner. All complaints will be acknowledged in writing to the initiator who will receive disposition regarding said complaint within a reasonable period of time. The investigation shall be reduced to writing and any reviewer's comments or conclusions shall be filed with the chief. When applicable, findings and/or suggestions for disciplinary action, retraining, or changes in policy shall be filed with the chief.
- D. If a bias-based policing complaint is sustained against an officer, it will result in appropriate corrective and/or disciplinary action, up to and including termination.
- E. If a departmental video or audio recording of the events upon which a complaint of bias-based policing is based exists, this department shall promptly provide a copy of the recording to that officer upon receipt of their written request.

VI. PUBLIC EDUCATION

- A. This department will inform the public of its policy against bias-based policing and the complaint process. Methods that may be utilized to inform the public are the news media, radio, service or

civic presentations, the Internet, as well as governing board meetings. Additionally, information will be made available as appropriate in languages other than English.

VII. CITATION DATA COLLECTION & REPORTING

- A. An officer is required to collect information relating to traffic stops in which a citation or warning is issued or an arrest is made. Information collected must include:
 - 1. The person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group, as stated by the person or as determined by the officer to the best of his/her ability;
 - 2. Was race or ethnicity known prior to the traffic stop;
 - 3. Reason for the traffic stop;
 - 4. The street address or approximate location of the stop;
 - 5. Whether a search was conducted;
 - 6. If a search was conducted, was it consensual or with probable cause;
 - 7. Whether any contraband was discovered in the course of the search and, if so, the type of contraband discovered;
 - 8. The result of the stop:
 - a. Arrest;
 - b. Citation;
 - c. Citation and arrest;
 - d. Written warning; or
 - e. Written warning and arrest;
 - 9. If the officer made an arrest as a result of the stop and/or search, what was the reason for the arrest;
 - 10. Was physical force resulting in bodily injury used during the stop?

VIII. USE OF VIDEO AND AUDIO EQUIPMENT

- A. Each motor vehicle used by this department to make traffic and pedestrian stops is equipped with a video camera and transmitter-activated equipment; and
- B. Each traffic and pedestrian stop made by an officer of this department that is capable of being recorded by video and audio, or audio, as appropriate, is recorded.
- C. This department shall retain the video and audiotapes, or the audiotape of each traffic and pedestrian stop for at least ninety (90) days after the date of the stop. If a complaint is filed with this department alleging that one of our officers has engaged in bias-based policing with respect to a traffic or pedestrian stop, this department shall retain the video and audiotapes, or the audiotape of the stop until final disposition of the complaint.
- D. Supervisors will ensure officers of this department are recording their traffic and pedestrian stops. Three random recordings of each officer will be reviewed at least once every ninety (90) days.

The supervisor will then document the review in Guardian Tracking under Video Review on the dropdown list.

- E. If the equipment used to record audio and/or video of the traffic or pedestrian stop is malfunctioning or otherwise not operable, the officer making the stop shall make a proper written record (paper citation/paper warning or e-citation/e- warning) and report the information as required in Section IX of this policy.

IX. COLLECTION AND REPORTING INFORMATION GATHERED FROM TRAFFIC AND PEDESTRIAN STOPS WITHOUT THE USE OF VIDEO AND AUDIO EQUIPMENT

- A. An officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense, shall record and report the same information required in Section VIII.
- B. This department shall compile and analyze the information contained in these individual reports. Not later than March 1st of each year, this department shall submit a report to our governing body containing the information compiled from the preceding calendar year. This report will include:
 - 1. A comparative analysis of the information contained in the individual reports in order to:
 - a. Determine the prevalence of bias-based policing by officers in this department; and
 - b. Examine the disposition of traffic and pedestrian stops made by this department's officers, including searches resulting from stops.
 - 2. Information relating to these individual reports regarding each complaint filed with this department alleging bias-based policing.

This report will not include identifying information about a peace officer who makes a stop or about an individual who is stopped or arrested by a peace officer.

Report on Racial Profiling Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of January 1, 2019 through December 31, 2019, based on allegations related to possible violations of the Texas Racial Profiling Law. The final disposition of the case is also included.



A check above indicates that the Marble Falls Police Department has not received any complaints, as outlined in the law, on any members of its police force, for having violated the Texas Racial Profiling Law during the time period of January 1, 2019 through December 31, 2019.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law.

Complaint No.	Alleged Violation			Disposition of the Case

Motor Vehicle-Related Contact Information (January 1, 2019 — December 31, 2019)

Race/Ethnicity*	Contacts	
	N	%
Black	183	3.82%
Asian/Pacific Islander	51	1.07%
White	3,577	74.72%
Hispanic/Latino	953	19.91%
Alaska Native/American Indian	23	0.48%
Total	4,787	100%

Total Number of Contacts in which Officers knew Race and Ethnicity of Individual Before Being Detained	Total Number of Contacts in which Officers <i>did not know</i> Race and Ethnicity of Individual Before Being Detained
382	4,405

“N” represents “number” of traffic-related contacts.

* Race/Ethnicity is defined by Senate Bill 1074 as being of a “particular descent, including Black, Asian/Pacific Islander, White, Hispanic/Latino or Alaska Native/American Indian.”

Reason for Stop?	Contacts	
	N	%
Violation of Law	82	1.71%
Pre-Existing Knowledge (warrant)	41	0.86%
Moving Traffic Violation	3,397	70.96%
Vehicle Traffic Violation	1,267	26.47%
Total	4,787	100%

Result of the Stop	Contacts	
	N	%
Citation	1,972	41.19%
Citation and Arrest	17	0.36%
Written Warning	1,430	29.87%
Written Warning and Arrest	21	0.44%
Arrest	97	2.03%
Verbal Warning	1,250	26.11%
Total	4,787	100%

“N” represents “number” of traffic-related contacts.

* Race/Ethnicity is defined by Senate Bill 1074 as being of a “particular descent, including Black, Asian/Pacific Islander, White, Hispanic/Latino or Alaska Native/American Indian.”

Reason for Search	Contacts	
	N	%
Consent	33	22.76%
Contraband in Plain View	4	2.76%
Incident to Arrest	4	2.76%
Inventory	41	28.28%
Probable Cause	63	43.44%
Total	145	100%

Description of Contraband Discovered	Contacts	
	N	%
Alcohol	59	62.77%
Currency	2	2.13%
Drugs	2	2.13%
Weapons	18	19.15%
Stolen Property	1	1.06%
Other	12	12.76%
Total	94	100%

Arrest Based On	Contacts	
	N	%
Outstanding Warrant	20	20.62%
Violation of Penal Code	37	38.14%
Violation of Traffic Law	40	41.24%
Total	97	100%

“N” represents “number” of traffic-related contacts.

* Race/Ethnicity is defined by Senate Bill 1074 as being of a “particular descent, including Black, Asian/Pacific Islander, White, Hispanic/Latino or Alaska Native/American Indian.”

Was physical force resulting in bodily injury used during stop?	Contacts	
	N	%
Yes	12	0.25%
No	4,775	99.75%
Total	4,787	100%

“N” represents “number” of traffic-related contacts.

* Race/Ethnicity is defined by Senate Bill 1074 as being of a “particular descent, including Black, Asian/Pacific Islander, White, Hispanic/Latino or Alaska Native/American Indian.”

Comparison of Twelve-Year Traffic and Motor Vehicle- Related Contact Information (January 1, 2008 – December 31, 2019)

Race/Ethnicity*												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
White	81.50 %	82.73 %	81.69 %	84.37 %	88.34 %	89.89 %	91.01 %	82.75 %	84.40 %	88.74 %	74.07 %	74.72 %
Black	2.37 %	2.45 %	2.19 %	3.02 %	3.00 %	3.27 %	2.37 %	4.25 %	2.89 %	3.95 %	4.52 %	3.82 %
Hispanic/Latino	15.45 %	14.38 %	15.50 %	11.34 %	7.64 %	6.05 %	5.84 %	11.95 %	10.41 %	5.68 %	19.21 %	19.91 %
Asian/Pacific Islander	0.48 %	0.31 %	0.45 %	0.55 %	0.66 %	0.59 %	0.30 %	0.50 %	0.75 %	0.97 %	1.00 %	1.07 %
Alaska Native/ American Indian	0.20 %	0.13 %	0.17 %	0.72 %	0.36 %	0.20 %	0.48 %	0.55 %	1.55 %	0.66 %	1.20 %	0.48 %
Total**	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

* Race/Ethnicity is defined by Texas Senate Bill 1074 as being of a “particular descent, including White, Black, Hispanic/Latino, Asian/Pacific Islander or Alaska Native/American Indian.”

** Figure has been rounded.

Twelve-Year Comparison

The twelve-year comparison from 2008 through 2019 showed similarities with respect to the traffic-related contacts. As evident in the Table, the percentage of drivers contacted by our officers (in traffic-related incidents) remains consistent over the past twelve years.

Contact Information

For additional questions regarding the information presented in this report, please contact:

Marble Falls Police Department
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Marble Falls, Texas 78654
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