

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 Criminal of 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.

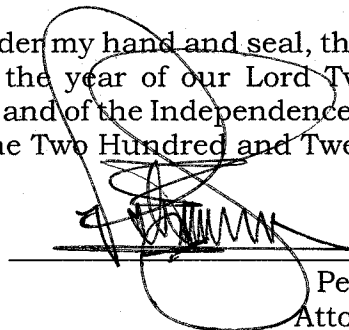
6. Questions and Controversies

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

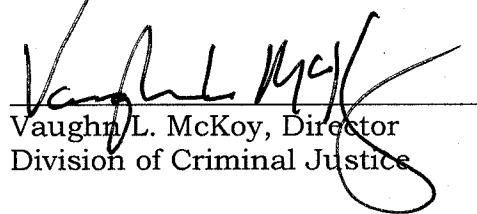
7. Effective Date

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