


# *New Hampshire Department of Safety*

## *Division of State Police*

	SUBJECT		GENERAL ORDER
	<b>FAIR AND IMPARTIAL POLICING</b>		<b>100.04</b>
	CALEA STANDARDS		DISTRIBUTION CODE
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### FAIR AND IMPARTIAL POLICING

#### I. PURPOSE

To prevent and prohibit the practice of biased policing and other discriminatory practices in any law enforcement-related activity involving a member of the Division. While this General Order is intended to ensure that Division members scrupulously honor the human and constitutional rights of those with whom they come into contact, nothing in this directive shall be construed to prevent Division members from engaging in lawful police activity, to include ascertaining the identity of persons lawfully detained or arrested or to confirm or dispel reasonable suspicions of any violation of law.

#### II. POLICY

It is the policy of the Division of State Police to respect and protect the constitutional rights of all individuals during law enforcement contacts and/or enforcement actions. In addition to respect for those human rights prescribed by law, Division members will treat all persons with the courtesy and dignity that is inherently due every person. Division members will act, speak and conduct themselves in a professional manner, and, whenever possible, maintain a courteous, professional attitude in all contacts with the public. In the absence of any specific report or suspicious circumstances, the actual or perceived race, ethnic background, color, age, gender, sexual orientation, religion, economic status, cultural group or any other identifiable group of any person will not be

the basis for the detention, interdiction or other disparate treatment of any individual by any member of the Division of State Police.

### III. DEFINITION

**Biased Policing:** The arrest, detention, interdiction, or other disparate treatment of an individual without reasonable suspicion or on the basis of the race, ethnic background, age, gender, sexual orientation, religion, economic status, cultural group or other identifiable group of such individual, except when such status is used in combination with other identifying factors in seeking to apprehend a specific suspect whose racial or ethnic status is part of the description of the suspect.

**Reasonable Suspicion:** Also known as “articulable suspicion.” Suspicion that is more than a mere hunch, but is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that an infraction of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. This can be based on the observations of a police officer combined with his or her training and experience, and/or reliable information received from credible outside sources.

### IV. PROCEDURE

#### 1. Prohibition on Biased Policing

- a) Biased policing of individuals by members of the Division of State Police is strictly prohibited.
- b) Stops or detentions based solely on race, ethnic background, age, gender, or sexual orientation, religion, economic status, cultural group, or any other prejudicial basis by any member of the Division of State Police are prohibited.
- c) The detention of any individual, which is not based on factors related to reasonable suspicion of a violation of federal law, New Hampshire statutes or any combination thereof is prohibited.
- d) Members will not use actual or perceived race, ethnic background, age, gender, sexual orientation, religion, economic status, cultural group or other identifiable group of such individual as the sole basis for developing reasonable suspicion or grounds for a traffic or street stop, or in deciding upon the scope and substance of post-stop action.
- e) Officers must be able to clearly articulate the specific law enforcement or public safety purpose of any traffic stop or other contact.

- f) When determining if reasonable suspicion exists for a stop, search or detention, or when developing probable cause for an arrest, members may consider the factors above, when one or more of those factors are part of the description of a known or suspected offender wanted in connection with a specific criminal or suspicious incident based on a credible report.
- g) Asset seizure and forfeiture efforts will be based on violations of federal law, New Hampshire statutes or any combination thereof; and shall not be motivated by race, color, ethnicity, age, gender, sexual orientation, religion, economic status or cultural group.

## **2. Matters Relating to Immigration and Citizenship Status**

- a) The New Hampshire State Police lacks the legal authority to enforce non-criminal civil violations of federal immigration law.
- b) Members shall not stop, investigate, detain or question an individual solely for the purpose of determining whether the individual is in the United States without authorization and proper documentation.
- c) An individual's presence in the United States without proper documentation or authority, standing alone, when that individual has not been previously removed, is not a criminal violation. Therefore, Division members may not initiate an investigation based solely on information or suspicion that an individual is in the United States without authorization and proper documentation.

## **3. Inquiries Concerning Citizenship Status**

- a) Division members should not ask an individual about his or her immigration status when investigating a civil violation. If a Division member needs to identify an individual and that individual does not have identification, the Division member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances. Identification methods may include a foreign passport, consular identification, or other government-issued documents that are reasonably reliable, subject to the same reasonable scrutiny and follow-up for authentication as any other forms of identification.
- b) With regard to investigations involving criminal offenses or suspicious activity, a member may ask an individual about his or her immigration status under the following circumstances:
  - 1. If the Division member is conducting a criminal investigation or an investigation of suspicious activity based on reasonable suspicion AND the immigration status of the suspect is relevant to the investigation,

provided that the investigation is initiated for a reason or reasons independent of information or suspicion that an individual is (or individuals are) in the United States without proper authorization in violation of the civil provisions of federal immigration law;

2. After a suspect has been arrested for a criminal violation.

**4. Notwithstanding the provisions in sections 2 and 3 above,**

- a) Division members operating near the Canadian border who have reason to believe that an illegal border crossing has immediately occurred may ask a suspect about his or her immigration status;
- b) Division members operating near the Canadian border may solicit the support of federal law enforcement in connection with state law matters if reasonably necessary to protect law enforcement officers and/or public safety; and
- c) Division members operating near the Canadian border may make inquiries consistent with sections 2 and 3 above.
- d) This policy is not intended to impair relationships with federal authorities, compromise officer safety, or hinder local, state or federal law enforcement priorities. It is not intended to change the Division's cooperation and coordination with federal authorities to enhance border security.

**5. Training**

- a) All sworn Division members will receive, upon hiring, training regarding the harms of bias-based policing and discrimination, including legal aspects and a review of this policy. Annual in-service training will be provided for affected personnel in bias issues to include legal aspects.
- b) Additional diversity and sensitivity training will be designated for members with sustained bias complaints or other sustained discrimination complaints filed against them in addition to possible disciplinary action.

**6. Duties of Division Members**

- a) Any employee who believes there is, or is made aware of any violation of this Order, shall immediately inform his/her immediate supervisor.
- b) All complaints of bias policing or discriminatory practices will be investigated in accordance with established internal affairs procedures.

- c) Each supervisor is responsible for continually monitoring and examining all members under their direct supervision to ensure that members' actions and activities adhere to this policy and to discover any indications of bias or discriminatory practices.
- d) Traffic enforcement, detention, and search procedures will be accompanied by consistent, ongoing supervisory oversight to ensure that members do not go beyond the parameters of reasonableness and lawfulness in conducting such activities.

## **7. Detention and Search**

- a) No motorist, once cited or warned, shall be detained beyond the point where there remains no reasonable suspicion of further unlawful circumstances or activity, and no person or vehicle shall be searched in the absence of consent, a warrant, or a legally recognized exception to the warrant requirement.
- b) It is strongly recommended that consent searches only be conducted with written consent, using the proper Division form. If the individual indicates that they will consent to a search but are refusing to sign the form, the Trooper shall nevertheless fill out the form and indicate "consented to search but refused to sign," inserting initials and the signature of any witness in the signature block.

## **8. Complaints of Bias and/or Discrimination**

- a) Any person may file a complaint with the Division if they feel they have been stopped or searched based on any alleged act of biased policing.
- b) Any person who tells a Division member that they wish to file such a complaint shall be provided with the name of the member's immediate supervisor. Any member who is accused on scene of discrimination, racial profiling, an illegal stop, frisk, and/or search by any person, shall report the incident to their immediate supervisor as soon as practicable at the conclusion of the contact. Such accusations can often be prevented or mitigated by explaining to the motorist the reason for the stop.
- c) Supervisors who receive official complaints shall follow Division procedures as outlined in the General Order, *130.01 Personnel Complaints/Internal Affairs Investigations*. Supervisors shall review bias/profiling accusations and complaints, formal or informal.

## **9. Disciplinary Procedures**

- a) Progressive discipline consistent with established disciplinary procedures will be implemented for non-compliance with this policy up to and including dismissal.
- b) Failure to report any observed or known violations of this order by any member of the Division will result in disciplinary action.


**10. Administrative Review**

- a) There will be a documented annual review of this order and Division practices conducted by the Director or his/her designee. The review will include a review of concerns expressed by citizens and any corrective actions taken.


This policy, which includes the attached supplemental appendix, was created and intended specifically for the NH State Police. This policy is **not** intended to be a model policy for law enforcement. Use by any other party is at the other party's own risk. A law enforcement entity should consult with its own legal counsel to address its own particular situation in the creation or adoption of any policy.

*This policy is for the internal use of the Division of State Police and is not intended nor should it be interpreted to be admissible to establish any standard of negligence in any civil action against any individual, government agency or entity or the State of New Hampshire higher than the standard of care that would otherwise be applicable in such action under State law. (RSA 516:36).*

Approved:

  
John J. Barthelmes  
Commissioner of Safety

Ordered:

  
Colonel Christopher J. Wagner  
Director of State Police