

Bias-Free Policing Policy Recommendations

This is the specific policy language recommended by the CPC for bias-free policing

Submitted in November 15, 2013 Policy Recommendations Report

Introduction: The Seattle Police Department Is Committed to Bias-Free Policing

The Seattle Police Department is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair, and equitable manner.

Bias-free policing is policing that is free of discriminatory effect as well as discriminatory intent. It will increase the Department's effectiveness as a law enforcement agency and build mutual trust and respect with Seattle's diverse groups and communities.

The Seattle Police Department works to not only ensure equality in policing, but to promote equity in policing. The goal of the Department's policy is to ensure the best policing practices for all communities based on their particular public safety needs. The goal is to also ensure equity in police services for all communities.

1. Disparate Impact

The Seattle Police Department is committed to eliminating policies and practices that have an unwarranted disparate impact on certain protected classes.

We anticipate that in the short term, despite our best efforts and intent to eliminate bias in policing, the long term impacts of historical inequality and institutional bias could result in disproportionate enforcement, even in the absence of intentional bias. The Seattle Police Department's policy is to identify ways to protect public safety and public order without engaging in unwarranted or unnecessary disproportionate enforcement.

If periodic analysis as directed by this Policy suggests that disproportionate enforcement is occurring, the Seattle Police Department will consult with community groups such as the Community Police Commission to explore equally effective alternative practices that would result in less disproportionate impact, and will report those proposals annually to the Mayor and to the City Council.

This Disparate Impact section of the Bias-Free Policing Policy will not be a basis to impose discipline against any employee of the department, other than the Chief of Police.

This Policy prohibiting unwarranted disparate impact will be implemented through data collection; periodic reporting to the Mayor, City Council and to the Community Police Commission; and policy revision, as provided in Appendix B and as developed in accordance with that Appendix. Initially, disparate impact analysis will focus on the classes protected by Title VI of the Civil Rights Act (race, color, national origin), as the Department is already obliged to comply with the regulations implementing Title VI by virtue of accepting Justice Department funding. The Department will consult with the Community Police Commission about whether to examine disparity with respect to other classifications, after protocols for identifying unnecessary disparity have been developed in the context of the classifications in the Civil Rights Act of 1964.

This section on disparate impact is not intended to create a private right of action to enforce its terms.

2. Employees May Not Engage In Bias-Based Policing

Bias-based policing is the different treatment of any person by officers motivated, in whole or in part, by the subject’s status as a member of a protected class or the other characteristics listed below.

Officers shall not make decisions or take actions that are influenced in any way by bias, prejudice, or discriminatory intent. Law enforcement and investigative decisions must be based upon observable behavior or specific intelligence, which forms the basis for, among other things, determinations of reasonable suspicion and probable cause.

Officers shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning race, religion, national origin, gender identity, sexual orientation, or other personal characteristics.¹

3. The Characteristics of an Individual May Be Appropriately Considered in Limited Circumstances

Officers may take into account the race, ethnicity, age, gender or other personal characteristics of an individual in establishing reasonable suspicion or probable cause only when the characteristic is part of a specific suspect description based on trustworthy and relevant information that links a specific person to a particular unlawful incident.

Officers must be prepared to articulate specific facts and circumstances that support their use of such characteristics in establishing reasonable suspicion or probable cause.

Officers are expected to consider relevant personal characteristics of an individual when determining whether to provide services or utilize tactics or procedures specifically designed for individuals with those characteristics (e.g. mental illness, homelessness, addictions, etc.).

4. The Bias-Free Policing Policy Includes All Protected Classes and Other Group Characteristics

This policy applies to the characteristics of all protected classes under state, federal, and local laws as well other discernible characteristics of an individual. Such characteristics include, but are not limited to, the following:

Race, ethnicity, or color	Familial status
Religion	Disability status
National origin	Veteran status
Gender	Political ideology
Age	Economic status
Mental illness	Sexual orientation
Homelessness	Gender identity
Use of a motorcycle or motorcycle-related paraphernalia – RCW 43.101.419	

¹ CPC is open to SPD’s suggestion to cross-reference Policy 5.001 on derogatory language here, and to align the provisions of the two policies

5. All Employees Share Responsibility for Preventing Bias-Based Policing

Every employee is responsible for knowing and complying with this policy.

Supervisors, commanders and civilian managers have an individual obligation to ensure the timely and complete review and documentation of all allegations of violation of this policy that are referred to them or of which they should reasonably be aware.

The Chief will reinforce that bias-based policing is unacceptable through specific yearly training, regular updates, and such other means as may be appropriate.

6. Officers Will Not Engage in, Ignore, or Condone Bias- Based Policing

Officers or supervisors who engage in, ignore or condone bias-based policing as provided in this policy will be subject to discipline.

Officers who have observed or are aware of other officers who have engaged in bias-based policing shall specifically report such incidents to a supervisor, providing all information known to them, before the end of the shift during which they make the observation or become aware of the incident.

Supervisors who fail to respond to, document and review allegations of bias-based policing will be subject to discipline.

No employee shall retaliate against any person who initiates or provides information or testimony related to an investigation, prosecution, OPA complaint, litigation or hearings related to the Department or Departmental employees, regardless of the context in which the complaint is made, or because of such person's participation in the complaint process as a victim, witness, investigator, decision-maker or reviewer.²

See SPM Section 5.001–Standards and Duties (Will link to manual section once 5.001 revision is complete.)

7. Supervisor Will Respond to Complaints in Person When Requested

If a person raises the issue of whether he or she is the subject of bias-based policing, the officer shall offer to call a supervisor to the scene to review the circumstances and determine an appropriate course of action.

If the person wishes to speak with a supervisor about his or her biased-policing concerns, the officer shall immediately contact a supervisor who will respond to the scene and conduct an investigation.

If the person declines to speak with a supervisor or leaves before the supervisor arrives, the officer will offer the person the supervisor's contact information so the person may report the circumstances of the allegation, and information on how to file a complaint with the Office of Professional Accountability.

² The CPC is open to SPD's recommendation to cross-reference here the SPD anti-retaliation policy in 5.001, but supports the addition of this to broaden the scope of both policies.

In every case where there has been an express or implied allegation of bias-based policing, the officer will document the circumstances of the allegation and all steps that were taken to resolve the allegation. This documentation must include the person's name, address, telephone or cell phone number, or email address if the person is willing to provide such information; and contact information for any civilian witnesses who observed the events, if they will provide it.

All reports involving an allegation of bias-based policing must be reviewed and approved by a supervisor before the officer leaves at the end of the officer's shift. If the supervisor did not discuss the incident with the complainant at the scene, the supervisor shall contact the complainant at his or her earliest opportunity to determine whether further review and fact gathering is needed.

Officers may detain an individual only as long as they have a lawful reason, and may not extend a detention solely to await the arrival of a supervisor.

See 5.140–PRO-1 Investigation of Bias-Based Policing Allegation for further detailed direction.

PROCEDURE FOR INVESTIGATION OF BIAS-BASED POLICING IS AVAILABLE IN APPENDIX A

8. An Annual Report Will be Prepared for the Chief of Police and the Public

This report shall describe and analyze the year's bias-based policing complaints and the status of the Department's effort to prevent bias-based policing, including both intentional bias, and unwarranted disparate impact. The research supporting the disparate impact components of the report shall be designed after consultation with the Community Police Commission. After review by the SPD command staff, and after names of individual officers have been removed, this report will be made available to the community.

PROCEDURE FOR THE ANNUAL REPORT IS AVAILABLE IN APPENDIX B

APPENDIX A

5.140-PRO-1 Investigation of Bias-Based Policing Allegation

Officer or other employee

1. **Receives** an express or implied allegation of bias-based policing; and
- 2a. **Notifies** their sergeant.

OR

- 2b. If the officer's sergeant is not available, **notifies** any sergeant from the officer's precinct. If no sergeant is available, notifies a lieutenant or above who then either assigns a specific sergeant or who shall personally respond to conduct the same review as would have been required of a sergeant had one been available.

Sergeant or next level supervisor

3. **Responds** to the scene.
4. **Gathers** all relevant information from witnesses and from the complainant, unless the complainant has left or remains but chooses not to speak to a supervisor at that time. Relevant information is defined as any information that may tend to explain, prove, or disprove the allegations being made. The information may include but not be limited to the following:
 - Subject and witness contact information;
 - Written or audio statements from the subject and witnesses, conducted on the in-car video system if a patrol car is present, unless safety or an investigation would be compromised, unless the individual being interviewed wishes to make her or his statement off video;
 - The sergeant should take the subject's statement in a separate location from the involved officer(s);
 - Any in-car video or audio recordings, or other video. Any in-car video shall be uploaded before the end of the involved officers' shift and the absence of any such in-car video shall be documented and explained;
 - Ensures that the involved officer writes a GO if it would be necessary apart from the bias allegation. The bias allegation will be documented in a format to be determined.

If the complainant has remained at the scene and is willing to speak with the supervisor, the reviewing supervisor shall affirmatively ask the complainant if she or he believes there may have been misconduct or if they would like the matter to be referred to OPA for investigation. The supervisor shall document the response and if the complainant asks that the matter be referred to OPA then the reviewing supervisor shall refer it.

If the complainant did not remain at the scene or did not wish to speak to the supervisor about the immediate complaint or incident, the supervisor shall make efforts to contact her or him by phone or letter and to interview her or him if the complainant is willing.

If any reviewing or approving supervisor determines that there may have been misconduct, that supervisor shall refer the matter to OPA for further investigation.

If the sergeant believes he/she has resolved the matter to the satisfaction of the subject and that no misconduct was involved, the sergeant will document the review and all facts leading him or her to believe that the matter has been satisfactorily resolved in a <format to be determined>.The Sergeant shall also recommend an appropriate disposition of the event.

That report must be reviewed and approved by a next level supervisor with a permanent rank of Lieutenant or above. That review must include a review of: The sufficiency of the reporting of the incident, the sufficiency of the review, and the appropriateness of the recommended disposition of the allegation.

The report must then be routed to the section commander for the same review and comment as for the Lieutenant.

The section commander must then route the report to the bureau chief for review and comment, and for approval and imposition of an appropriate disposition of the event. The report is then routed to the Chief for final review.

Each level may send the review or disposition back to a prior reviewer for further review, but must also send the original report on with the indication that it was returned for further review. The Chief or Deputy Chief of Staff shall review all reports that were returned for further investigation to determine if there are any issues of supervision in the review process.

Exact documentation format remains uncertain at this point, but will be:

- ***Electronic***
- ***Form-driven to address data collection needs***
- ***Specifically identify the steps necessary for a sufficient investigation***
- ***Include an electronic transmission and review/signoff procedure***
- ***Be designed to integrate with the larger data reporting system when that becomes operational. This system will include some reporting capability as well, to be determined.***

APPENDIX B

PROCEDURE FOR ASSESSING DISPARATE IMPACT OF DEPARTMENT POLICIES AND PRACTICES

This Appendix describes a data collection and analysis plan regarding disparate impact in Seattle policing. The procedure described is designed to achieve two main goals. First, the procedure will enable identification of SPD practices – including stops, citations and arrests – that have an especially disparate impact on particular racial or ethnic groups relative to the general population and to the White population. Second, the procedure outlines a method for identifying alternative enforcement practices that would reduce racial and ethnic disparities by either: a) addressing the targeted behavior in a different way; or b) de-emphasizing the practice in question (or both). The procedure also allows for the identification of practices that do not have disparate impact; analyses of these practices will yield important insights about ways that practices that do produce racial and ethnic disparities may be reformed.

The proposal focuses on enforcement practices that are not primarily driven by reports from crime victims, but rather are highly discretionary and hence amenable to reform. With respect to criminal offenses, these include arrests for: drug law violations, prostitution, disorderly conduct, obstructing a public officer, resisting arrest, trespass, driving offenses, pedestrian interference, and illegal camping. Civil infractions for jaywalking, drinking in public, public consumption of marijuana, and public urination will also be analyzed. Additional criminal and civil enforcement categories may be identified through analysis of existing arrest and infraction patterns. Police stops that do not lead to citation, arrest or criminal charges will also be analyzed.

The procedure involves six main analytic steps: 1) identifying the racial and ethnic composition of the persons stopped, cited or arrested by the Seattle Police Department for a relevant violation or offense; 2) calculating stop and arrest disparity indices that will facilitate comparative analysis; 3) comparative analysis to identify the practices that have the greatest (and least) disparate impact; 4) understanding the practices that do (and do not) produce disparities; 5) identifying possible alternatives and remedies for consideration by stakeholders; and 6) follow up analyses to ascertain whether alternatives that have been implemented reduce disparate impact and serve public safety goals. Each of these analytic steps is described below.

- 1) **Identification of the racial and ethnic composition of persons stopped, cited and arrested by the Seattle Police Department.** The first step in the process is the identification of the racial and ethnic composition of: a) persons who are stopped but not arrested by SPD; b) persons who are cited for one of the civil violations previously enumerated; and c) persons who are arrested for or charged with one of the criminal offenses identified previously.

Unfortunately, obtaining this information is not straightforward. The Seattle Police Department currently stores stop and arrest information in its Record Management System (RMS). However, it is not clear whether the RMS can generate stop and arrest data that is sufficiently refined. For example, it is uncertain whether the data generated by RMS will distinguish between drug possession arrests and drug delivery arrests, or include information about the type of police operation that generated a particular arrest. Moreover, it is not clear whether surnames can be produced by querying the RMS; as noted below, surnames are necessary in order to identify suspects' ethnicity.

Obtaining detailed stop and arrest data is crucial for identifying the specific enforcement practices that have highly disparate impacts. For this reason, information about stops and arrests will be acquired through *both* RMS and by individually coding of a sample of General Offense (GO) reports generated by SPD officers. These reports are filed by officers following a stop or arrest, and include information about the race of the suspect, as well as the specific offense(s) involved, the time, date, precinct, and location of the stop or arrest, and the type of operation involved. Similar information will be obtained regarding citations by individually coding a sample of the civil citations issued for the civil infractions identified as relevant. A sample of Seattle Police Department stop, citation and arrest data will be coded and compiled on an annual basis.

Because Seattle police officers are not asked to record the ethnicity of arrestees on GO reports, an additional step will be necessary to identify Latinos who are stopped, cited or arrested in Seattle. Specific, Hispanic Surname Analysis will be used to identify Latino/a persons who were the subject of SPD enforcement actions. Hispanic Surname Analysis allows analysts to estimate the proportion of people in a given sample who identify as Latino or Latina. This program utilizes the U.S. Census Spanish Surname database and assigns a numeric value between 0 and 1 to all surnames in that database. The list that will be used to identify defendants of Hispanic origin contains 12,497 different Spanish surnames that are classified by the Census Bureau as “Heavily Hispanic.” These numeric values are provided by the U.S. Census Department and represent the probability that a given surname corresponds to persons who identified themselves as Hispanic/Latino in the 1990 U.S. Census.

The procedure described above will enable the analyst to annually compile data regarding the race and ethnicity of those stopped, cited and arrested for specific offenses by the SPD. The next two steps described how these data will be analyzed in order to identify enforcement practices that have a comparatively pronounced disparate impact on particular ethnic and racial groups in Seattle.

- 2) **Calculating Disparity Indices.** The arrest and stop data will reveal the racial and ethnic breakdown of those stopped, cited and arrested for specific offenses in Seattle. In order to facilitate comparative analysis of these data, per capita stop, citation and arrest rates for particular racial and ethnic groups will be calculated. U.S. Census population data will be used to calculate these rates. These rates will reveal how many Asians, Pacific Islanders, Blacks, Latinos, American Indians and Alaska Natives, and Whites were stopped, cited or arrested for various offenses per 1,000 Seattle residents of each racial/ethnic group. Because some of the people arrested may reside outside of Seattle, these rates will not be exact, but will provide a useful estimate of the degree to which the practice in question is differentially affecting Seattle residents.

In addition, “disparity ratios” will be calculated. These ratios reveal to the extent to which a stop or arrest rate for each of the racial and ethnic groups other than Whites compares to the non-Hispanic White rate. For example, if the analysis reveals that 5 of every 1,000 Black Seattle residents, but 1 of every 1,000 White Seattle residents was arrested for drug possession, the disparity ratio would be 5, meaning that the Black drug possession arrest rate is five times higher than the White drug possession arrest rate. These disparity ratios will be calculated for stops, citations and arrests, and will facilitate the comparative analysis described below.

- 3) **Comparative Analysis of Disparate Impact:** The third step in the procedure is a comparative analysis of the degree of disparate impact in Seattle Police Department stops and arrests. The purpose of this analysis is to identify enforcement practices that produce relatively great disparities and may warrant further examination.

The comparative analysis will have two dimensions. First, the degree of disparity in Seattle stops, citations and arrests across offense categories will be analyzed. For example, comparison of the arrest disparity ratios across arrest categories may reveal that arrests for disorderly conduct have a significantly greater disparate impact than DUIs. Similarly, comparison of infraction ratios will enable identification of the kinds of civil infractions that have the greatest disparate impact. This analysis will thus identify specific offense categories that are characterized by high levels of disparity by Seattle standards.

However, it is possible that the disparity found in a particular category of stops or arrests is not high by Seattle standards, but is high relative to the level of disparity found in other jurisdictions. For example, the analysis may show that in Seattle, the Black DUI arrest rate is twice as high as the White DUI arrest rate, but that other arrest categories have higher disparity ratios. If disparities are assessed only by Seattle standards, DUI arrests would not be among those identified as have an especially disparate impact on Blacks. However, a Black-White disparity ratio of 2 in DUI arrests may be substantially greater than the Black-White disparity found in in DUI arrests in other jurisdictions. To the extent that this is the case, further investigation of the practices producing this disparate impact may be warranted.

A separate comparative analysis of the degree of disparity found in Seattle police stops and arrests *relative to the degree of disparity found in police stops and arrests in other jurisdictions* will therefore be conducted. The point of this exercise is not to create an artificial benchmark that the SPD would be required to reach, but rather to contextualize the patterns that characterize Seattle practices. Identification of jurisdictions with less disparate impact in particular enforcement areas will also be useful for identifying alternative practices that may help to ameliorate disparate impact.

The comparative analysis of disparity in police stops will compare Seattle stop disparity ratios to those found in other jurisdictions where stop data are collected as a result of consent decrees requiring the collection of such data. For arrests, the analysis will compare Seattle's arrest disparities with those found in other mid-sized cities. These arrest data will be obtained through the FBI's Uniform Crime Report program. Unfortunately, it does not appear that the data that would enable comparative analysis of citation ratios exists, so levels of disparity in civil infractions will only be compared across violation categories within Seattle.

The comparative analysis described above will enable the analyst to identify enforcement practices that are characterized by levels of disparity that are high relative to other Seattle enforcement practices and/or to those found in other mid-sized cities. Based on these results, the analyst will identify the Seattle enforcement practices that have the greatest disparate impact on people of color. The analysis described above will also enable to analyst to identify the practices that are characterized by low levels of disparity.

- 4) **Understanding the Practices that Produce Disparities:** A fourth step in the procedure is identification of the drivers of the practices in question. To begin, the analyst will identify geographic and temporal patterns in these practices, and identify the nature of the

investigations through which the relevant stops, citations or arrests occur. For example, this analysis will reveal whether these practices are concentrated in particular geographic locales or are mainly conducted during particular shifts. It will also identify the circumstances in which the practices take place, and whether, for example, police enforcement is typically driven by requests from neighbors or by some other process. A similar analysis of practices that do not have disparate impacts may also be conducted in order to identify practices that may mitigate disparate impact.

Once this basic understanding is in place, interviews with officers working in the relevant units, their supervisors, and neighborhood stakeholders will be conducted. These interviews will identify the problem that SPD personnel and community members are attempting to resolve through the use of the enforcement practice in question, as well as the drivers of the practice in question. This analysis will inform the identification of alternatives as described below.

- 5) **Identification of Alternatives:** The final step in the analysis is the identification of alternative practices that will reduce racial and ethnic disparities in stops, citations and arrests. These alternatives may reduce disparate impact by either addressing the problem in a different way or by de-emphasizing the practice in question. The analyst will draw on interviews with SPD personnel, community members, and other stakeholders as well as analyses of practices that do not produce disparate impacts in order to generate a number of possible alternatives. These alternatives will be evaluated in terms of their capacity to meaningfully address the problem and addresses public safety concerns in a way that also reduces disparate impact. These alternatives will be presented to a wide range of stakeholders for their consideration.
- 6) **Follow Up Analyses:** Follow-up analyses will assess the comparative impact of any alternative practices adopted as a result of the application of this procedure. To begin, the racial and ethnic composition of those stopped, cited and arrested and disparity ratios will be recalculated the year following the implementation of the alternative practices. These will be compared against similar indices for previous years in order to determine whether there has been a reduction of disparate impact. Interviews with SPD personnel and community stakeholders will also be conducted to ascertain whether the alternative approach is meeting public safety goals and other community needs.