

***Please Note: This is a working draft of Directive 344.05. This is proposed language and the Bureau has not implemented any changes at this time.**

Directive 344.05, Bias-Based Policing/Profiling Prohibited (DRAFT)

2nd Universal Review: 9/7/2017 – 9/21/2017(clean view)

Refer:

- ORS § 166.155, Intimidation in the Second Degree
- ORS § 166.165, Intimidation in the First Degree
- Oregon House Bill 2002, (2015).
- Oregon House Bill 2355
- Citywide Equity Goals and Strategies
- City of Portland Resolution No. 37277, Declare the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City For All
- DIR 310.00, Professional Conduct and Courtesy
- DIR 310.20, Discrimination, Harassment, and Retaliation Prohibited
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 640.80, Mandatory Bias/Prejudice Crime Reporting
- DIR 810.10, Immigration Enforcement and Diplomatic Immunity
- DIR 1500.00, Training

Definitions:

- **Bias-Based Policing:** The differential treatment of any person or any group of persons and/or any discriminatory practices by the Bureau or its members that are motivated by prejudicial judgments of the individual on the basis of their membership in a legally protected or Bureau-proscribed classification.
- **Equity:** The process of creating policies and procedures to promote the fair and unbiased treatment of all individuals and to remove differences in treatment of our members and community members based on membership in a legally protected or Bureau-proscribed classification.
- **Probable Cause:** The facts and circumstances, known to the member at the time, which would justify a reasonable person in believing the suspect committed or was committing an offense.
- **Profiling:** A form of bias-based policing, wherein a law enforcement officer targets an individual for suspicion of violating a provision of law based solely on the individual's real or perceived age, race, ethnicity, color, national origin, language sex, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law.
- **Reasonable Suspicion:** An objective test, measured at the time and place the member acts and based on the totality of the circumstances, which requires a member to point to specific, articulable facts giving rise to a reasonable interference that a subject committed a crime.
- **Stop:** Temporary restraint of a person's liberty by a peace officer (sworn member) who is lawfully present in any place.

***Please Note: This is a working draft of Directive 344.05. This is proposed language and the Bureau has not implemented any changes at this time.**

Policy:

1. The Portland Police Bureau is dedicated to offering courteous and professional service delivery and providing equal protection, a fundamental right under the Constitution, to all members of the community. The Bureau endeavors to create an organizational culture that promotes nondiscriminatory and inclusionary practices, and its members shall strive to enforce laws and policies in an impartial and equitable manner.
2. Bureau members are committed to respecting and preserving the constitutional rights of all individuals. They are prohibited from taking or refraining to take any police-action motivated by bias or prejudice and should, when appropriate, strive to engage community members in a positive manner. Furthermore, members shall not profile or discriminate against any individual who is a member of a legally protected class. Legally protected classes, as defined by federal and state statute, as well as case law, include an individual's race, color, national origin, citizenship, ethnicity, religion, sex, sexual orientation, age, actual or perceived mental or physical disability, marital or familial status, veteran status or any other protected status under law.
3. While other classes of persons are not legally protected in that there is no basis in case law or statute requiring that they be treated in a non-discriminatory manner, the Bureau is committed to policing in the most impartial manner possible. Therefore, the Bureau shall also prohibit the profiling or any disparate treatment of any individual based on their membership in the following classes: housing status, source of income (economic status), immigrant or refugee status, or language or political ideology or affiliation.
4. Public trust and confidence are the cornerstones of community policing. The Bureau recognizes that engaging in police acts that are rooted in bias is contrary to the values of the Bureau and erodes that trust and confidence, delegitimizes the Bureau, and ultimately undermines community policing efforts.
5. Members shall adhere to established legal, ethical and best practice standards. The Bureau shall administer a comprehensive training program that will provide for the professional growth and continued development of its members. Curriculum regarding legal and equity concepts and skill sets will be incorporated into training and reflect the Bureau's commitment to equity in policy and practice. The Bureau shall allocate the necessary resources and personnel to support the training and development of equity-informed knowledge, attitudes, and behaviors of all members. Furthermore, the Bureau shall prepare and instill in its members the ability to lawfully execute their police functions without bias, while also treating community members with dignity and respect.

Procedure:

1. Biased-Based Policing and/or Profiling.
 - 1.1. Members shall police justly and impartially. The Bureau prohibits bias-based policing and the execution of any other police actions or practices that are guided or motivated by prejudice, bias, or discrimination.

***Please Note: This is a working draft of Directive 344.05. This is proposed language and the Bureau has not implemented any changes at this time.**

- 1.2. Members who engage in, condone, or fail to report bias-based policing or profiling shall be subject to discipline, up to and including termination.
 - 1.2.1. Pursuant to Directive 310.00, Professional Conduct and Courtesy, members have a duty to report misconduct, including bias-based policing and/or profiling practices.
 - 1.2.2. Any supervisor who is informed that a member has engaged in profiling or bias-based policing, receives a complaint alleging such or otherwise becomes aware of such action and fails to act or report the member's behavior shall be subject to disciplinary action.
- 1.3. When executing a stop, detention, search, seizure of property, an arrest or any other police action, the member's action must be supported by articulable facts.
 - 1.3.1. If required, members shall document the supporting facts and circumstances and articulate how they established reasonable suspicion or probable cause for taking the police action.
2. Permitted Use of Physical Traits and/or Individual Characteristics When Establishing Reasonable Suspicion or Probable Cause.
 - 2.1. Members shall not use, to any extent, protected or Bureau-proscribed classification information in conducting stops or detentions, or activities following stops or detentions, except to identify a particular individual or group when engaging in the investigation of appropriate suspect-specific activity.
 - 2.1.1. Members are permitted to engage in conversations or encounters with community members for the purpose of building relationships, seeking assistance or exchanging information, so long as the encounter is non-coercive and the community member is permitted to cease the conversation and/or depart of their own accord.
 - 2.2. Members shall only use the listed classification information in combination with other relevant and specific identifying traits or factors (e.g., description of clothing, height, etc.) when searching for a specific individual or group. In these circumstances, the protected or Bureau-proscribed status characteristics should not be given undue weight or be the sole factor cited/identified.
 - 2.2.1. Except as provided in Section 2.1., members shall not consider any of the protected or Bureau-proscribed status characteristics when seeking to establish either reasonable suspicion or probable cause.
 - 2.2.2. Except as provided in Section 2.1., members shall not consider any of the protected or Bureau-proscribed status characteristics when deciding to initiate even those consensual encounters that do not amount to legal detentions or to request consent to search.
 - 2.2.3. A member may consider an individual's otherwise protected or Bureau-proscribed class status to the extent they are formulating reasonable suspicion or probable cause to investigate or arrest for a bias crime, as defined in ORS §166.155 and 165.165.
 - 2.2.3.1. When investigating or charging under one of these statutes, members shall document the protected or Bureau-proscribed class status considered and the reason for doing so to establish reasonable suspicion or probable cause.

***Please Note: This is a working draft of Directive 344.05. This is proposed language and the Bureau has not implemented any changes at this time.**

3. Complaint Intake and Processing.
 - 3.1. In accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing, a community member may file a complaint, either in person, in writing, electronically, or by telephone, regarding allegations of biased-based treatment or profiling by a member with the Independent Police Review (IPR), the Bureau's Internal Affairs Division (IA), a Police Bureau Precinct, the Police Commissioner or any Bureau member.
 - 3.2. When an allegation rises to the level of potential misconduct, the IA Captain shall process and assign the complaint, as set forth in Directive 330.00, Internal Affairs, Complaint Intake, and Processing.
 - 3.3. IA and IPR are responsible for investigating all complaints alleging profiling, whether from a known, anonymous, or third party complainant or from the Law Enforcement Contacts Policy and Data Review Committee.
4. Communication with the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.1. The Professional Standards Division Manager is the Police Bureau's responsible point of contact with the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.2. The Professional Standards Division Manager, or designee, will submit copies of all City-received profiling complaints to the Law Enforcement Contacts Policy and Data Review Committee and will intake any Committee-received profiling complaints from the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.3. The Professional Standards Division Manager, or designee, will notify the Law Enforcement Contacts Policy and Data Review Committee of disposition of the complaint.
 - 4.3.1. However, the Law Enforcement Contacts Policy and Data Review Committee may collect and disseminate data regarding profiling and bias-based policing for statistical purposes, so long as personal identifiers are not included in the disclosure.
5. Training.
 - 5.1. The Bureau shall provide annual training to members that emphasizes developing an understanding of racial, ethnic, national, religious, cultural and other differences, and equips members with the necessary tools and techniques to police effectively and without bias.
6. Public Record Protections:
 - 6.1. The personal information of complainants and Bureau members who are the subject of profiling complaints are exempt from public disclosure under ORS § 192.502.

PROVIDE FEEDBACK: [Use this Form](#)

***Please Note: This is a working draft of Directive 344.05. This is proposed language and the Bureau has not implemented any changes at this time.**

344.05, Bias-Based Policing/Profiling Prohibited

2nd Universal Review: 9/7/2017 – 9/21/2017 (redline markup view)

Refer:

- [ORS § 166.155, Intimidation in the Second Degree](#)
- [ORS § 166.165, Intimidation in the First Degree](#)
- Oregon House Bill 2002, (2015).
- [Oregon House Bill 2355](#)
- Citywide Equity Goals and Strategies
- [City of Portland Resolution No. 37277, Declare the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City For All](#)
- [DIR 310.00, ~~Conduct~~, Professional Conduct and Courtesy](#)
- [DIR 310.20, Discrimination, Harassment, and Retaliation Prohibited](#)
- [DIR 330.00, Internal Affairs, Complaint Intake, and Processing](#)
- [DIR 640.80, Mandatory Bias/Prejudice Crime Reporting](#)
- [DIR 810.10, Immigration Enforcement and Diplomatic Immunity](#)
- ~~DIR 344.00, Compliance with Human Resources Administrative Rules~~
- ~~Directive~~ 1500.00, Training

Definitions:

- Bias-Based Policing: The differential treatment of any person or any group of persons and/or any discriminatory practices by the Bureau or its members that are motivated solely by prejudicial judgments of the individual on the basis of their membership in a legally any characteristic of protected or Bureau-proscribed classification, under city, state, and federal laws.
- Equity: The process of creating policies and procedures to promote the fair and unbiased treatment of all individuals and to remove differences in treatment of our members and community members based on membership in a legally protected or Bureau-proscribed classificationclassifications.
- Probable Cause: The facts and circumstances, known to the member at the time, which would justify a reasonable person in believing the suspect committed or was committing an offense.
- Profiling:- A form of bias-based policing, wherein a law enforcement officer targets an individual for suspicion of violating a provision of law based solely on the individual's real or perceived age, race, ethnicity, color, national origin, language sex, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disabilityreal or perceived factor of the individual's protected classification, unless the officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law.
- Reasonable Suspicion: An objective test, measured at the time and place the member acts and based on the totality of the circumstances, which requires a member to point to specific, articulable facts giving rise to a reasonable interference that a subject committed a crime.

- Stop: Temporary restraint of a person's liberty by a peace officer (sworn member) who is lawfully present in any place.
- ~~Protected classifications include the following:~~
 - ~~Race or color;~~
 - ~~National origin or ethnicity;~~
 - ~~Citizenship, immigrant or refugee status;~~
 - ~~Religion;~~
 - ~~Gender, gender identity, or gender expression;~~
 - ~~Age;~~
 - ~~Marital or familial status;~~
 - ~~Sexual orientation;~~
 - ~~Mental or physical disability;~~
 - ~~Mental illness;~~
 - ~~Economic status;~~
 - ~~Political ideology or affiliation;~~
 - ~~Veteran status;~~
 - ~~Language;~~
 - ~~Housing status (having or not having fixed residence, public assistance, use of shelter, homelessness (houselessness)).~~

About Equity:

1. ~~In accordance with Citywide Equity Goals and Strategies, City Bureaus will work to end racial and other disparities within city government, so there is fairness in hiring and promotions, greater opportunities in contracting, and equitable services to all residents.~~
2. ~~The City of Portland, through the Office of Equity and Human Rights, recognizes its special role as a government entity to ensure that all people have access to the opportunities necessary to satisfy their essential needs, advance their well-being, and achieve their full potential. Equity is achieved when outcomes like economic status, education, access to healthcare, and other social determinants for success cannot be predicted by identity.~~
3. ~~The Police Bureau will allocate resources, information, systems, and procedures which support the training and development of equity informed knowledge, attitudes, and behaviors of all members.~~

Policy:

1. ~~1. The Portland Police Bureau is dedicated ~~committed~~ to offering courteous ~~providing services and enforcing laws in a professional~~ service delivery and providing equal protection, a fundamental right under the Constitution, to all members of the community. The Bureau endeavors to create an organizational culture that promotes nondiscriminatory and inclusionary practices, and its members shall strive to enforce laws and policies in an impartial, fair and equitable manner. ~~The intent of this Directive is to respect individual rights, build relationships, and increase Police Bureau legitimacy.~~~~
2. ~~The Police Bureau is further committed to partnering with the criminal justice system to develop unbiased intergovernmental procedures and joining with community service providers to rehabilitate offenders through reconciliation with victims and the community at~~

~~large, so as to facilitate trustworthy systems, productive lives, and a cost-effective society over arrest and incarceration.~~

~~2. Bureau members are committed to respecting and preserving the constitutional rights of all individuals. They are prohibited from taking or refraining to take any police-action motivated by bias or prejudice and should, when appropriate, strive to engage community members in a positive manner. Furthermore, members shall not profile or discriminate against any individual who is a member of a legally protected class. Legally protected classes, as defined by federal and state statute, as well as case law, include an individual's race, color, national origin, citizenship, ethnicity, religion, sex, sexual orientation, age, actual or perceived mental or physical disability, marital or familial status, veteran status or any other protected status under law.~~

~~3. While other classes of persons are not legally protected in that there is no basis in case law or statute requiring that they be treated in a non-discriminatory manner, the Bureau is committed to policing in the most impartial manner possible. Therefore, the Bureau shall also prohibit the profiling or any disparate treatment of any individual based on their membership in the following classes: housing status, source of income (economic status), immigrant or refugee status, or language or political ideology or affiliation.~~

~~4. Police Bureau members are prohibited from taking or not taking any police-action motivated by bias or profiling.~~

~~4. Public trust and confidence are the cornerstones of community policing. The Bureau recognizes that engaging in police acts that are rooted in bias is contrary to the values of the Bureau and erodes that trust and confidence, delegitimizes the Bureau, and ultimately undermines community policing efforts.~~

~~Members shall adhere to established legal, ethical and best practice standards. The Bureau shall~~

~~2.5.3. It is the responsibility of the Police Bureau to administer a comprehensive training program that will provide for the professional growth and continued development of its members. Curriculum regarding legal and equity concepts and skill sets will be incorporated into training and reflect the Bureau's commitment to equity in policy and practice. The Bureau shall allocate the necessary resources and personnel to support the training and development of equity-informed knowledge, attitudes, and behaviors of all members. Furthermore, the Bureau shall prepare and instill in its members the ability to lawfully execute their police functions without bias, while also treating community members with dignity and respect.~~

~~5. Characteristics of a protected classification may be taken into account when a member is acting on a suspect description or information related to an identified or suspected violation of a provision of law. Members must be able to articulate specific facts, circumstances or conclusions that support reasonable suspicion or probable cause for any stop, search, or seizure.~~

~~6. It is the responsibility of all Police Bureau members to proactively ensure compliance with this Directive. Any member who becomes aware of conduct that could constitute bias based policing shall take immediate action to stop or prevent the conduct and shall immediately report the conduct to his or her supervisor.~~

~~7. Managers and supervisors will reinforce the value of this directive and not wait for events to occur. Any supervisor or manager who is aware of bias based policing and condones it by action or inaction will be subject to disciplinary action.~~

Procedure:

1. Biased-Based Policing and/or Profiling.

1.1. Members shall police justly and impartially. The Bureau prohibits bias-based policing and the execution of any other police actions or practices that are guided or motivated by prejudice, bias, or discrimination.

1.2. Members who engage in, condone, or fail to report bias-based policing or profiling shall be subject to discipline, up to and including termination.

1.2.1. Pursuant to Directive 310.00, Professional Conduct and Courtesy, members have a duty to report misconduct, including bias-based policing and/or profiling practices.

1.2.2. Any supervisor who is informed that a member has engaged in profiling or bias-based policing, receives a complaint alleging such or otherwise becomes aware of such action and fails to act or report the member's behavior shall be subject to disciplinary action.

1.3. When executing a stop, detention, search, seizure of property, an arrest or any other police action, the member's action must be supported by articulable facts.

1.3.1. If required, members shall document the supporting facts and circumstances and articulate how they established reasonable suspicion or probable cause for taking the police action.

2. Permitted Use of Physical Traits and/or Individual Characteristics When Establishing Reasonable Suspicion or Probable Cause.

2.1. Members shall not use, to any extent, protected or Bureau-proscribed classification information in conducting stops or detentions, or activities following stops or detentions, except to identify a particular individual or group when engaging in the investigation of appropriate suspect-specific activity.

2.1.1. Members are permitted to engage in conversations or encounters with community members for the purpose of building relationships, seeking assistance or exchanging information, so long as the encounter is non-coercive and the community member is permitted to cease the conversation and/or depart of their own accord.

2.2. Members shall only use the listed classification information in combination with other relevant and specific identifying traits or factors (e.g., description of clothing, height, etc.) when searching for a specific individual or group. In these circumstances, the protected or Bureau-proscribed status characteristics should not be given undue weight or be the sole factor cited/identified.

2.2.1. Except as provided in Section 2.1., members shall not consider any of the protected or Bureau-proscribed status characteristics when seeking to establish either reasonable suspicion or probable cause.

2.2.2. Except as provided in Section 2.1., members shall not consider any of the protected or Bureau-proscribed status characteristics when deciding to initiate even those consensual encounters that do not amount to legal detentions or to request consent to search.

2.2.3. A member may consider an individual's otherwise protected or Bureau-proscribed class status to the extent they are formulating reasonable suspicion or probable cause to investigate or arrest for a bias crime, as defined in ORS §166.155 and 165.165.

2.2.3.1. When investigating or charging under one of these statutes, members shall document the protected or Bureau-proscribed class status considered and the reason for doing so to establish reasonable suspicion or probable cause.

4.3. Complaint Intake and Processing.:

4.1.3.1. In accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing, a community member may file a complaint, either in person, in writing, electronically, or by telephone, regarding allegations of biased-based treatment or complaint alleging profiling by any member with of the Independent Portland Police Review (IPR), Bureau. The Bureau member will forward the Bureau's information, through channels, to the Internal Affairs Division (IA), a Police Bureau Precinct, the, which will then forward the information on to the City Auditor's Independent Police Review. Additionally, a complaint alleging profiling may be filed through the City Auditor's Independent Police Commissioner or any Bureau member. Review, in the following ways:

4.1.1. When an allegation rises to the level of potential misconduct, In writing via a Citizen Compliant Form. Forms are managed on the Auditor's Office website (<http://www.portlandonline.com/auditor/index.cfm?&a=7372&c=27067>), and are accessible via the IA Captain shall process and assign Portland Police Bureau website. Forms may be filed in the complaint, as set forth in following ways:

4.1.1.1. Electronically via the City Auditor's Independent Police Review's website (<http://www.portlandonline.com/auditor/index.cfm?&a=7372&c=27067>)

4.1.1.2. Mailed to the City Auditor's Independent Police Review (City Hall, 1221, SW Fourth Ave., Rm. 140, Portland, OR, 97204)

4.1.1.3. Delivered to the City Auditor's Independent Police Review (City Hall, 1221, SW Fourth Ave., Rm. 140, Portland, OR, 97204),

4.1.2. In person, at the City Auditor's Independent Police Review (City Hall, 1221, SW Fourth Ave., Rm. 140, Portland, OR, 97204),

4.1.3. By telephoning the City Auditor's Independent Police Review (503-823-0146) to file verbally or coordinate a facsimile submittal.

4.1.4. In person, with a Portland Police Bureau member or at a precinct.

2. Complaint Processing:

3.2. In accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing.

2.1.3.3. IA and IPR, the Police Bureau's Professional Standards Division, together with the City Auditor's Independent Police Review, are responsible for investigating all

complaints alleging profiling, whether from a known, anonymous, or third party complainant or from the Law Enforcement Contacts Policy and Data Review Committee.

~~2.2. Complaints alleging profiling that are received by the City within one hundred eighty days (180) after the alleged commission of profiling will be investigated.~~

~~3.4. Communication with the Law Enforcement Contacts Policy and Data Review Committee:~~

~~3.1.4.1. The Professional Standards Division Manager is the Police Bureau's responsible point of contact with the Law Enforcement Contacts Policy and Data Review Committee.~~

~~3.2.4.2. The Professional Standards Division Manager, or designee, will submit copies of all City-received profiling complaints to the Law Enforcement Contacts Policy and Data Review Committee and will intake any Committee-received profiling complaints from the Law Enforcement Contacts Policy and Data Review Committee.~~

~~3.3.4.3. The Professional Standards Division Manager, or designee, will notify the Law Enforcement Contacts Policy and Data Review Committee of disposition of the complaint.~~

~~4.3.1. However, the Law Enforcement Contacts Policy and Data Review Committee may collect and disseminate data regarding profiling and bias-based policing for statistical purposes, so long as personal identifiers are not included in the disclosure.~~

5. Training.

5.1. The Bureau shall provide annual training to members that emphasizes developing an understanding of racial, ethnic, national, religious, cultural and other differences, and equips members with the necessary tools and techniques to police effectively and without bias.

4.6. Public Record Protections:

4.1.6.1. The personal information as defined in ORS § 807.750, of complainants and of Police Bureau members who are the subject of profiling complaints are exempt from public disclosure under ORS § 192.502.

