



CITY OF PORTLAND, OREGON



Bureau of Police

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Directive 344.05, Bias-Based Policing/Profiling Prohibited Executive Summary

Introduction

During the course of its 2011 investigation of the Portland Police Bureau (“the Bureau”), the Department of Justice (DOJ) met with members of the Portland community to discuss their most pressing concerns with regard to policing and, more broadly, Bureau-community relations. Community members identified several areas in which the Bureau could improve its practices, but its relationship with communities of color, specifically the African American community, arose as a significant issue in need of the Bureau’s attention.

Although the DOJ investigation did not find a pattern or practice of unconstitutional Bureau interactions with people of color, the DOJ recommended that the Bureau seek to strengthen its engagement efforts with communities of color; continue to collect and closely monitor stop data to better frame the Bureau’s understanding of the perception that African Americans are stopped at a disproportionate rate as compared to other demographic groups, and to determine if there is any legitimacy to that assertion; and revise its bias-based policing directive to bring the Bureau’s policy and practices in line with best practice standards.

In response to these recommendations, the Bureau has sustained its stop data collection and analysis efforts, and continues to publish that information and provide it to the DOJ. Additionally, the Bureau’s Strategic Services Division is currently developing an internet-based, community-facing interactive stop data dashboard to continue with its practice of providing open data platforms. The Bureau also continues to engage its various advisory groups, several of which advocate on behalf of some of the city’s communities of color; organize community outreach events; host standing precinct meetings with community members; and it has enhanced its recruiting efforts in communities of color. Finally, the Bureau conducted a comprehensive review of Directive 344.05, Bias-Based Policing/Profiling Prohibited, and made considerable revisions to the policy.

Public Comments

The Bureau received most comments from members of the public and other community stakeholders during the first universal review and public comment period, but also received a handful of comments during the second comment period. During both periods, responders expressed overwhelming concern about the use of the term “solely” in the bias-based policing and profiling definitions. Additionally, there were recommendations regarding the complaint intake process; the disclosure of information pertaining to a bias-based policing/profiling-related complaint; the responsibility of a member to intercede when they witness prohibited actions; and finally, some commenters voiced concern about the language included in the policy that guides member behavior when engaging in casual conversations with community members.

Bias-Based Policing and Profiling Definitions

Nearly every commenter requested that the Bureau remove the word “solely” from the bias-based policing and profiling definitions. Most expressed concern that by including “solely” in the definitions, the Bureau would be narrowing the member behavior that is prohibited. The definitions for both “bias-based policing” and “profiling” originally included the word “solely,” largely because Oregon House Bill 2355 included the term when defining “profiling.” The Bureau adopted the state-established definition of profiling for consistency, and incorporated the term into the bias-based policing definition to ensure that there was clarity and cohesion between the two definitions.

The Policy Development Team considered the overwhelming response from the public calling for the removal of the term “solely” and also researched best practice standards, both of which led to the decision to remove the term from both definitions. The industry shift away from sole factor-based definitions served as a fairly compelling reason to adjust the Bureau’s policy, but there was also the pervasive concern amongst nearly all of the public commenters that, hypothetically, a member could use a general infraction (e.g., minor traffic violation) to justify routinely stopping individuals on the basis of race, while avoiding a policy violation. This ultimately guided the decision to remove the term, as it is not the intent of the Bureau to create the perception or reality that it in any way encourages or condones such stops.

Bias-Based Policing/Profiling Complaint Intake and Reporting

A community member recommended that the policy include additional language regarding complaint intake and processing, specifically calling for certain individuals to report complaints alleging profiling to the Bureau’s Internal Affairs (IA) and the Independent Police Review (IPR). Complaints of any nature, including allegations of bias-based policing practices or profiling, are received and processed using uniform procedures that are set forth in Directive 330.00, Internal Affairs, Complaint Intake, and Processing. The Bureau and IPR work closely together to manage the complaint intake process and investigate the claim. As established in Directive 330.00, Internal Affairs, Complaint Intake, and Processing, the IA Captain is required to notify IPR regarding the processing and assignment of all complaints. Because the exhaustive process for complaint intake and investigation is detailed in a separate directive, the Policy Development Team thought it sufficient to reference that policy in this directive.

Record Disclosure

A commenter proposed that the Bureau add language that clearly defines when personal information pertaining to a complaint (i.e., information regarding the complainant and subject of the complaint) should be disclosed, as required by law. First, in an attempt to clean up the policy and emphasize its key focus—prohibiting bias-based police practices, the Policy Development Team moved the section regarding the disclosure of public information to Directive 332.00, Administrative Investigations, as that guidance is better housed in the policy that details the investigation of a complaint and speaks to the retention of related records.

The recommendation to include language that speaks to when such information should be released is well taken, however, the Policy Development Team holds that the reference to the statutory language suffices, as the statute addresses the exact circumstances under which personal information should be released.

Duty to Intercede

We received a recommendation to include language that directs members to intervene if they witness a fellow member engaging in bias-motivated police action or profiling. While the Bureau fundamentally agrees with this notion, enforcement proves difficult. What one member perceives as behavior that is motivated by bias, may not actually constitute a bias-based or motivated act that is prohibited by Bureau policy. In other words, listing objective criteria poses a challenge in this context. The Policy Development Team will continue to contemplate how best to incorporate this concept.

“Mere Conversation”

In light of the addition of the section regarding permitted uses of physical traits, the Policy Development Team thought it necessary to introduce language that provides clear direction for informal interactions with community members that may be related to relationship-building, seeking or providing assistance, or exchanging information. The language that we proposed in the draft posted for the second universal review and public comment period gave a couple of commenters pause, as there was some concern that it should be clear in policy that these kinds of interactions should be voluntary on the part of the community member and that the nature of the exchange should be unambiguously stated by the member.

Based on the feedback that we received from members of the public and the DOJ, the Policy Development Team revised the language to clarify that encounters of this nature must be voluntary and non-coercive and, therefore, the community member is permitted to end the conversation and leave on their own volition. Moreover, the policy specifically states that members cannot rely on legally- or Bureau policy-protected characteristics when initiating informal encounters of this type.

We thank every individual who took the time to provide feedback on this directive. All comments received during both review periods are attached at the end of this document. We have removed all personal information to protect the privacy of commenters.

The Bureau’s Revised Policy

During the revision process, the Policy Development Team considered all of the comments received during both universal review and public comment periods; discussed the concerns of the DOJ, Compliance Officer/Community Liaison (COCL), the Director of the Independent Police Review (IPR), and the mayor’s staff; and reviewed the policies of other comparable jurisdictions. We made extensive changes to the current directive to better reflect the Bureau’s position on the issue and its intended practice. The revised policy includes sharper language that expressly prohibits members from engaging in, ignoring, and failing to report bias-based policing and/or profiling. While the previous version of the directive included a section that prohibited any police action (or inaction) that was motivated by bias, the updated directive reinforces this expectation throughout the policy.

The Policy Development Team also sought to enhance the directive by underscoring the Bureau’s commitment to respecting and protecting the constitutional rights of every individual; its responsibility to ensure that Bureau members conduct themselves professionally; the importance of building and maintaining community trust and confidence; and the impact that implicit biases may have on a member’s perceptions or actions. In addition to incorporating language that specifically addresses the role that implicit biases potentially play in the realm of policing, and human behavior in general, we also added policy language that speaks to the training and resources that the Bureau is committed to providing to its membership.

Finally, we found it necessary to distinguish between classes of individuals who are legally protected under the law and those who the Bureau will similarly recognize as it pertains to bias-based treatment or profiling, as there is a legal distinction between the two groups. The Bureau is committed to serving all individuals and unequivocally prohibits the disparate treatment of anyone, whether they are afforded legal protections or not. The revised policy also offers clearer guidance regarding the permitted use of discernible traits or information when establishing reasonable suspicion or probable cause and when faced with the prospect of a bias crime investigation or arrest.

The Bureau believes that the revised directive provides more clarity and enhanced guidance to its members; however, any suggestions to further improve this policy are welcome during its next review.

This directive will become effective on March 2, 2018.

Published on 2/1/18

344.05, Bias-Based Policing/Profiling Prohibited

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 classes protected by law or Bureau policy.
- **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 Bureau members and community members based on membership in classes protected by law or Bureau policy.
- **Law Enforcement Contacts Policy and Data Review Committee:** A statewide, governor-appointed committee that is charged with the duties of assisting Oregon law enforcement agencies with stop data collection and analysis efforts, improving community relations, training efforts, and policy recommendations that pertain to ensuring equity in Oregon law enforcement.
- **Probable Cause:** A substantial objective basis for believing that, more likely than not, an offense has been committed and a person to be arrested has committed it.
- **Profiling:** Where a Bureau member targets an individual belonging to a class protected by law or Bureau policy when conducting stops or detentions unless the Bureau member is acting on 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 inference that a subject has engaged or is engaging in criminal activity.

- Stop: Temporary restraint of a person's liberty by a sworn member who is lawfully present in any place.

Policy:

1. The 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. Members 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 or state statute, as well as case law, include an individual's race, color, national origin, citizenship, ethnicity, religion, sex, pregnancy, sexual orientation, gender identity, age, actual or perceived mental or physical disability, language (spoken or signed), 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, lawful source of income, economic status, immigrant or refugee status, 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 provide introductory and ongoing training to all sworn members that emphasizes developing an understanding of racial, ethnic, national, religious, cultural, and other differences and fosters the professional growth and continued development of members. Training of this nature is reinforced and incorporated throughout several disciplines and is intended to equip members with the necessary tools and techniques to police effectively, lawfully, and without bias, while also treating community members with dignity and respect.
6. The Bureau recognizes the reality of implicit bias, the scope of its potential influence on human behavior and, as it pertains to policing, how it can affect interactions and relationships between the Bureau and Portland's diverse communities. Therefore, the Bureau is committed to offering resources and instruction that help members identify and acknowledge their own subconscious perceptions or associated stereotypes about or attitudes towards

people about which they may not be aware. In an effort to both minimize discriminatory practices and strengthen its relationship with the communities it serves, the Bureau will continue to work with members on an individual and collective basis to address how implicit biases may directly impact their work.

Procedure:

1. Bias-Based Policing and/or Profiling.
 - 1.1. Members shall police justly and impartially. Members shall not engage in bias-based policing or profiling.
 - 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.
2. Permitted Use of Physical Traits and/or Individual Characteristics when Establishing Reasonable Suspicion or Probable Cause.
 - 2.1. When executing a stop, detention, search, seizure of property, an arrest or any other police action, the member's action shall be based on a standard of reasonable suspicion or probable cause. Members must be able to articulate and document specific facts and circumstances that establish reasonable suspicion or probable cause.
 - 2.2. Members are permitted to consider status characteristics that are protected by law or Bureau policy when acting on a suspect description or information related to an identified or suspected violation of a provision of law.
 - 2.2.1. 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, status characteristics that are protected by law or Bureau policy should not be the sole factor cited/identified.
 - 2.3. For a bias crime, as defined in ORS §166.155 and 165.165, a member may consider an individual's class status that is otherwise protected by law or Bureau policy to the extent they are formulating reasonable suspicion or probable cause to investigate or arrest.
 - 2.3.1. When investigating or charging under one of these statutes, members shall document the protected class status considered and the reason for doing so to establish reasonable suspicion or probable cause.
 - 2.4. When initiating consensual encounters that do not amount to legal detentions or when seeking consent to search, members shall not rely solely on status characteristics that are protected by law or Bureau policy.

- 2.4.1. Members are permitted to engage in voluntary and non-coercive conversations with community members for the purpose of building relationships, seeking or providing assistance, or exchanging information.
 - 2.4.2. It is not the intent of this policy to impede legitimate community engagement based on a community's protected status.
3. Complaint Intake and Processing.
 - 3.1. Internal Affairs (IA) and the Independent Police Review (IPR) shall accept and process all complaints alleging profiling and bias-based policing, whether from a known, anonymous, or third-party complainant or from the Law Enforcement Contacts Policy and Data Review Committee, in accordance with Directive 330.00, Internal Affairs, Complaint Intake, and Processing.
4. Communication with the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.1. The IPR Director is the City of Portland's responsible point of contact with the Law Enforcement Contacts Policy and Data Review Committee.
 - 4.2. The IPR Director 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 IPR Director or designee will notify the Law Enforcement Contacts Policy and Data Review Committee of disposition of the complaint.
 - 4.3.1. The Law Enforcement Contacts Policy and Data Review Committee may collect and disseminate data regarding profiling and bias-based policing for statistical purposes, but is required to keep personally identifying information confidential.
 - 4.4. The IA Captain or designee shall ensure that the appropriate profiling complaint data is provided to the Law Enforcement Contacts Policy and Data Review Committee as described above.

History:

- Originating Directive Date: 04/12/02
- Last Revision Signed: 02/01/18
 - Effective Date: 03/02/18
- Next Review Date: 09/02/18

Directive 344.05 – Website comments 4/5/17 - 5/6/17 and 9/7/17 - 9/21/17

Date	Individual	Comment
2nd Universal Review		
9/21/17		<p>This is feedback for Directive 344.05. It's link to comment is broken, so I'm using this one instead.</p> <p>The definition of profiling should be changed to remove "solely" as was done with the definition for bias-based policing. The current definition would allow officers to use the categories for suspicion as one of several factors. Removing "solely" would also bring consistency.</p> <p>This is a broader concern about tracking bias, but one I must share:</p> <p>Bias isn't always conscious, so a better idea, I think, would be to require police to cite a specific reason why they made a stop rather than choose from a list of options.</p> <p>I think it is fair for citizens to always be able to know why they were actually detained. This way they know immediately if the stop is "mere conversation" or not.</p> <p>I would like to have a notification that my comment was received, especially since I'm having to not follow instructions because of a technical failure on your side.</p>
9/21/17		<p>Profiling is effective and has shown to work. We should not put the safety and effectiveness of our police below the fear of insulting people.</p>
9/21/17		<p>We join the comments from our colleagues at Copwatch. This directive is much improved, but much needed improvements remain.</p>
9/20/17		<p>I support the following comments from the AMA coalition:</p> <p>The AMA Coalition supports the Bureau changing the definition of "bias-based policing" by removing the word "solely." Leaving that word in would allow an officer otherwise to say "I stopped that person for a burned out headlight and because they are black" and not be found out</p>

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		<p>of policy. However, the definition of "profiling" still contains the word "solely." Even though that is taken from the state law (established with 2015's HB 2002 and affirmed with this year's HB 2355), the Bureau can tailor its policies more narrowly. After all the Bureau goes beyond federally established guidelines for "constitutional use of force," the same can go for profiling.</p>
<p>9/20/17</p>		<p>The AMA Coalition supports the Bureau changing the definition of "bias-based policing" by removing the word "solely." Leaving that word in would allow an officer otherwise to say "I stopped that person for a burned out headlight and because they are black" and not be found out of policy. However, the definition of "profiling" still contains the word "solely." Even though that is taken from the state law (established with 2015's HB 2002 and affirmed with this year's HB 2355), the Bureau can tailor its policies more narrowly. After all the Bureau goes beyond federally established guidelines for "constitutional use of force," the same can go for profiling.</p>
<p>9/14/17</p>		<p>344.05 BIAS-BASED POLICING/ PROFILING PROHIBITED</p> <p>Some of the comments we made on the Bias-Based policing Directive this April were incorporated in the new draft. We believe that the Bureau has made some strides toward improving this Directive by removing the word "solely" from the definition of "bias-based policing." However, we continue to remind the Bureau that as a local entity, Portland can define "profiling" more narrowly than the state. Thus we are encouraging that the word "solely" also be removed from or modified in the definition of profiling, perhaps adding a note that says "while the state law defines profiling as targeting an individual based solely on the individual's perceived [characteristics], the Bureau's definition is more restrictive."</p> <p>This would be consistent with the definition of bias-based policing and similar to how the Bureau explains its Force policy is narrower than the Constitutional "Graham" standard. We previously suggested the Bureau use the language that was put into 810.10 on immigration enforcement, which prohibits action based "solely or primarily upon a person or group's actual or perceived national origin or immigration status." In other words, adding the words "or primarily" after "solely" is an acceptable solution.</p> <p>Also, the language reflecting the state law indicates the encounter has to be due to "suspicion of violating a provision of law." The reality is, sometimes officers see a person and pull them over</p>

and then sometimes decide to explain the stop by relying on a traffic or equipment violation-- but sometimes no reason at all is given. Often the person is let go with no citation, warning or other paperwork. Thus the use of the term "any police action" as used in Policy Section 2 should apply to the definition of profiling. (We note here that we support the Bureau's apparent deliberate omission of HB2355's modification that the action has to be self-initiated and not based on a call for service.)

Specifically to cite the strengths here:

--Bias-based policing is now defined as "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."

--The previously-existing Policy Section 4 has been moved up to be part of Policy Section 2, and still reads that officers "are prohibited from taking or refraining to take any police action motivated by bias or prejudice," adding that they "should, when appropriate, strive to engage community members in a positive manner."

--A new Section (2.2) explicitly says that officers "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."

But here is one of our main concerns: The Directive seems to both exempt and include what officers would call "mere conversation" from these policies. Section 2.1.1 tells officers they 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."

This is a reasonable description of a "mere conversation" but (a) doesn't prohibit officers from disproportionately stopping to talk to people based on any of the protected characteristics (including race), (b) doesn't require officers to let the person know they are free to go, and (c) doesn't recognize that for many people, an armed uniformed officer asking to talk to them seems like a coercive action. Then section 2.2.2 seems to contradict that open-ended invitation by saying officers "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." These two paragraphs need to be reconciled, weighing heavily toward the latter.

We see that the Bureau acknowledges the passage of HB 2355, which rewrote the state profiling law, but relying on that law causes a few problems. In the definition of profiling, the list of characteristics which, if used to target an individual, includes "gender," which is appropriate, but that word was removed from the state law. The previous list of protected characteristics (in the old definitions section) included citizenship, immigrant or refugee status, veteran status and marital status, which are all removed here. In Policy Section 2, where there is a list of legally protected classes, it adds back in citizenship, veteran and "marital or familial" status, but omits gender identity and homelessness (which are both listed in the state law). Policy Section 3, seeking to define the "Bureau-proscribed" categories, does mention housing status, and adds back in immigrant or refugee status. As per PCW's recommendations, the term "source of income" was added back in-- but then "economic status" is listed in parentheses. These are two different concepts: How someone makes money (whether it is returning recyclables or being the CEO of a corporation) is not the same as how much money they have or appear to have (rich vs. poor).

Another concern is that a previous requirement (in old Policy Section 5) told officers they had to take "immediate action to stop or prevent [bias based policing]" that they observe. This is somewhat watered down in the new Procedure Section 1.2, which just says "Members who engage in, condone, or fail to report bias-based policing or profiling shall be subject to discipline, up to and including termination." We're all for the sentiment of that sentence-- we just want to see "condone" be expanded to include the previous requirement to take action to stop such behavior. We support the continuation of explicit language saying supervisors who fail to act based on reports of bias shall be subject to discipline as well (new Section 1.2.2, former Policy 7).

We thank the Bureau for taking out the specific minutiae on how to file a complaint in favor of a streamlined description (Section 3.1).

Our final comment repeats the concern we brought up in April about the Section (formerly 4.1, now 6.1) which makes a blanket exemption to disclosing "personal information" including the name of a complainant and employee, citing ORS 192.502. To accurately reflect that statute and the possibility that officers' names may be disclosed, the Directive should say "The statute allows for disclosure when doing so is in the public interest."

9/14/17		<p>Suggested revisions for Directive 344.05</p> <p>Page 1: Profiling definition. Add comma to change "national origin, language sex, gender" to "national origin, language, sex, gender"</p> <p>Page 2: To keep with the profiling definition from page one, in section three, change "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." to "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, citizenship status, gender identity, language, or political ideology or affiliation."</p> <p>Page 4: 3.1 States a community member may file a complaint with "a Police Bureau Precinct, the Police Commissioner or any Bureau member" in addition to the IPR and IA. However, section 3.3 states, "IA and IPR are responsible for investigating all complaints alleging profiling..." If that's true, I propose an added subsection requiring "a Police Bureau Precinct, the Police Commissioner or any Bureau member" to report any complaints alleging profiling to the IA or IPR.</p> <p>Finally, I suggest an added practice for accountability. Statistics of protected statuses should be taken after every arrest. Whether the statistics are collected vocally by an arresting officer or written by the individual detained, they need to be collected. Perhaps they're collected at the time of processing, instead of initially during the detainment/arrest. However, information identifying the arresting officers and the statistics of protected class statuses of the individual arrested must be documented, turned over to IPR, and logged. Any bureau member with disproportionately high incidences (compared to their peers) of arresting community members of any protected class after quarterly assessments must have that information reported to their supervisor. The bureau member will be expected to engage in ongoing training to recognize and correct this behavior. If the bureau member continues to document significantly higher arrests of individuals of any protected class, IA and the Professional Standards Division Captain will address the matter as a</p>
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		complain meriting an investigation, pursuant to Directive 332.40.
1st Universal Review		
5/7/17		<p>Definitions in a policy are extremely important. They serve as the foundation for each practice that is outlined in the policy. I am concerned with the use of the word “solely” in the definitions of Bias-Based Policing and Profiling in the policy. There are numerous law enforcement agency policies that define bias-based policing and profiling that do not include this extremely limited adverb. It is unnecessary. I find it difficult to believe that a true finding on a complaint of bias or profiling would be possible with the application of this criteria- the adverb “solely” would be possible. At least, the word “solely” must be removed from these definitions.</p>
5/6/17		<p>Asking as a concerned citizen of Portland that you follow Albania ministerial alliance recommendations copied belie</p> <p>Albina Ministerial Alliance Coalition for Justice and Police Reform comments on Directive 344.05 Bias-Based Policing/ Profiling prohibited.</p> <p>The AMA Coalition calls on the Bureau to strengthen the Bias Based Policing Directive in line with previous versions. Primarily, the word “solely” saying that profiling can only be present if an officer bases their treatment of a person’s race, gender, housing status, etc. will mean that no officer will ever be found in violation of this Directive. The officer will always say they found some other reason to target the person even if their behavior was the same as an affluent white male.</p> <p>Chief Derrick Foxworth used a federal definition of profiling: “any police-initiated action that relies upon the race, ethnicity, or national origin of an individual rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been engaged in criminal activity.” The PPB could modify this policy to include the other protected classes currently listed in the Directive and state law to create a truly meaningful means to hold officers accountable.</p>
5/6/17		Remove the word “solely” from the paragraph describing bias-based policing. This standard is

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		<p>unreasonably high and will lead to outcomes much like your standards against the use of deadly force—no police officer will EVER be found out of compliance. It is clear from the stop statistics that racial and other forms of bias exist in policing in Portland. This does not necessarily mean that every police officer is biased in her/his work, it could be a result of wider policy decisions or how directives are applied in different parts of the city. If the bureau is serious about providing true community-based, non-biased policing, you will adopt a directive that is worded in a way that actually allows you to clearly identify the problem, its root causes, and then apply targeted and meaningful solutions, rather than simply checking-off a compliance box.</p>
<p>5/6/17</p>		<p>There are holes big enough to drive a bus through.</p> <p>this language makes it so law enforcement would very rarely be charged with bias, and never convicted. I've been in jury before. Intent is almost impossible to prove. That means there are no teeth in this and it is mostly for show.</p>
<p>5/6/17</p>		<p>Albina Ministerial Alliance Coalition for Justice and Police Reform comments on Directive 344.05 Bias-Based Policing/ Profiling prohibited.</p> <p>The AMA Coalition calls on the Bureau to strengthen the Bias Based Policing Directive in line with previous versions. Primarily, the word "solely" saying that profiling can only be present if an officer bases their treatment on a person's race, gender, housing status, etc. will mean that no officer will ever be found in violation of this Directive. The officer will always say they found some other reason to target the person even if their behavior was the same as an affluent white male.</p> <p>Chief Derrick Foxworth used a federal definition of profiling: "any police-initiated action that relies upon the race, ethnicity, or national origin of an individual rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity." The PPB</p>

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	<p>could modify this policy to include the other protected classes currently listed in the Directive and state law to create a truly meaningful means to hold officers accountable.</p>
<p>5/4/17</p>	<p>My comments/suggestions are below.</p> <p>Definitions:</p> <p>Profiling: delete "unless the officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law." It contradicts the act of profiling.</p> <p>Protected classifications include the following: Change "color" to "skin color" Change "age" to "age or generational status"</p> <p>About Equity:</p> <ol style="list-style-type: none"> 2. after "all people" I suggest adding "are treated with respect and that their human rights are recognized" 2. there should be clarification to the last sentence where it says "cannot be predicted by identity;" this is pretty vague but also seems contradictory to equity (at least how it currently reads) 3. Add "personnel" to the list of allocations from PPB (people are not resources) <p>Policy:</p> <p>What procedural training can the "criminal justice system" provide to PPB that will mitigate and end biased policing? Is this not current protocol?</p> <p>3. An invaluable resource is OEHR who can design intensive training for PPB. Scrutinize any out-of-house training resources (price and curricular design has been an issue in the past, especially training that is delivered by white men only for white men only and that ultimately is a regurgitation of McIntosh's "White Privilege" article).</p> <p>4. What are the consequences if they do? Are they codified?</p>

		<p>6. I don't see how this can be achieved given the notorious reputation of PPB and their "blue wall"</p> <p>7. What is the disciplinary action? A common issue is that even when PPB behaves unethically they are rarely given meaningful punishment.</p> <p>Procedure:</p> <p>1.1 "through channels" sets up the possibility for all sorts of problems. Can the intake officer be charged with sending the complaint directly to IA?</p> <p>1.1 via all of the ways a bias complaint can be filed, do they offer anonymity? This is especially important for community members who are fearful of retaliation or who are undocumented.</p> <p>Complaint Processing:</p> <p>2.1 180 days is lifetime to victims, and is not "fair or equitable." How can the time frame be shortened, significantly?</p> <p>Thank you for offering this opportunity to comment.</p>
5/3/17		<p>Directive 344.05, Bias-Based Policing/Profiling Prohibited</p> <p>Definitions: We join our Copwatch colleagues in noting that the word “solely” in both the Bias-Based Policing and Profiling definitions is incredibly problematic. Officers make decisions about who to contact or stop based on a number of factors, some of which are situational and some of which may related to protected class status.</p> <p>The use of protected class factors or traits should not be used (outside of the context of locating an already identified suspect), whether that use occur in combination with situational factors or not. The over-policing of marginalized communities does not happen to the exclusion of other factors. For example, an officer could see three different individuals jaywalking, but only stop one. If the stop is based on both the jaywalking and the protected class status of the person the</p>

	<p>officer chose to stop, that is still unacceptable disparate impact. Here, the word “solely” could give this officer an out for treatment that is nonetheless unacceptable and contrary to USDOJ’s definition of profiling. Moreover, this allows officers acting in bad faith to cover that bad faith with a pretextual explanation. This is unacceptable.</p> <p>We applaud the addition of Section 6, which requires officers to affirmatively stop and report biased policing. We further suggest instituting an anonymous method of submitting such reports to supervisors to encourage reporting without fear of reprisal or social consequences.</p> <p>We join our Copwatch colleagues in calling for “any police-initiated action” language to be used instead of “target[ing] an individual for suspicion of violating a provision of a law.” Seizures and civil forfeitures appear only ambiguously covered by this directive, when they ought to be clearly covered.</p> <p>The information specified in ORS 192.502 as exempt from disclosure contains many provisions by which the public can access this information on request. This directive mischaracterizes the availability of this information by flatly stating the information is exempt from public disclosure. We suggest the following statement instead: “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, subject to the limitations of that statute.”</p>
<p>4/28/17</p>	<p>344.05 BIAS-BASED POLICING/ PROFILING PROHIBITED</p> <p>Bias-Based Policing/Racial Profiling Prohibited</p> <p>We strongly believe that the Bureau should return the definition of profiling to the one based on the USDOJ definition that was in place in the mid-2000s: profiling is "any police-initiated action that relies upon the race, ethnicity, or national origin of an individual rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity." Race, ethnicity and national origin can be expanded to "any characteristic of protected classification under city,</p>

state and federal laws" (words in the current definition), perhaps adding "and as defined in this Directive." As we wrote in May 2015 when the current version was created to mirror state law, the current definition prohibiting "the differential treatment of any person... motivated solely by any characteristic of protected classification..." means that if the bias is only partially based on such characteristics, an officer can still discriminate. For example, they could pull a person over for having a broken tail light and for being black (after not having pulled over a white person with a broken tail light), and not be found out of policy.

--The definitions section should be numbered.

--We continue to appreciate the list of protected categories, which added to race, ethnicity, national origin, color, religion, gender, age, marital status, sexual orientation and mental or physical disability the newer categories of gender identity, familial status, mental illness, economic status, political ideology and veteran status. We noted before that "source of income" was a previous category which could stand to be re-inserted.

--We noticed that the old definition of profiling, which only talked about stops and searches, now refers to "target[ing] an individual for suspicion of violating a provision of law." We'd suggested adding "seizure" to stop and search, but now would rather see the DOJ language on "any police-initiated action" since profiling might also include mere conversations based solely (or partially) on a person's appearance. This is taken care of somewhat in Policy section 4, which prohibits taking/not taking action based on bias or profiling, and Policy section 5 which allows taking characteristics into consideration if there is reasonable suspicion or probable cause and the characteristics are based on suspect description

--We appreciate that there is a sense of the seriousness of this Directive in Policy sections 6 and 7, which puts the responsibility on all officers

	<p>to comply and report violations, and potentially subjects supervisors to discipline for condoning bias by "action or inaction." Our previous concerns that addressing complaints in a timely manner is mostly addressed by Policy section 6 ordering officers to take immediate action and Policy section 7 saying supervisors "will... not wait for events to occur."</p> <p>--It's not clear whether the details (including URLs which are subject to frequent changes) about how to file a complaint are in this Directive to comply with state law (Procedure section 1). Since complaints about any misconduct go through the same channels (Independent Police Review/IPR or the Bureau) this may be one place a cross reference can be handy. It seems this subsection is really about the public filing a complaint more than Bureau policy, unless the idea is for officers to file with IPR instead of reporting to a supervisor.</p> <p>--Section 4.1 makes a blanket exemption to disclosing "personal information" including the name of a complainant and employee, citing ORS 192.502. However, that statute has exceptions for the public interest, which we would argue in the case of officers shown to be biased is a compelling reason to release such information.</p>
<p>4/24/17</p>	<p>I have taken the liberty of re-writing the policy for better clarity of purpose:</p> <p>Definitions:</p> <ul style="list-style-type: none"> • Bias-Based Policing: The discriminatory treatment of any person by Bureau members relying on any characteristic of protected 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 protected classifications. • Profiling: A form of bias-based policing, wherein a law enforcement officer relies on an individual's real or perceived protected classification as a factor in targeting that individual for suspicion of violating a provision of law, unless the officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law. • City: Any agency designated to receive complaints alleging profiling pursuant to this directive. • Protected classifications include the following:

- o Race or color,
 - o National origin or ethnicity,
 - o Citizenship, immigrant or refugee status,
 - o Religion,
 - o Gender, gender identity, or gender expression,
 - o Age,
 - o Marital or familial status,
 - o Sexual orientation,
 - o Mental or physical disability,
 - o Mental illness,
 - o Economic status,
 - o Political ideology or affiliation,
 - o Veteran status,
 - o Language,
 - o 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. The Portland Police Bureau is committed to providing services and enforcing laws in a professional, nondiscriminatory, 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.

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.

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

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. Complaint Intake:

1.1. A complaint alleging profiling may be filed through the City Auditor’s Independent Police Review, in the following ways:

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>)

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

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

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

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

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

1.2 In accordance with Directive 330.00, Internal Affairs, Complaint Intake and

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		<p>Processing, a complaint alleging profiling may be filed with any member of the Portland Police Bureau.</p> <p>1.2.1 The Bureau member will forward the information, through channels, to the Internal Affairs Division, which will then forward the information on to the City Auditor’s Independent Police Review. Additionally,</p> <p>2. Complaint Processing:</p> <p>2.1. In accordance with Directive 330.00, Internal Affairs, Complaint Intake and Processing, 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.</p> <p>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.</p> <p>2.3. The City will respond to every complaint alleging profiling within a reasonable time after the conclusion of the investigation. The response must contain a statement of the final disposition of the complaint.</p> <p>3. Communication with the Law Enforcement Contacts Policy and Data Review Committee:</p> <p>3.1. The Professional Standards Division Manager is the Police Bureau’s responsible point of contact with the Law Enforcement Contacts Policy and Data Review Committee.</p> <p>3.2. 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.</p> <p>3.3. The Professional Standards Division Manager, or designee, will notify the Law Enforcement Contacts Policy and Data Review Committee of disposition of the complaint.</p> <p>4. Public Record Protections:</p> <p>4.1. 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.</p>
4/20/17		yes this is needed
4/16/17		The directive is unconstitutional in that it allows the use of "race" and other characteristics to form the basis for taking police action. The recommendations from the former COAB correctly

		<p>recommended a prohibition against such discrimination and was consistent with the position taken by the USDOJ on this issue.</p> <p>If the City and the PPB were truly committed to ending racial profiling, it would adopt the COAB's recommendations regarding how to prevent racial profiling.</p>
4/18/17		<p>Title should read "Bias Based" not "Biased Based"</p> <p>The definition of Bias-Based Policing refers to differential treatment "motivated solely by" it is more correct for Title VI purposes to delete solely and read only "motivated by" it is the motivation, not the sole motivation that is a problem.</p> <p>Similarly in the definition of "Profiling" "based solely on" should read "based on" as other characteristics may complicate, but this does not do away with the prohibition of basing decisions on protected characteristics. There must be a basis in fact.</p> <p>The numbered list following the list of characteristics is oddly formatted.</p> <p>Under "About Equity":</p> <ol style="list-style-type: none"> 1. reads in part "within city government, so there is fairness" would read better "within city government, to assure fairness" 3. reads in part "procedures which support the training and development" is very passive and does not indicate requirements for what follows. This language should be sharpened to indicate requirements rather than supports. <p>Under Policy:</p> <ol style="list-style-type: none"> 1. reads PPB is "committed to providing: should be strengthened with something like "required to provide" in keeping with federal law. 2. is also soft in its language rather than stating requirements or guarantees as are warranted under Title VI 3. "Curriculum regarding legal and equity concepts and skill sets...reflect the ...commitment to equity in policy and practice." reads very soft. Something regarding accountability in training and action would be more useful. 4. would read better as "prohibited from engaging in profiling and any other behaviors motivated by bias." 5. reads "may be taken into account when" should read "may be taken into account ONLY when". 6. The use of "shall" would be better replaced by must to make it clear that immediate action and report MUST be completed by the bureau member. 7. "Managers and supervisors will reinforce the values of this directive and not wait for events to

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		occur." is vague and non-directive. Requiring actions of all sworn members at the level of Sgt and above and all non-sworn members with supervisory responsibilities would make this section more clear and useful. As it reads it is easy to ignore.
4/16/17		<p>Under the section “About Equity” there is a goal of “greater opportunities in contracting” I urge PPB to set a goal that for example 20% of contracts would be awarded to businesses that qualify as MWBE.</p> <p>Also I encourage PPB to set measurable goals related to equity - a sample of strong actionable items can be found at https://policy.m4bl.org/end-war-on-black-people/ - the movement for black lives</p>
4/10/17		Profiling is good basic police work. Shouldn't be confused or connected with bias or racism! If a white male is wearing all black and wandering in a neighborhood at night you would stop and ID him. Does that mean you can't stop a black male doing the same thing without being called a racist? Don't allow liberals dictate on the subject of investigative tools needed to complete your job safely and maintain safety in the community. It is not racism or bias if the male is of another race, etc. Use common sense!