



# **Sample Policies on Bias Based Policing**

Revised May 2017



## Table of Contents

Ark. Code Ann. § 12-12-1401 <i>et seq</i> .....	2
Biased Law Enforcement Practices.....	5
The Use of Mobile Digital Recording Equipment .....	11
The Use of Body Worn Video Recording Equipment.....	13

## Foreword

After the passage of Ark. Code Ann. § 12-12-1401 *et seq*, the Criminal Justice Institute (CJI) of the University of Arkansas System, in conjunction with the Arkansas Municipal League (League), began to develop model policies regarding the prohibition of racial profiling by law enforcement agencies. These sample policies were completed and mailed to all Arkansas municipal law enforcement agencies who were members of the League’s Municipal Legal Defense Program (MLDP) during the summer of 2003 and have since been amended and made available to MLDP members on several occasions. To bring Arkansas’s cities and towns the most complete and up-to-date information, the League participated in a study commissioned by the Arkansas Association of Chiefs of Police (AACP) to determine the viability of having model critical incident policies for municipal law enforcement agencies and ultimately to produce such policies. Those efforts were coordinated through the Public Agency Training Council (PATC) and the Legal and Liability Risk Management Institute (LLRMI) and lead to a variety of policies including policies on biased based policing and mobile digital recording. Those policies are included in this publication and were the byproduct of the AACP committee whose membership included representatives from the AACP, PATC, LLRMI, Arkansas Attorney General’s Office, Arkansas Commission on Law Enforcement Standards and Training, Arkansas Sheriffs’ Association, Arkansas State Police, Arkansas Tactical Officers Association, the Conway Police Department, and the University of Arkansas-CJI.

Ark. Code Ann. § 12-12-1401 *et seq* requires that each law enforcement agency in the state adopt a policy prohibiting racial profiling. To assist your department in meeting this ongoing obligation we are providing this booklet. While these “sample” policies are designed to be used by all cities and towns, it is crucial that each department analyze its own operations and amend the policies as best suits its individual needs. Further, it is imperative that each city or town engage its local legal counsel to assist with this process and not rely on this publication as its sole source of policy implementation.

As always, the League staff remains available to assist you.

## Disclaimer

*The information contained in this book is not intended as legal advice generally or for any specific case, circumstance, or incident. Readers are responsible for consulting with legal counsel when questions arise concerning the application of the law to a particular set of facts. This book is intended solely for educational and informational purposes.*

## Acknowledgment

The policies contained herein have been reproduced with the permission of the AACP, PATC, and LLRMI.

## **Section.**

### **12-12-1401 Definition.**

### **12-12-1402 Prohibition on racial profiling.**

### **12-12-1403 Policies.**

### **12-12-1404 Training.**

### **12-12-1405 Racial profiling hotline.**

### **12-12-1401 Definition.**

- (a) As used in this subchapter, “racial profiling” means the practice of a law enforcement officer’s relying to any degree on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.
- (b) “Racial profiling” does not include reliance on the criteria in combination with other identifying factors when the law enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect and the description is thought to be reliable and locally relevant.

**History:** Acts 2003, No. 1207, § 1.

### **12-12-1402 Prohibition on racial profiling.**

- (a) No member of the Department of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas Department of Transportation, a county sheriff’s department, or a municipal police department, constable, or any other law enforcement officer of this state shall engage in racial profiling.
- (b) The statements of policy and definitions contained in this subchapter shall not be construed or interpreted to be contrary to the Arkansas Rules of Criminal Procedure or the United States Constitution or the Arkansas Constitution.

**History:** Acts 2003, No. 1207, § 2; 2005, No. 2136, § 3; 2017, No. 707, § 16.

### **12-12-1403 Policies.**

- (a) The Department of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas Department of Transportation, all county sheriffs’ departments, municipal police departments, constables, and all other law enforcement agencies of this state shall adopt a written policy that:
  - (1) Prohibits racial profiling as defined in § 12-12-1401;
  - (2) Requires that law enforcement officers have reasonable suspicion prior to a stop, arrest, or detention;
  - (3) Defines reasonable suspicion to ensure that individuals are stopped for valid reasons and that race, ethnicity, national origin, or religion is not the basis for stops for violations for which nongroup members would not be stopped;
  - (4) Requires law enforcement officers to identify themselves by full name and jurisdiction and state the reason for the stop and when possible present written identification;
  - (5) Provides for a systematic review process by supervising personnel within a department or law enforcement agency for investigating allegations of racial profiling to determine whether any officers of the law enforcement agency have a pattern of stopping or searching persons, and if the review reveals a pattern, requires an investigation to determine whether a trend is present

indicating that an officer may be using race, ethnicity, national origin, or religion as a basis for investigating other violations of criminal law;

- (6) When a supervisor or other reviewer has detected a pattern of racial profiling, provides timely assistance, remediation, or discipline for individual law enforcement officers who have been found to be profiling by race, ethnicity, national origin, or religion;
- (7) Ensures that supervisors will not retaliate against officers who report racial profiling by others; and
- (8) Provides standards for the use of in-car audio and visual equipment, including the duration for which the recordings are preserved.

**(b)**

- (1) Each law enforcement agency shall include a copy of the law enforcement agency's policy in the annual report that the law enforcement agency submits to the Division of Legislative Audit.
- (2) The Division of Legislative Audit shall submit to the Attorney General the name of any law enforcement agency that fails to comply with subdivision (b)(1) of this section, and the Attorney General shall take such action as may be necessary to enforce this section.
- (3) The Division of Legislative Audit shall forward to the Attorney General a copy of each law enforcement agency's policy received by the Division of Legislative Audit. The Attorney General shall review each law enforcement agency's policy to ensure that the law enforcement agency's policy meets the standards required by law.

**(c)**

- (1) Each law enforcement agency may promote public awareness of the law enforcement agency's efforts to comply with the mandates of this section.
- (2) In addition, each law enforcement agency shall make available for public inspection a copy of the law enforcement agency's policy.

**History:** Acts 2003, No. 1207, § 3; 2005, No. 2136, § 4; 2007, No. 1048, § 2; 2009, No. 165, § 8; 2017, No. 707, § 17.

## **12-12-1404 Training.**

**(a)** Each law enforcement agency shall provide annual training to all officers that:

- (1) Emphasizes the prohibition against racial profiling;
- (2) Ensures that operating procedures adequately implement the prohibition against racial profiling and that the law enforcement agency's law enforcement personnel have copies of, understand, and follow the operating procedures; and
- (3) Includes foreign language instruction, if possible, to ensure adequate communication with residents of a community.

**(b)** The course or courses of instruction and the guidelines shall stress understanding and respect for racial, ethnic, national, religious, and cultural differences and development of effective and appropriate methods of carrying out law enforcement duties.

**(c)**

- (1) The Arkansas Commission on Law Enforcement Standards and Training shall adopt an initial training module concerning diversity and racial sensitivity for recruits and officers.
- (2) The commission shall also adopt a training module for biennial recertification for all recruits and officers who have completed the initial training module.

**(d)**

- (1) The commission shall promulgate rules that set significant standards for all training required in this section.
- (2) The commission may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 *et seq.*
- (3) The commission may review and recommend changes to the racial profiling policy of any law enforcement agency.
- (4) Upon request, the racial profiling policy of any law enforcement agency shall be made available to the commission for the purpose described in subdivision (d)(3) of this section.
- (5) The commission may establish a toll-free hotline and an email address to receive complaints concerning racial profiling.

**History:** Acts 2003, No. 1207, § 4; 2005, No. 2136, § 5; 2011, No. 779, § 11; 2017, No. 250, § 6.

## **12-12-1405 Racial profiling hotline.**

**(a)**

- (1) The Attorney General shall establish and publish procedures to receive complaints concerning racial profiling.
  - (2) The procedures shall include the operation of a toll-free hotline and may include procedures to receive written complaints through the mail, email, or facsimile.
- (b)** The Attorney General shall maintain statewide statistics on complaints received concerning racial profiling.
- (c)** The Attorney General annually shall report statewide statistics on complaints concerning racial profiling received under this section during a year no later than October 1 of the next year to the Legislative Council.
- (d)** If the Attorney General suspects that a violation of law has occurred, the Attorney General shall refer the matter to the appropriate prosecuting attorney or other appropriate legal authority.

**History:** Acts 2009, No. 768, § 1; 2017, No. 250, § 7.

# Biased Based Profiling

*Disclaimer: This model policy was revised on February 1, 2016, and is to be used only as a guide to assist Arkansas municipal law enforcement agencies in drafting policies regarding biased law enforcement practices. Every effort has been made to ensure that the information contained herein reflects the most current data and research on this issue; however, no model policy can meet all of the needs of any given agency as each agency operates in a unique environment. As such, this model policy should not be adopted by any agency without it being reviewed by local counsel for compliance with federal, state, and local laws, as well as for consistency with other departmental regulations and policies.*

## I. Purpose

- A. Members of this law enforcement agency shall not violate the constitutional rights of persons, regardless of race, ethnicity, national origin or religion (note that other statements may be included in your policy as deemed appropriate by the particular law enforcement agency; these include but are not limited to: color, creed, gender, age, sexual orientation, disability, or any belief system).
- B. This policy serves to (1) reaffirm this law enforcement agency's commitment to unbiased law enforcement practices, (2) further clarify the circumstances in which officers may consider race or ethnicity when making enforcement decisions, and (3) reinforce procedures that assure the public this agency is providing service and enforcing laws in an equitable and lawful fashion.<sup>1</sup>

## II. Policy

It is the policy of this department to respect the rights of all persons. As such, this department will work diligently to ensure the following:

- A. Law enforcement officers of this agency shall not violate citizens' equal protection rights. Toward this end, members are prohibited from engaging in racial/bias profiling in any aspect of law-enforcement activity as defined by this policy.
- B. It shall be the policy of this law enforcement agency that officers base pedestrian or motor vehicle stops, detentions, investigative activities, searches, property seizures, or arrests of a person upon a standard of reasonable suspicion or probable cause in compliance with the United States and Arkansas Constitutions as well as federal and state law.
- C. Law enforcement officers of this agency shall be prohibited from utilizing race, ethnicity, national origin or religion to any degree in making law enforcement decisions, except to determine whether a person matches the description of a particular suspect.<sup>2</sup>
- D. The statements of policy and definitions contained herein shall not be construed or interpreted to be contrary to the Arkansas Rules of Criminal Procedure or the Constitutions of the United States or the State of Arkansas.<sup>3</sup>

## III. Definitions

- A. "Probable cause" means that set of facts or circumstances based on reliable information, personal knowledge or observation by an officer, which reasonably shows and would warrant an ordinary prudent person in believing that a particular person has committed, is threatening, or is about to commit some criminal violation of the law. This definition is subject to federal and state court interpretation and other applicable law.
- B. "Reasonable suspicion" means suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a

<sup>1</sup> Fridell, L. Lunney, R. Diamond, D., & Kubu, B. (2001). Racially Biased Policing: A Principled Response. Conducted through the Police Executive Research Forum and funded by the Office of Community Oriented Policing Services under Grant No. 1999-CK-WX-0076.

<sup>2</sup> Fridell, L. Lunney, R. Diamond, D., & Kubu, B. (2001). Racially Biased Policing: A Principled Response. Conducted through the Police Executive Research Forum and funded by the Office of Community Oriented Policing Services under Grant No. 1999-CK-WX-0076.

<sup>3</sup> Ark. Code Ann. § 12-12-1402(a).

bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion.<sup>4</sup> This definition is subject to federal and state court interpretation and other applicable law.

- C. “Reasonable cause to believe” means a basis for belief in the existence of facts which, in view of the circumstances under and purposes for which the standard is applied, is substantial, objective, and sufficient to satisfy applicable constitutional requirements.<sup>5</sup> This definition is subject to federal and state court interpretation and other applicable law.
- D. “Reasonable belief ” means a belief based on reasonable cause to believe.<sup>6</sup> This definition is subject to federal and state court interpretation and other applicable law.
- E. “Racial profiling” means the practice of a law enforcement officer relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity, except that racial profiling does not include reliance on the criteria in combination with other identifying factors when the law enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect, and the description is thought to be reliable and locally relevant.<sup>7</sup> This definition is subject to federal and state court interpretation and other applicable law.

#### **IV. Field Officer Responsibilities**

- A. Members of this law enforcement agency, whether sworn, civilian, or volunteer, shall treat every person with courtesy and respect when interacting with the public and will conduct all law enforcement duties in a professional manner.
- B. Officers shall base all pedestrian and motor vehicle stops, detentions, investigative activities, or arrests on a standard of reasonable suspicion or probable cause and in doing so shall not violate this policy.<sup>8</sup>
- C. Upon initial contact, each law enforcement officer shall provide his or her full name, written identification, jurisdiction, and the reason for the pedestrian or motor vehicle stop to the accused.<sup>9</sup> If asked for a serial or badge number by the pedestrian or driver of a motor vehicle, the law enforcement officer shall oblige, when it is reasonable to do so, by providing such information.
- D. When stopping a pedestrian or a driver of a vehicle for an alleged motor vehicle violation, each law enforcement officer shall take into account circumstances associated with each individual pedestrian or motor vehicle stop and shall use discretion in determining whether to issue a verbal warning, a written warning, or a citation.
- E. In an effort to minimize conflict during interactions with accused violators when stopping and or detaining persons, it is recommended that officers attempt, where feasible and reasonable, to:

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<sup>4</sup> Ark. R. Crim. P. 2.1.

<sup>5</sup> Ark. R. Crim. P. 10.1(h).

<sup>6</sup> Ark. R. Crim. P. 10.1(i).

<sup>7</sup> Ark. Code Ann. § 12-12-1401

<sup>8</sup> Commission on Accreditation of Law Enforcement Agencies (CALEA) CALEA Standard 61.1.8; 590.650 and 590.653 RSMO. Race Based Traffic Stops Procedural Instructions. Found online at [www.mopca.com/members/documents/vol3/MODRACIAL.doc](http://www.mopca.com/members/documents/vol3/MODRACIAL.doc). See also Act 2136 of 2005, section 3.

<sup>9</sup> Id.



- i. Extend a customary greeting to each person such as: Good morning, afternoon, or evening.
- ii. Identify themselves by name. For instance:  
I am Officer Smith of the \_\_\_\_\_ Law Enforcement Agency.
- iii. Explain the reason for the stop or detention:  
I stopped you because\_\_\_\_\_.
- iv. Listen politely and give the accused ample opportunity to tell his or her story and explain his or her behavior.
- v. Politely ask for identification and any required documents: May I please see your driver's license, registration, and proof of motor vehicle insurance?
- vi. Complete paperwork and advise the driver or pedestrian as to what action is being taken and what, if anything, the person must do as a result, such as pay a fine, obtain a court hearing, etc.
- vii. Extend a departing pleasantry such as: Please drive safely or thank you for your cooperation.
- viii. Make sure the driver is able to merge safely back into traffic.<sup>10</sup>
- ix. Remain courteous and project a professional demeanor during the interview, questioning, or contact.
- x. Officers shall refrain from participating in or encouraging any actions or statements that could be reasonably perceived as racial/bias-related profiling, including but not limited to racial slurs or derogatory references about a minority group.
- xi. Officers shall report any acts of racial/bias-related profiling to their immediate supervisor as is more specifically defined herein.

## **V. Supervisor Responsibilities**

- A. Each supervisor is responsible for ensuring that all personnel under their command fully understand the content of this policy and are operating in compliance with the procedures herein.<sup>11</sup>
- B. Each supervisor shall be responsible for making contact, when possible, with any known complainant alleging biased law enforcement practices by his or her field officers, either on the scene or by telephone and documenting same in writing using departmentally approved forms.
  - i. If the complaint is not resolved, and forms have not already been filled out, the supervisor shall offer to provide the complainant a Citizen Complaint Form.
  - ii. If the supervisor arrives at the scene of the allegation, then she/he shall provide a Citizen Complaint Form and collect the mobile video/audio recording (MVR) tape, if applicable, from the field officer.
  - iii. The supervisor shall further provide guidance to the complainant, as needed, in completing and filing the complaint as well as explaining the department's policy and in particular the investigative process.<sup>12</sup>
- C. Upon receipt of a complaint, each supervisor shall address the matter in a timely manner by doing the following:
  - i. Evaluate, provide a written report, and process each Citizen Complaint Form alleging biased law enforcement practices to the agency head or his/her designee or to the Internal Affairs Unit, if applicable.
    - (a) Written reports shall be completed within twenty-four (24) hours of filing by the complainant.

<sup>10</sup> General Orders Manual of the Milton, Florida Police Department, Order #17, Professional Traffic Stops.

<sup>11</sup> Fridell, L. Lunney, R. Diamond, D., & Kubu, B. (2001). Racially Biased Policing: A Principled Response. Conducted through the Police Executive Research Forum and funded by the Office of Community Oriented Policing Services under Grant No. 1999-CK-WX-0076.

<sup>12</sup> Commission on Accreditation of Law Enforcement Agencies (CALEA) CALEA Standard 61.1.8; 590.650 and 590.653 RSMO. Race Based Traffic Stops Procedural Instructions. Found online at [www.mopca.com/members/documents/vol13/MODRACIAL.doc](http://www.mopca.com/members/documents/vol13/MODRACIAL.doc)

- ii. Evaluate, copy, and submit a written report to the agency head or his or her designee detailing the review of the MVR tape, if applicable.
  - (a) Each supervisor shall maintain a copy of the MVR tape, if applicable, and any written report prior to submitting to the agency head or his or her designee or the Internal Affairs Unit.
  - (b) The written MVR Tape Report shall be completed within twenty-four (24) hours of filing by the complainant and submitted to the agency head or his or her designee or the Internal Affairs Unit for investigation.

## **VI. Allegations of Biased Law Enforcement Practices**

- A. When accused of biased law enforcement practices, the field officer shall first contact his or her immediate supervisor for advice on the situation.
  - i. When practical to do so, the supervisor shall report to the scene to mediate the situation.
  - ii. The field officer shall provide complainant(s) with the full name and telephone number of his or her immediate supervisor, and the contact name and telephone number of the agency head or his or her designee, or the supervisor of the Internal Affairs Unit, if applicable.
  - iii. Field officers shall complete a written report detailing the incident, the allegation(s) made, the purpose for the pedestrian or motor vehicle stop, detention, investigative activity or arrest, and submit the report to his or her supervisor.
- B. Along with the written report, field officers shall submit the MVR tape containing the encounter in question, if applicable, to his or her supervisor.
- C. All allegations of biased law enforcement practices shall be investigated by the department in a like and consistent manner.

## **VII. Departmental Review<sup>13</sup>**

- A. Management of this law enforcement agency shall implement a systematic review process to generate quarterly analyses of statistical information collected from the Citizen Complaint Form.
- B. These analyses shall identify allegations specific to biased law enforcement practices.
- C. If a pattern is identified, the agency head or his or her designee or the Internal Affairs Unit, if applicable, shall be responsible for conducting an investigation to determine whether officers of the agency have violated the provisions of this policy and/or other department policies or procedures.
- D. Officers found to have engaged in biased law enforcement practices shall receive counseling, remediation, corrective training, timely assistance and/or discipline, including but not limited to termination, in a timely manner.<sup>14</sup>

## **VIII. Documentation and Record Keeping<sup>15</sup>**

- A. Any officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall document the stop with the following information, which shall be included in addition to any other information documented by the officer:
  - i. A physical description of each person detained as a result of the stop, including:
    - (a) the person's gender and
    - (b) the person's race or ethnicity.

<sup>13</sup> Sections VII, VIII, and X of this model policy and procedures referencing Departmental Review, Documentation and Record Keeping, and Communication to the Community of this Policy are not mandated by Arkansas law; however, it is recommended by the Arkansas Municipal League that law enforcement agencies carefully study the issue of record keeping, keeping in mind that agency's or department's budget and available manpower and determine whether they wish to implement any record keeping system.

<sup>14</sup> See Ark. Code Ann. § 12-12-1403(a)(6).

<sup>15</sup> Sections VII, VIII, and X of this model policy and procedures referencing Departmental Review, Documentation and Record Keeping, and Communication to the Community of this Policy are not mandated by Arkansas law; however, it is recommended by the Arkansas Municipal League that law enforcement agencies carefully study the issue of record keeping, keeping in mind that agency's or department's budget and available manpower and determine whether they wish to implement any record keeping system.

- ii. The traffic law or ordinance alleged to have been violated or the suspected offense;
  - iii. Whether the officer conducted a search as a result of the stop, and if so, the basis for that search, consent of the person detained, existence of probable cause, frisk for weapons, or other;
  - iv. Whether any contraband was discovered in the course of the search and the type of contraband discovered;
  - v. Whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
  - vi. The street address or approximate location of the stop;
  - vii. The date and time of the stop; and
  - viii. Whether the officer issued a warning or a citation as a result of the stop.
- B. Every year, no later than April 1, this law enforcement agency will compile the above information relating to the race/ethnicity of individuals stopped.
  - C. The information will be reported in a format that may include, but is not limited to, the reporting of the data in numerical and/or percentage categories of ethnicity, stops, reasons for the stops, searches resulting from the stops, disposition of the stops, and the duration of the stops.
  - D. This law enforcement agency shall also compile data on individual officers to be used in evaluation and as an early warning system for possible racial/bias profiling.
  - E. The data and documentation collected pursuant to this general order shall not constitute prima facie evidence of racial profiling or any other violation of civil rights or of state or federal law.

## **IX. Training<sup>16</sup>**

- A. Training shall be in compliance with state law and regarding this policy. This training shall include:
  - i. Training of all current and future agency employees as to this policy and the prohibition against racial/biased profiling;
  - ii. Annual in-service training stressing the understanding and respect for racial, ethnic, national, religious and cultural differences and development of effective and appropriate methods of carrying out law enforcement duties;
  - iii. Input from those classes of persons identified in the agency policy in development of curriculum;
  - iv. Specific lesson plans for patrol officers, supervisors, etc.;
  - v. A review of the agency's operating procedures that implement the prohibition against racial profiling and the affirmation by agency employees that they have copies of, understand, and are following the policy; and,
  - vi. If necessary and possible, foreign language instruction to ensure adequate communication with residents of a community.
- B. Further, training shall be planned and completed in compliance with the standards designed by the Commission on Law Enforcement Standards and Training (CLEST).

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<sup>16</sup> See Ark. Code Ann. §§ 6-11-105(a); 12-8-104; 12-12-1404; and Act 2136 of 2005, Section 5.

## **X. Communication to the Community of this Policy**

- A. This law enforcement agency shall be responsible for providing public information relating to the agency's efforts to comply with government mandates on racial profiling. This will include public education relating to the agency's complaint process. Avenues for this information may be, but not limited to, any of the following:
  - i. Pamphlets developed by the agency;
  - ii. Public service announcements concerning this policy and additional outreach efforts on local radio stations, television stations, and local newspapers;
  - iii. Community meetings and public forums in which bias/racial profiling is discussed; and
  - iv. News/press releases.
- B. Where appropriate to meet the goals of this policy, communication of this policy with the community shall be available in English and in Spanish.

## **XI. Retaliation**

- A. No member of this law enforcement agency, regardless of rank or stature, shall retaliate against fellow officers, officials, civilians, or volunteers for reporting incidents of biased law enforcement practices or for participating in or cooperating with the investigation of those incidents.
- B. Actions or behaviors found to constitute retaliation shall be immediately addressed and may lead to dismissal.

## **XII. The Use of Mobile Video/Audio Recording (MVR) Equipment**

- A. If MVR equipment is available within the law enforcement agency, please refer to Policy, Mobile Digital Recording (page 11).

## **XIII. Legislative Audit Requirements**

- A. A. To the extent that state law mandates local law enforcement agencies to file reports with Legislative Audit, this order/policy shall be included in the annual report that the department submits to the Division of Legislative Audit.<sup>17</sup>

## **XIV. Public Inspection**

- A. A copy of this policy shall be kept at \_\_\_\_\_ (name specific location where the policy will be kept or posted) and will be available for public inspection.<sup>18</sup>

## **XV. Application**

- A. This order constitutes agency policy and is not intended to enlarge the employee's existing civil or criminal liability in any way. It shall not be construed as the creation of an additional cause of action by either the employee or any third party.<sup>19</sup>

<sup>17</sup> Ark. Code Ann. § 12-12-1403(b)(1). Further, the name of any law enforcement agencies that fail to comply with this requirement will be submitted to the Attorney General by the Division of Legislative Audit for appropriate actions to ensure that the policy is provided. The Attorney General will review each policy to ensure the policy meets the standards required by law.\*

<sup>18</sup> Ark. Code Ann. § 12-12-1403(c)(2).\*

<sup>19</sup> Commission on Accreditation of Law Enforcement Agencies (CALEA) CALEA Standard 61.1.8; 590.650 and 590.653 RSMO. Race Based Traffic Stops Procedural Instructions. Found online at [www.mopca.com/members/documents/vol3/MODRACIAL.doc](http://www.mopca.com/members/documents/vol3/MODRACIAL.doc).

\* Act 1048 of 2007.

# The Use of Mobile Digital Recording Equipment

*Disclaimer: This model policy was revised on February 1, 2016, and is to be used only as a guide to assist Arkansas municipal law enforcement agencies in drafting policies regarding the use of mobile video and audio recording equipment. Every effort has been made to ensure that the information contained herein reflects the most current data and research on this issue; however, no model policy can meet all of the needs of any given agency as each agency operates in a unique environment. As such, this model policy should not be adopted by any agency without it being reviewed by local counsel for compliance with federal, state, and local laws, as well as for consistency with other departmental regulations and policies.*

## I. Purpose

To establish policy procedures on the use and storage of all departmental Mobile Digital Recording (MDR) equipment and data including but not limited to vehicle devices, body worn devices, and independently held devices.

## II. Policy

This policy sets forth principles and guidelines for the utilization and storage of MDR equipment within the department. It will be the policy of this department to facilitate such technology for the collection of evidence for criminal investigation and prosecution, to provide a means for administrative investigation and inspection, and to assist in training officers to improve safety and security tactics as well as for providing for better service to the community.

## III. Procedures

### A. Training

- i. All officers will receive training on the proper use of MDR equipment.
  - (a) Training will be accomplished via a Field Training Officer, a classroom environment, or other methodology as determined by the chief or his or her designee.
  - (b) All training shall be documented.

### B. Control and Management of MDR (equipment and data)

- i. MDR (equipment and data) will:
  - (a) Be the property of this department.
  - (b) Officers shall not utilize self-owned recording equipment without written permission from the chief or his designee, and where authorization is given, data from the equipment shall be the property of this department and shall be downloaded, stored, and maintained in accordance with this policy.
  - (c) Not be duplicated and/or used without authorization from the chief, or his or her designee.
  - (d) Be maintained and stored in a manner that allows efficient identification and retrieval.
  - (e) Not leave the custody of the department unless approved by the chief or his or her designee.
  - (f) Be stored for \_\_\_\_\_. (Each department should evaluate its computer and technological limitations and adjust storage times accordingly. It is recommended that at a minimum, this data be maintained for the statute of limitations on any possible criminal prosecution regarding a specific incident that may have been recorded. As for civil purposes, the minimum storage time should be three years from the incident in question. If resources are available, it is suggested that much longer storage time be put in place.)
  - (g) Be restricted in access to supervisory personnel only as may be defined by the chief or his or her designee.

- ii. MDR containing valuable information for case prosecution, criminal or civil proceedings shall:
  - (a) Be protected as evidence.
  - (b) Be subject to the same chain of evidence safeguards as detailed in this department's Evidence Control Policy.
  - (c) Be duplicated and maintained in safe storage prior to being released as directed by the chief or his or her designee.

#### C. General

- i. MDR equipment in department vehicles will automatically activate when the vehicle's emergency warning devices are in operation.
- ii. MDR equipment installed in vehicles is the responsibility of the officer assigned to the vehicle, and will be maintained according to manufacturer's recommendations.
- iii. Non-vehicle MDR equipment will be operated as directed by the chief or his or her designee.

#### D. Supervisory Responsibilities

- i. All supervisors must be knowledgeable of MDR equipment, operations and functionality, and of departmental procedures for its use.
- ii. All district supervisors shall ensure the following:
  - (a) All officers under his or her command shall be knowledgeable of this policy.
  - (b) Equipment shall be checked at the shift's beginning to ensure that it functions properly and records the date and officer(s) name(s).
  - (c) Any needed repair of MDR equipment shall be duly arranged.

#### E. Officer Responsibilities

- i. Prior to checking "in service," officers will determine whether their MDR equipment is working satisfactorily and will bring any problems at this or other times to the attention of their immediate supervisor as soon as possible.
- ii. The MDR equipment may be manually deactivated during non-enforcement activities such as when protecting accident scenes from other vehicular traffic, during parade or funeral escorts, etc.
- iii. Officers must ensure that equipment is operating in order to record traffic stops or other enforcement actions. In so doing, they will ensure when practical, that:
  - (a) The digital recorder is positioned and adjusted to record events.
  - (b) The wireless microphone is on to provide narration with the digital recording to explain the reason for their current or planned enforcement action.
  - (c) Actions of suspects during interviews, when undergoing sobriety checks, or when placed into custody are recorded.
  - (d) Circumstances at crime and accident scenes or other events such as the confiscation and documentation of evidence or contraband are recorded.
  - (e) Officers shall not in any manner attempt to alter or alter MDR recordings.
  - (f) Officers are encouraged to inform their supervisor of any recorded sequences that may be of value for training purposes.
  - (g) Officers will note the incident, arrest and related reports when digital/audio recordings are made during the incident in question. The Use of Body Worn Video Recording Equipment

# The Use of Body Worn Video Recording Equipment

*Disclaimer: This model policy was revised on February 1, 2016, and is to be used only as a guide to assist Arkansas municipal law enforcement agencies in drafting policies regarding the use of mobile video and audio recording equipment. Every effort has been made to ensure that the information contained herein reflects the most current data and research on this issue; however, no model policy can meet all of the needs of any given agency as each agency operates in a unique environment. As such, this model policy should not be adopted by any agency without it being reviewed by local counsel for compliance with federal, state, and local laws, as well as for consistency with other departmental regulations and policies.*

## I. Purpose

The purpose of this policy is to direct Officers and Supervisors in the proper use and maintenance of Body Worn Video Recorders (BWV) as well as directing how video will be utilized as a quality control mechanism and evidence.

## II. Policy

It is the policy of this department to provide officers as designated by the Chief of Police with BWV devices as feasible. Officers shall activate the BWV when such use is appropriate to the proper performance of his or her official duties, where the recordings are consistent with this policy and law. This policy does not govern the use of surreptitious recording devices used in undercover operations or in-car-video covered under separate policy or directive.

## III. Definitions

- A. "Law Enforcement Contact" A law enforcement contact within the meaning of this policy is any contact or activity whereby an Officer stops a person's movement by a means intentionally applied or conducts any activity requiring probable cause, reasonable suspicion, or consent to form the legal basis for the conduct. A law enforcement contact or activity does not include mere conversation or other contact outside the scope of a law enforcement purpose when such contact does not require any legal basis.

## IV. Procedure

- A. Officers using BWV equipment shall be trained in its use, maintenance, and required documentation and storage of such recordings.
- B. Officers using BWV equipment will test such equipment at the beginning of each tour of duty or special event to ensure proper operation and required battery life. Improperly functioning equipment shall be reported to the immediate supervisor or other reporting mechanism established by this department for purpose of replacement or repair.
- C. Officers assigned BWV are required to wear such devices unless otherwise directed by the Chief of Police or their designee or other unforeseen circumstances prevent the wearing of the device. BWV will be worn on the officer's body in a manner that will optimize the recording of events.

- D. BWV activation is limited to situations involving official police activities authorized by law or court order, including consensual citizen encounters and investigation of law violations. Officers are authorized to record events when the officer is a party to the conversation, or when an individual is in custody and there is generally no expectation of privacy. Officers will audibly and video-graphically record, as feasible, the following events, including but not limited to:
  - i. Calls for service in which citizen contact is made;
  - ii. Traffic stops;
  - iii. All transports excluding ride-alongs;
  - iv. Investigative stops;
  - v. Foot pursuits;
  - vi. Arrests, Searches, Seizures;
  - vii. Consensual encounters;
  - viii. Verbal Witness/Suspect Statements;
  - ix. Miranda Warnings, Arrestee Interviews;
  - x. When arriving at law enforcement events and/or citizen contacts initiated by other Officers; and
  - xi. Other incidents the officer reasonably believes should be recorded for law enforcement purposes.
- E. Officers will make reasonable efforts to ensure the BWV recording equipment is accurately capturing events. Officers are prohibited from turning off the BWV during any citizen contact or law enforcement event unless otherwise authorized by this policy, and Officers shall not erase, alter, modify or tamper with BWV recordings.
- F. Recording shall continue until the law enforcement event or citizen contact is completed and the citizen involved departs or the officer discontinues his or her participation in the law enforcement event or citizen contact by leaving the scene.
- G. In the event an officer deems it necessary to stop recording or becomes aware that a recordable event was not recorded, the officer will document such event.

## **V. Issues Related to Privacy**

- A. BWV should not be activated when: the officer is on break, engaged in personal activities, involved with citizen encounters outside the scope of a law enforcement contact or purpose, or when the officer is in a location under circumstances requiring a respect for an expectation of privacy such as a restroom, locker room, or other area when people are in an exposed or otherwise compromised state. However, should exigent circumstances develop where the need to record an event outweighs any privacy concern, the officer will activate the device where feasible to do so.
- B. BWV will not be activated when encountering undercover officers or confidential informants and such encounters should not be recorded.
- C. When entering a residence that requires the consent of the resident, Officers will inform the resident that he or she is wearing an activated recording device and request permission to continue recording the encounter. If the resident wishes not to be recorded in the interior of their home, Officers will document that desire via the BWV and turn off the device for the remainder of the contact. However, should exigent circumstances develop where the need to record the event outweighs any privacy concern, the officer will reactivate the device where feasible to do so irrespective of the resident's desire.



- D. When legally entering a residence without the consent of the resident, such as serving a warrant or exigent circumstances, or undercover operations, recordings will be made of the incident until its conclusion.
- E. The BWV will not be activated during personal or administrative conversations between officers, or between officers and supervisors.

## **VI. Electronic storage:**

- A. Original digital files from a BWV will be downloaded and stored on a designated network server or other electronic network storage.
- B. Officers will make reasonable attempts to download video/audio files before the end of each shift.
- C. Non-evidentiary video/audio recordings will be maintained in electronic storage or the network server for a period of time as directed by the Chief of Police or their designee but in no case will be held less than any required amount of time pursuant to the Arkansas Freedom of Information Act or court decision related thereto.
- D. Video/audio recordings determined to be evidentiary in any criminal or civil proceeding shall be copied to DVD or other media and handled in accordance with departmental regulations regarding electronic evidence or work product. Recordings will be maintained in accordance with Arkansas law related to police municipal records as outlined in A.C.A. § 14-2-204. Recordings known to pertain to civil matters will be maintained for a minimum of three years or until such a time as the civil matter is resolved and all time for appeal has exhausted.
- E. This agency will maintain a duplicate electronic file of recordings submitted to other agencies for court or other purposes.
- F. All recording media, recorded images and audio recordings are the property of this agency. Dissemination outside the agency for reasons other than criminal prosecution is strictly prohibited without specific authorization of the Chief of Police or designee.
- G. Malicious destruction or deletion of video and audio files is prohibited.
- H. All video and audio files are subject to open records request as allowed by Arkansas law.
- I. Electronic media will be stored in a manner designated by the agency.
- J. If a recording is used in a disciplinary action resulting in suspension or termination against an employee, the recording shall be held for a minimum of three (3) years from the completion of the disciplinary action.
- K. Electronic Media is subject to review by the Chief of Police or their designees.
- L. Video shall not be reproduced without the express authority of the Chief of Police or their designee.
- M. First line supervisors or a designee should review a random sample of BWV recordings quarterly for each officer supervised for policy, training and legal compliance. After review, the supervisor will document the review and any supervisory actions taken. Supervisors should meet with individual Officers to provide guidance, training and correction when required. Supervisors will initiate formal counseling or internal affairs procedures; as the need arises. When corrective action is taken, a special review may be implemented for that particular officer for a set duration of time in order to ensure compliance with the corrective action.

## **VII. BWV Evidentiary/Administrative Procedures:**

- A. When an officer becomes aware that a BWV recording contains potential evidence of a criminal or administrative matter, the officer is required to ensure the video is uploaded to the network server (or other storage medium) and document such recording via police report and/or other procedures established by this department.
- B. When a BWV related to evidence of a criminal or administrative matter is recorded, the evidence custodian will ensure the video is uploaded to the network server or other electronic media and disseminated per department procedures.
- C. Where there is any indication that the BWV may contain “Brady” material, that recording must be saved and turned over to the prosecutor assigned to the case in accordance with the “Duty to Disclose” policy of this department.
- D. Civilians shall not be allowed to review recordings except as approved by the Chief of Police or their designee, through the process of evidentiary discovery and/or FOIA request.





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Sample Policies on Bias Based Policing