



# DUNCANVILLE POLICE DEPARTMENT

2016

## RACIAL PROFILING ANALYSIS

PREPARED BY:

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## **Executive Summary**

Article 2.132 (7) of the Texas Code of Criminal Procedure requires the annual reporting to the local governing body of data collected on the race or ethnicity of individuals stopped and issued citations or arrested subsequent to traffic stops and whether or not those individuals were searched. Since the law provides no clear instruction to a governing body on how to review such data, the Duncanville Police Department requested this analysis and review to assist the City Council in reviewing the data.

The analysis of material and data from the Duncanville Police Department revealed the following:

- **A COMPREHENSIVE REVIEW OF THE DUNCANVILLE POLICE DEPARTMENT REGULATIONS, SPECIFICALLY SECTION 5.41 OUTLINING THE DEPARTMENT'S POLICY CONCERNING RACIAL PROFILING, SHOWS THAT THE DUNCANVILLE POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH ARTICLE 2.132 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.**
- **A REVIEW OF THE INFORMATION PRESENTED AND SUPPORTING DOCUMENTATION REVEALS THAT THE DUNCANVILLE POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH TEXAS LAW ON TRAINING AND EDUCATION REGARDING RACIAL PROFILING.**
- **A REVIEW OF THE DOCUMENTATION PRODUCED BY THE DEPARTMENT IN BOTH PRINT AND ELECTRONIC FORM REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE RACIAL PROFILING COMPLAINT PROCESS AND PUBLIC EDUCATION ABOUT THE COMPLAINT PROCESS.**
- **ANALYSIS OF THE DATA REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE COLLECTION OF RACIAL PROFILING DATA.**
- **THE ANALYSIS OF STATISTICAL INFORMATION FROM DUNCANVILLE POLICE DEPARTMENT REVEALS THAT THERE ARE NO METHODOLOGICALLY CONCLUSIVE INDICATIONS OF SYSTEMIC RACIAL PROFILING BY THE DEPARTMENT.**
- **THE DUNCANVILLE POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW CONCERNING THE PROHIBITION OF RACIAL PROFILING.**
- **THE DUNCANVILLE POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW CONCERNING THE REPORTING OF INFORMATION TO TCOLE.**

## **Introduction**

This report details an analysis of the Duncanville Police Department's policies, training, and statistical information on racial profiling for the year 2016. This report has been prepared to specifically comply with Article 2.132 of the Texas Code of Criminal Procedure (CCP) regarding the compilation and analysis of racial profiling data. Specifically, the analysis will address Articles 2.131 – 2.135 of the CCP and make a determination of the level of compliance with those articles by the Duncanville Police Department in 2016. The full copies of the applicable laws and regulations pertaining to this report are contained in Appendix A.

This report is divided into six analytical sections: Duncanville Police Department's policy on racial profiling; Duncanville Police Department's training and education on racial profiling; Duncanville Police Department's complaint process and public education on racial profiling; analysis of statistical data on racial profiling; analysis of Duncanville Police Department's compliance with applicable laws on racial profiling; and a final section which includes completed data and information reporting forms required to be sent to TCOLE beginning in 2011.

For the purposes of this report and analysis, the following definition of racial profiling is used: racial profiling means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity (Texas CCP Article 3.05).

## **Duncanville Police Department Policy on Racial Profiling**

A review of Duncanville Police Department regulation 5.41 revealed that the department has adopted policies to be in compliance with Article 2.132 of the Texas CCP (see Appendix B). There are seven specific requirements mandated by Article 2.132 that a law enforcement agency must address. All seven are clearly covered in regulation 5.41. Duncanville Police Department regulations provide clear direction that any form of racial profiling is prohibited and that officers found engaging in inappropriate profiling may be disciplined up to and including termination. The regulations also provide a very clear statement of the agency's philosophy regarding equal treatment of all persons regardless of race or ethnicity. Appendix C lists the applicable statute and corresponding Duncanville Police Department regulation.

***A COMPREHENSIVE REVIEW OF DUNCANVILLE POLICE DEPARTMENT REGULATION 5.41 SHOWS THAT THE DUNCANVILLE POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH ARTICLE 2.132 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.***

## **Duncanville Police Department Training and Education on Racial Profiling**

Texas Occupation Code § 1701.253 and § 1701.402 require that curriculum be established and training certificates issued on racial profiling for all Texas Peace officers. Information provided by Duncanville Police Department reveals that racial profiling training and certification is current for all officers.

***A REVIEW OF THE INFORMATION PRESENTED AND SUPPORTING DOCUMENTATION REVEALS THAT THE DUNCANVILLE POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH TEXAS LAW ON TRAINING AND EDUCATION REGARDING RACIAL PROFILING.***

## **Duncanville Police Department Complaint Process and Public Education on Racial Profiling**

Article 2.132 §(b)3-4 of the Texas Code of Criminal Procedure requires that law enforcement agencies implement a complaint process on racial profiling and that the agency provide public education on the complaint process. Duncanville Police Department regulation 5.41 Section IV Parts A-D covers this requirement. Specifically, the department has prepared a tri-fold pamphlet available in the Duncanville Police Department lobby, the counter outside the Duncanville Police Department Internal Affairs office, and the Duncanville Public Library. The brochure is clearly written and provides detailed information on the process and whom to contact to file a complaint. Duncanville Police Department also provides the following easy to access websites for information related to Internal Affairs and complaint processes:

1. Internal Affairs (<http://www.duncanville.com/departments/police/administrative/internal-affairs/>).
2. Internal Affairs Brochure (<http://www.duncanville.com/wp-content/uploads/2016/07/IAD-Lobby-Information-2016.pdf>).
3. Complaint Form (<http://www.duncanville.com/wp-content/uploads/2016/07/IAD-Basic-Complaint-Form-2016.pdf>).

***A REVIEW OF THE DOCUMENTATION PRODUCED BY THE DEPARTMENT IN BOTH PRINT AND ELECTRONIC FORM REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE RACIAL PROFILING COMPLAINT PROCESS AND PUBLIC EDUCATION ABOUT THE COMPLAINT PROCESS.***

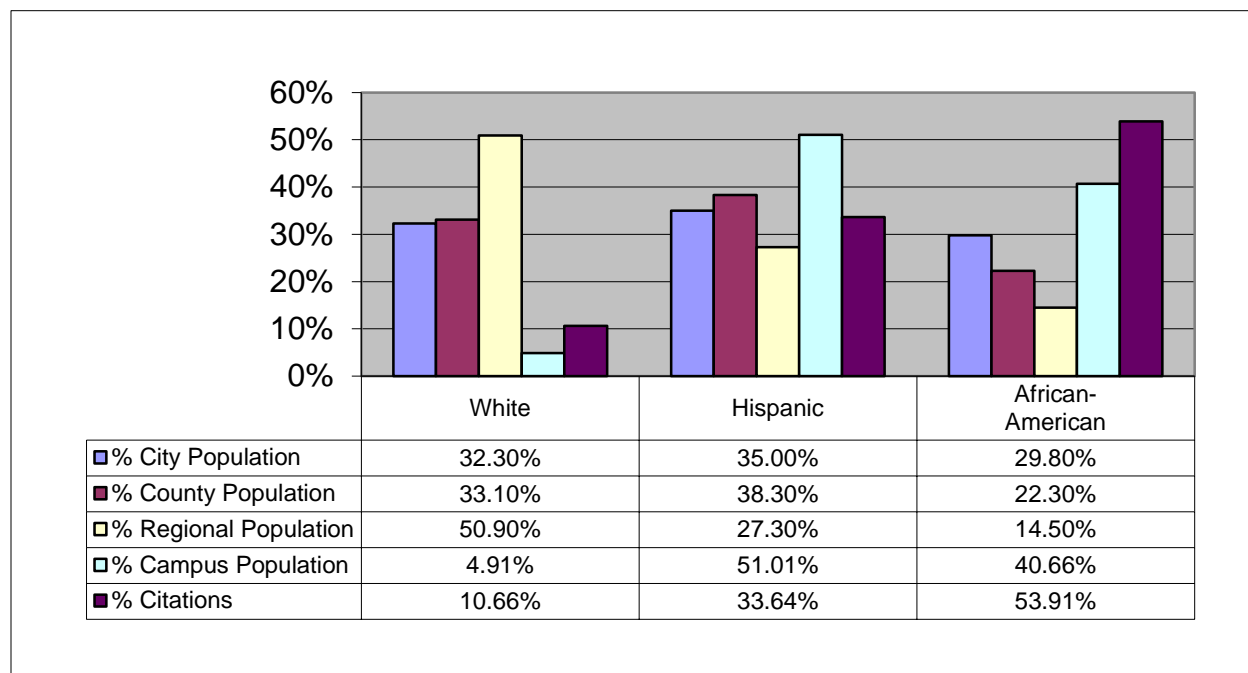
## **Duncanville Police Department Statistical Data on Racial Profiling**

Article 2.132(b) 6 requires that law enforcement agencies collect statistical information on traffic stops in which a citation is issued and arrests with specific information on the race of the person cited. In addition, information concerning searches of persons and whether or not the search was based on consent is also required to be collected. Duncanville Police Department submitted statistical information on all citations in 2016 and accompanying information on the race of the person cited. Accompanying this data was the relevant information on searches and arrests.

***ANALYSIS OF THE DATA REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE COLLECTION OF RACIAL PROFILING DATA.***

## Analysis of the Data

The first chart depicts the percentages of people cited by race among the total 4,305 citations given in 2016.<sup>1</sup> White drivers constituted 10.66 percent of all drivers cited, whereas Whites constitute 32.30 percent of the city population, 33.10 percent of the county population, and 50.90 percent of the region population.<sup>2</sup> However, White drivers were cited at a higher rate than the percentage of Whites within the campus population of ISD students (4.91 percent).<sup>3</sup> African-American drivers constituted 53.91 percent of all drivers cited, whereas African-Americans constituted 29.80 percent of the city population, 22.30 percent of the county population, and 14.50 percent of the region population. African-American drivers were cited at a rate that is higher than the percentage of African-Americans within the ISD student population (40.66 percent). Hispanic drivers constituted 33.64 percent of all drivers cited, whereas Hispanics constituted 35.00 percent of the city population, 38.30 percent of the county population, and 27.30 percent of the region population. Hispanic drivers were cited at a rate that is lower than the percentage of Hispanic students within the ISD (51.01 percent).



Easy determinations regarding whether or not Duncanville officers have “racially profiled” a given motorist are impossible given the nature of the data that has been collected and presented for this report. The law dictates that police agencies compile aggregate-level data regarding the

<sup>1</sup> There were 52 citations given where the race/ethnicity of the citizen was Native American, Middle Eastern, or unknown/other. Due to the extremely small number of cases, these data are not represented in the charts. The total of 4,305 “citations” includes 3,985 citations and 320 with citation and arrest. The figure 4,305 is used for all calculations in this report.

<sup>2</sup> City and County population figures are derived from the 2010 Census of the U.S. Census Bureau. “Regional” population figures are defined as the 16 county Dallas-Ft. Worth Area and include the following counties: Collin, Dallas, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

<sup>3</sup> Duncanville ISD enrollment data are based on figures reported by Duncanville ISD district profile found at <http://duncanvilleisd.org/domain/30>.

*rates* at which agencies *collectively* stop motorists in terms of their race/ethnicity. These aggregated data are to be subsequently analyzed in order to determine whether or not *individual* officers are “racially profiling” motorists.

This methodological error, commonly referred to as the “ecological fallacy,” defines the dangers involved in making assertions about individual officer decisions based on the examination of aggregate incident level data. In short, one cannot “prove” that an *individual* officer has “racially profiled” any *individual* motorist based on the rate at which a department stops any given *group* of motorists. This kind of determination necessarily requires an examination of data at the individual officer level for a more detailed analysis of individual officer decision-making. Unfortunately, the law does not currently require the collection of this type of data, resulting in a considerable amount of conjecture as to the substantive meaning of aggregate level disparities. That is, who or what is driving the disproportionate rates at which minorities seem to be stopped and searched? We cannot know or even begin to examine this issue with analyses that end with aggregate level comparisons of rates.

Additional interpretation problems remain in regards to the specific measurement of racial “profiling” as defined by Texas state code. For example, officers are currently forced to make subjective determinations regarding an individual’s race based on his or her personal observations because the Texas Department of Public Safety does not provide an objectively-based determination of an individual’s race/ethnicity on the Texas driver’s license. The absence of any verifiable race/ethnicity data on the driver’s license is especially troubling given the racial diversity within the city of Duncanville and the North Texas region as a whole, and the large numbers of citizens who are of Hispanic and/or mixed racial descent. The validity of any racial/ethnic disparities discovered in the aggregate level data becomes threatened in direct proportion to the number of subjective “guesses” officers are forced to make when trying to determine an individual’s racial/ethnic background.<sup>4</sup>

In addition, the data collected for the current report does not allow for an analysis that separates (or disaggregates) the discretionary decisions of officers to stop a motorist from those that are largely non-discretionary. For example, non-discretionary stops of motorists based on the discovery of outstanding warrants should not be analyzed in terms of whether or not “profiling” has occurred simply because the officer who has stopped a motorist as a result of the discovery of an outstanding warrant does not *independently* make the decision to stop, but rather, is required to stop that individual regardless of any determination of race. An officer cannot be determined to be “racially profiling” when organizational rules and state codes compel them to stop regardless of an individual’s race/ethnicity. Straightforward aggregate comparisons of stop rates ignore these realities, and fail to distinguish between discretionary and non-discretionary law enforcement actions.

Finally, there has been considerable debate as to what the most appropriate population “base-rate” is in determining whether or not racial/ethnic disparities exist. Questions concerning the most appropriate base-rate are most problematic in the case of traffic stops, because there are problems associated with using any number of different population measures to determine whether or not aggregate level racial disparities exist. As the current analysis shows in regards

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<sup>4</sup> It should be noted that in 2016, officers reported knowing the race or ethnicity of the driver prior to the stop in only 28 out of 4,305 motor vehicle stops, or less than 1 percent of the time.

to the use of city, county, regional, and ISD student population base-rates, the outcome of analyses designed to determine whether or not disparities exist is obviously dependent on which base-rate is used. In addition, changes in the demographic character of North Texas and particularly within the city of Duncanville have made the base-rate issue especially problematic because measures derived exclusively from the U.S. Census can become quickly outdated since they are compiled only once per decade. Although this report utilized the most recent 2010 Census data, these figures have become outdated due to the rapid changes still being experienced in the North Texas area, and in particular, the city of Duncanville. Moreover, the determination of valid stop base-rates becomes multiplied if analyses fail to distinguish between residents and non-residents who are stopped, because the existence of significant proportions of non-resident stops will lead to invalid conclusions if racial/ethnic comparisons are made exclusively to resident population figures.

In short, the methodological problems outlined above point to the limited utility of using aggregate level comparisons of the rates at which different racial/ethnic groups are stopped in order to determine whether or not racial profiling exists within a given jurisdiction.

The table below reports the summaries for the total number of persons cited and searched subsequent to being stopped by the Duncanville Police Department for traffic offenses. In addition, the table shows the number of stopped individuals who granted consent to search and those stopped drivers who were arrested pursuant to the stop.

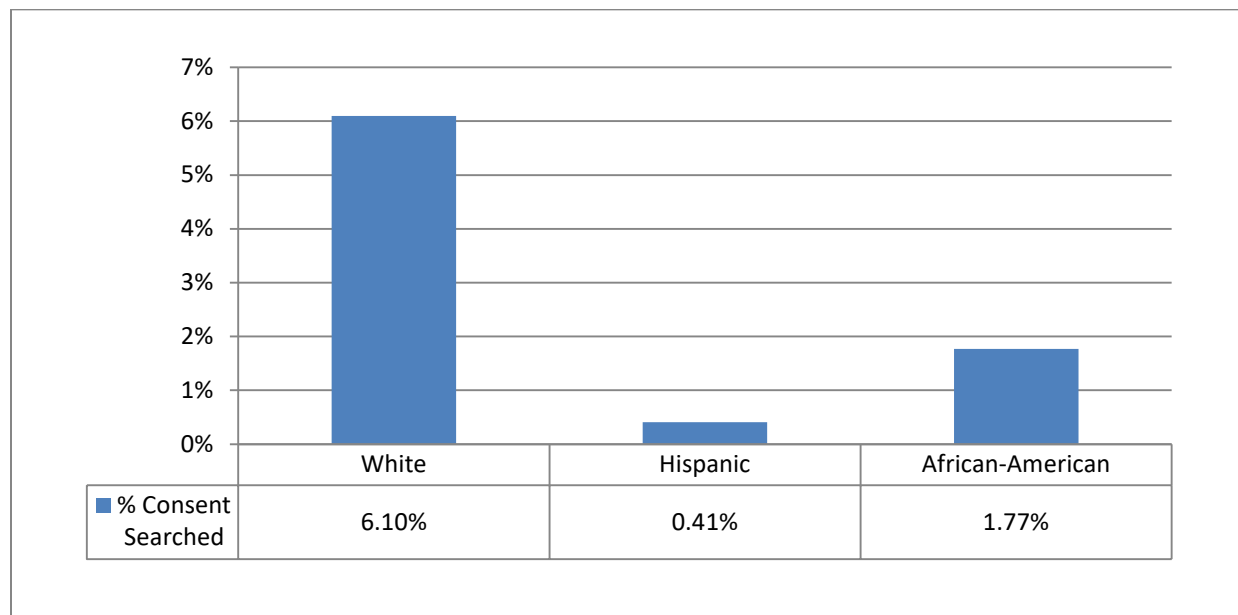
The table shows that roughly 11 percent of all citations were issued to White drivers (459/4,305 total citations), roughly 54 percent (2,321) of all citations were issued to African-American drivers, and roughly 34 percent (1,448) of all citations were issued to Hispanic drivers. In addition, roughly 23 percent of all drivers searched were White (122/522 total searches), 13 percent were Hispanic, and 63 percent were African-American. It is clear, however, that the vast majority of the total number of drivers cited (including White, African-American, and Hispanic groups) were *not* searched (88 percent, 522/4,305).

<b>Action</b>	<b>White</b>	<b>African-American</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Other</b>	<b>Total</b>
Total Citations	459	2,321	1,448	25	52	4,305
Searched	122	328	68	4	0	522
Consent	28	41	6	0	0	75
Arrest	39	217	62	0	2	320

It should be noted that aggregate level comparisons regarding the rates at which drivers are searched by police are subject to some of the same methodological issues as those outlined above regarding analyses of aggregate level stop rates. Of particular concern is the absence of any analyses that separates discretionary searches from non-discretionary searches. For example,

searches that are conducted incident to an arrest or as part of a vehicle tow inventory should not be included in analyses designed to examine whether or not racial profiling has occurred because these types of searches are non-discretionary in that the officer is compelled by law or departmental guidelines to conduct the search irrespective of the race of the stopped driver.

The bar chart below presents the percentage of drivers who were searched by consent within each racial category. Overall, less than 2 percent of all citations resulted in a consent search. Across racial groups, roughly 6 percent of all White drivers who were cited were consent searched, less than 1 percent of all Hispanic drivers who were cited were consent searched, and less than 2 percent of all African-American drivers who were cited were searched by consent. Altogether, only 75 consent searches occurred in 2016 among more than 4,000 traffic stops.



### **Analysis of Racial Profiling Compliance by Duncanville Police Department**

The foregoing analysis shows that the Duncanville Police Department is fully in compliance with all relevant Texas laws concerning racial profiling, including the existence of a formal policy prohibiting racial profiling by its officers, officer training and educational programs, a formalized complaint process, and the collection of data in compliance with the law. Finally, internal records indicate that during 2016 the department received no complaints alleging racial profiling.

In addition to providing summary reports and analysis of the data collected by the Duncanville Police Department in 2016, this report also included an extensive presentation of some of the limitations involved in the level of data collection currently required by law and the methodological problems associated with analyzing such data for the Duncanville Police Department as well as police agencies across Texas. The Duncanville Police Department should continue its educational and training efforts within the department on racial profiling. Finally, the department should conduct periodic evaluations of individual officers to assess whether or



not an officer is engaging in racial profiling. The final section of this report includes required TCOLE reporting information by Texas law enforcement organizations.

# **Duncanville Police Department TCOLE Reporting Forms**



Partial Exemption Racial Profiling Reporting  
(Tier 1)

Department Name DUNCANVILLE POLICE DEPARTMENT  
 Agency Number 113210  
 Chief Administrator Name ROBERT D. BROWN, JR.  
 Reporting Name BRIAN HEARD  
 Contact Number 972-780-5035  
 E-mail Address BHEARD@DUNCANVILLEPD.COM

Certification to Report 2.132 (Tier 1) – Partial Exemption

Policy Requirements (2.132(b) CCP):

Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's complaint process;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
  - (A) the race or ethnicity of the individual detained;
  - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and
  - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
- (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
  - (A) the Commission on Law Enforcement Officer Standards and Education; and
  - (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

These policies are in effect

Robert D. Brown Jr. 1-20-17  
 Chief Administrator Date



**Partial Exemption Racial Profiling Reporting  
(Tier 1)**

**Video and Audio Equipment Exemption**

**Partial Exemption Claimed by (2.135(a) CCP):**



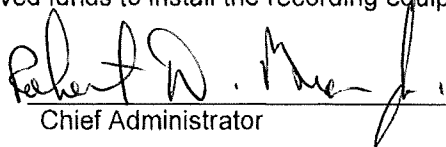
all cars regularly used for motor vehicle stops are equipped with video camera and transmitter-activated equipment and each motor stop is recorded and the recording of the stop is retained for at least 90 days after the stop.

**OR**



In accordance with 2.135(a)(2) the agency has requested and not received funds to install the recording equipment

I claim this exemption

  
Chief Administrator

Date

1-20-17

PARTIAL EXEMPTION RACIAL PROFILING REPORTING (TIER 1)

INSTRUCTIONS: Please fill out all boxes. If zero, use 0.

1. Total on lines 4, 11, 14, and 17 must be equal
2. Total on line 20 must equal line 15

AGENCY NAME:

Number of motor vehicle stops (mark only 1 category per vehicle stop):

1. 3985 Citation only
2. 0 Arrest only
3. 320 Both
4. 4305 (Total of 1-3)

Race or Ethnicity (mark only 1 category per vehicle stop):

5. 2321 African
6. 25 Asian
7. 459 Caucasian
8. 1448 Hispanic
9. 50 Middle Eastern
10. 2 Native American
11. 4305 (Total of 5-10, must be the same as #4)

Race or Ethnicity known prior to stop?

12. 28 Yes
13. 4277 No
14. 4305 (Total of 12-13, must be the same as #4 and #11)

Search conducted?

15. 522 Yes
16. 3783 No
17. 4305 (Total of 15-16, must be the same as #4, #11, and #14 above)

Was search consented?

18. 75 Yes
19. 447 No
20. 522 (Total, must equal #15)



# **Appendix A**

## **Racial Profiling Statutes and Laws**

### **Art. 3.05. RACIAL PROFILING.**

In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 2, eff. Sept. 1, 2001.

### **Art. 2.131. RACIAL PROFILING PROHIBITED.**

A peace officer may not engage in racial profiling.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

### **Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING.**

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
  - (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
  - (4) provide public education relating to the agency's complaint process;
  - (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
  - (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
    - (A) the race or ethnicity of the individual detained;
    - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and
    - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
  - (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
    - (A) the Commission on Law Enforcement Officer Standards and Education; and
    - (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.
- (c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.
- (d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. If a law enforcement agency installs video or audio equipment as provided by this



subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 25, eff. September 1, 2009.

### **Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS.**

(a) In this article, "race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

- (3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;
- (4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;
- (5) the reason for the search, including whether:
  - (A) any contraband or other evidence was in plain view;
  - (B) any probable cause or reasonable suspicion existed to perform the search; or
  - (C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;
- (6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
- (7) the street address or approximate location of the stop; and
- (8) whether the officer issued a written warning or a citation as a result of the stop.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 26, eff. September 1, 2009.

#### **Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.**

(a) In this article:

(1) "Motor vehicle stop" has the meaning assigned by Article 2.132(a).

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education

and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency.

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

- (A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; and
- (B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2009, 81st Leg., R.S., Ch. [1172](#), Sec. 27, eff. September 1, 2009.

**Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT.**

(a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 28, eff. September 1, 2009.

**Art. 2.136. LIABILITY.**

A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

**Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.**

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

**Art. 2.138. RULES.**

The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

**Art. 2.1385. CIVIL PENALTY.**

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 29, eff. September 1, 2009.

# **Appendix B Agency Policy**

# DUNCANVILLE POLICE DEPARTMENT REGULATIONS

SUBJECT: Racial Profiling	SECTION: 5.41
EFFECTIVE DATE: September 24, 2014	APPROVED:
AMENDS/SUPERSEDES: Reg. 5.41 ISSUED: November 12, 2013	Robert D. Brown, Jr. Chief of Police

I. PURPOSE

This Racial Profiling Policy is adopted in compliance with the requirements of Articles 2.131 through 2.138, Texas Code of Criminal Procedure, which prohibits Texas peace officers from engaging in racial profiling.

Two of the fundamental rights guaranteed by both the United States and Texas Constitutions are equal protection under the law and freedom from unreasonable searches and seizures by government agents. The right of all persons to be treated equally and to be free from unreasonable searches and seizures must be respected. Racial profiling is an unacceptable patrol tactic and will not be condoned.

This policy shall not preclude officers from offering assistance such as upon observing a substance leaking from a vehicle, a flat tire, or someone who appears to be ill, lost, or confused. Nor does this policy prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.

II. DEFINITIONS

- A. Racial Profiling – means a law enforcement-initiated action based on an individual’s race, ethnicity, or national origin rather than on the individual’s behavior or on information identifying the individual as having engaged in criminal activity. Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.
- B. Race or Ethnicity – means of a particular descent, including Caucasian, African, Hispanic, Asian, Middle Eastern, or Native American descent.
- C. Acts Constituting Racial Profiling – are acts initiating law enforcement action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest based solely upon an individual’s race or ethnicity or on the basis of racial or ethnic stereotypes, rather than upon the individual’s behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.
- D. Pedestrian Stop – means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.



- E. Traffic Stop – means a peace officer that stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic.

III. PROHIBITION

Peace officers of the City of Duncanville are strictly prohibited from engaging in race profiling. The prohibition against racial profiling does not preclude the use of race or ethnicity as factors in a detention decision by a peace officer. Race or ethnicity may be legitimate factors in such a decision when used as part of a description of a suspect or witness for whom a peace officer is searching. Additionally, members of the Duncanville Police Department shall neither engage in enforcement activities nor refuse service based on anyone's ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.

IV. COMPLAINT PROCESS AND PUBLIC EDUCATION

- A. Complaints will be taken from citizens who feel that their contact with the Police was a result of a bias towards their race or ethnicity and that action taken against them was the result of them being singled out due to their race or ethnicity.
- B. Public education on racial profiling complaints will be accomplished by the distribution of tri-fold pamphlets available in the lobby of the Duncanville Police Station, the counter outside of the Duncanville Police Internal Affairs Office located in the West Wing of Duncanville City Hall, and in the Duncanville Public Library.
- C. Complaints alleging racial profiling will be handled in accordance with Duncanville Police Department Regulation #4.01.
- D. If the Department opens an investigation based upon a complaint alleging racial profiling, and if a recording of the occurrence exists, the Department shall promptly provide a copy of the recording to the officer who is the subject of the complaint, upon written request by the officer.

V. CORRECTIVE ACTION

**Any peace officer who is found, after investigation, to have engaged in racial profiling in violation of this policy shall be subject to corrective action, which may include: diversity, sensitivity or other appropriate training, counseling, suspension, termination of employment, or other appropriate action as determined by the Chief of Police.**

VI. DATA COLLECTION AND REPORTING

- A. For each traffic stop in which a citation is issued and for each arrest resulting from such traffic stops, a peace officer involved in the stop shall collect information identifying the race or ethnicity of the person detained, stating whether a search was conducted (to include a search of a person, place, or vehicle), and if a search was conducted, whether the person detained consented to the search.
- B. The Municipal Court Administrator shall utilize the court's software to compile the data collected on each traffic citation. The Police Records Coordinator shall utilize the RMS system to compile the data collected on each arrest. The Court Administrator and the Records Coordinator shall convey to the Assistant Chief of

Police the data collected during the previous calendar year not later than January 30 of each subsequent year. The Assistant Chief of Police shall cause to be prepared an annual report covering the period January 1 through December 31 of each year, and shall submit the report to the governing body of the City of Duncanville no later than March 1 of the following year.

A copy of the annual report must also be submitted to the Texas Commission on Law Enforcement (TCOLE). The annual reports shall not include identifying information about any individual stopped or arrested, and shall not include identifying information about any peace officer involved in a stop or arrest.

VII. REVIEW OF VIDEO AND AUDIO DOCUMENTATION-STANDARDS

- A. As of the effective date of this regulation, every vehicle regularly used by the Duncanville Police Department to make traffic stops has been equipped with audio or audio/video recording equipment as required by CCP Art. 2.135.
- B. Review of audio or audio/video recordings will be in compliance with Duncanville Police Department Regulation 5.29 (Use of the Mobile Video System).

VIII. TRAINING

- A. Officers are responsible to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law.
- B. All officers shall complete a TCOLE training and education program on bias based profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.
- C. The Chief of Police, as part of the initial training and continued education for such appointment, will be required to attend the LEMIT program on bias based profiling.

The Duncanville Police Department is vitally interested in taking action where its employees have proved derelict in their duties or are guilty of wrongdoing. If it becomes necessary for you to make a complaint, you can be assured that it will be given a fair and thorough investigation.

Similarly, if you have occasion to see a police officer doing outstanding work, tell them about it. Your Duncanville Police Officers are individuals who are dedicated to serving you and our community.

### **How long will the investigation take?**

Investigations of complaints are completed in as short of a time as possible. Additional time is also required for legal and supervisory review after completion of the investigation.

### **Will there be a final report?**

Yes. The Internal Affairs Office or a supervisor will complete a report at the conclusion of their investigation. The report will consist of:

- **Allegations** - a listing of the alleged violation(s).
- **Findings** - results of the investigation.
- **Conclusion** - analysis of support for findings.
- **Recommendation** - the Internal Affairs Office or the supervisor will make one of the following recommendations for each allegation:

- ◆ **Not Sustained** - the investigation could not prove or disprove the allegation.
- ◆ **Unfounded** - the investigation determined that the alleged incident did not take place.
- ◆ **Exonerated** - the investigation determined that the allegation is accurate, but the incident does not involve policy or law violations
- ◆ **Sustained** - the investigation determined that the allegation is accurate and involves a policy or law violation.

The complaining person will be notified in writing of the results of the investigation upon conclusion.

### **Who determines discipline?**

The Chief of Police has final authority for determining discipline.

The Internal Affairs investigative report does not recommend discipline.

If you have any questions, feel free to contact the **Internal Affairs Office @ (972) 780-4905** at any time. If the investigators are not in the office, leave your name and telephone number and your call will be returned as soon as possible. You may also reach us on the Web at [cmccaleb@duncanvillepd.com](mailto:cmccaleb@duncanvillepd.com). Regular business hours are M-Thurs. 8:00 a.m.-5:00 p.m.

The Duncanville Police Internal Affairs Office is located in the Police Department, 203 E. Wheatland Rd., Duncanville, Texas.

## How to file a Complaint with **Internal Affairs Office** (972) 780-4905



**The mission of the  
Duncanville PD is to provide  
quality law enforcement and  
public safety services to our  
community focusing on goals,  
objectives, values, and  
partnerships.**

## **The Complaint Process**

The Duncanville Police Department is dedicated to providing the best police service possible to all citizens. Police officers are carefully selected and given the best training possible in order to provide this service. However, there may be an occasion to lodge a complaint about the actions of a Police Officer with the Duncanville Police Department. The following information is provided on how to file a complaint, how it is investigated, and the possible outcome.

## **How complaints are filed.**

You may lodge a complaint with any Supervisor of the Police Department, visit the Internal Affairs Office located at 203 E. Wheatland Rd. in the West Wing of Duncanville City Hall, write a letter addressed to the Internal Affairs Office or take a basic complaint form home, fill it out and return it to the Internal Affairs Office. Your complaint will be reviewed by the Internal Affairs Office and the Police Administration to determine if an internal investigation is warranted.

**Texas State law requires that all complaints against police officers must be in writing and signed by the person making the complaint.**

Just as citizens have the right to know what allegations they face before being charged with a crime, officers are afforded the same right.

Complaints must be received within ninety (90) days of the incident complained about except in special cases (such as criminal misconduct or when the person complaining can show good cause).

Complaints will be taken from citizens with first hand knowledge of the incident, e.g., the person in direct contact with the Police Officer or a fact witness to the incident.

## **Racial Profiling**

Citizens who believe that they have been the subjects of “Racial Profiling” due to an unwarranted contact or action by a Police Officer by way of “race or ethnicity” should feel free to file a complaint with the Internal Affairs Office.

## **False Complaint**

Sometimes people make false complaints against police officers. Citizens should be aware that this is a violation of the Texas Penal Code, Section 37.02, Perjury. **Sec. 37.02 states, A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning: "he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath."**

**An offense under this section is a Class A misdemeanor.**

## **What happens when a complaint is valid?**

When the investigation of a complaint reveals that the charges are true against a police officer, the Chief of Police may take one of the following actions depending on the nature of the violation.

1. Provide Training
2. Reprimand the employee.
3. Suspend the employee without pay.
4. Demote the employee.
5. Terminate the employee.

## **What happens when the complaint is not proven or is not true?**

Police officers are afforded certain rights, the same as with all citizens, and complaints must be supported by sufficient evidence. If there is not sufficient evidence to sustain the complaint, the officer is notified and continues on duty. If he was removed from duty during the investigation, he will be paid for that period.

## **Officers may appeal any disciplinary action.**

When a citizen is adjudged guilty of a criminal offense, he may appeal the court's decision, just as an officer may appeal the disciplinary action taken against him. The City of Duncanville has established procedures for officers to follow in their appeals, just as the Police Department has established procedures for insuring that complaints by citizens against officers are thoroughly and honestly investigated.

## **What if you are not satisfied with the decision?**

If you are not satisfied with the results of the investigation, you may appeal to the Office of the Chief of Police located at 203 E. Wheatland Road.



# Duncanville Police Department

*Special Services / Internal Affairs*

## Complaint Information Form

### Complainant Information

\_\_\_\_\_

**\*Last Name**                      **\*First Name**                      **\*Middle Name**

**\*Date of Birth** \_\_\_/\_\_\_/\_\_\_ **\*Race** \_\_\_ **\*Sex** \_\_\_ **\*DL/ID #** \_\_\_\_\_

**\*Home Address**  
**City/State/Zip** \_\_\_\_\_

\_\_\_\_\_ Mobile/  
**\*Home Phone #** (\_\_\_\_) \_\_\_\_\_ Pager # (\_\_\_\_) \_\_\_\_\_

Name of Business \_\_\_\_\_

Business Address  
City/State/Zip \_\_\_\_\_

Business Phone # (\_\_\_\_) \_\_\_\_\_

Complaint Associated With:

Arrest \_\_\_; Traffic Stop \_\_\_; On Call \_\_\_;

Other \_\_\_\_\_

Was the officer previously known to you, Yes ( ) No ( )

**\* Required information**

(OVER)

**Officer/Employee Information**

Officer Name or Description \_\_\_\_\_

2<sup>nd</sup> Officer (if applicable) \_\_\_\_\_

I.D.# & Rank (if known)\_\_\_\_\_ Marked Squad Car, Yes ( ) No ( )

Squad Car Number\_\_\_\_\_ Was the officer in uniform? Yes ( ) No ( )

Date/time & location of alleged incident,

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**\*\* ALLEGATION (S)\*\***

On **separate sheet(s) of paper**, please provide an account of the **facts** concerning the conduct of the officer(s) involved. Include in your account of the events **as much detail as possible** with descriptions where applicable. Finally, do not forget to **sign the complaint narrative**, it is required by law.

**\*\* WITNESSES \*\***

Please provide a list of any witnesses to the incident complained of, including their name, address, and best telephone number where they can be reached at during regular daytime business hours.

The Duncanville Police Department Internal Affairs Office is dedicated to investigating each complaint thoroughly. **For a personal interview with Internal Affairs, it is preferred that an appointment is made in advance.** Please call Sgt. Chris McCaleb at (972) 780-4905, **regular business hours are M-Thurs. 8:00 a.m. to 5:00 p.m.**, voice mail is provided at all other times, so please leave a message. You may also contact via e-mail at [cmccaleb@duncavillepd.com](mailto:cmccaleb@duncavillepd.com). Every call or e-mail will be returned.

**\*\*Return completed forms to Internal Affairs Office, located the Duncanville Police Department, or mail the completed form to:**

Duncanville Police Department  
ATTN: C. McCaleb #150  
Special Services/Internal Affairs  
P.O. Box 380280  
Duncanville, TX 75138-0280

# Appendix C

## Racial Profiling Laws and Corresponding General Orders and Standard Operating Procedures

<b>Texas CCP Article</b>	<b>DUNCANVILLE POLICE DEPARTMENT Regulations Section 5.41</b>
2.132(b)1	Section II Part A
2.132(b)2	Section III
2.132(b)3	Section IV
2.132(b)4	Section IV Part B
2.132(b)5	Section V
2.132(b)6	Section VI
2.132(b)7	Section VI Part B