

APPENDIX B -- MODEL POLICY APPROVED BY POLICE TRAINING
COMMISSION

INVESTIGATIVE AND ENFORCEMENT TRAFFIC STOPS

I. Purpose:

The purpose of the policy is to establish guidelines for conducting constitutionally valid Investigative and enforcement traffic stops.

II. Policy:

A. It is the policy of _____ that all investigative and enforcement traffic stops will be based upon articulable and constitutionally valid suspicions.

Commentary: Requiring an officer to ask the operator's race or ethnic group may only enflame and prolong an already tense situation. Agencies may opt to instruct officers to use their personal judgment in assessing race and ethnicity.

B. It is the policy of _____ that a record system will be established to track investigative and enforcement traffic stops.

Commentary: The Advisory Committee anticipates that agencies will initiate appropriate training programs to reinforce interpersonal communication skills developed during entrance level courses. The length of in-service programs and frequency of delivery is best determined by each agency.

B. It is the policy of _____ that all sworn members will receive periodic training and/or to develop new skills to enhance police-citizen contacts.

III. Definitions:

A. Investigative stop – A stop based on reasonable articulable suspicion or knowledge of criminal activity. Information may originate with another officer or by independent investigation.

B. Enforcement stop – A stop initiated as a result of an observed violation of the criminal or traffic code.

C. Reasonable and articulable suspicion – Actions taken by the officer must be reasonable under the existing circumstances and based on the officer's knowledge at the time. Officers must be able to point to and describe the specific factors that raised suspicions and led him or her to take action in connection with the traffic stop.

D. *Whren* or "pretext" stop – The U.S. Supreme Court has determined that a law enforcement officer who observes a traffic violation may stop the violator, even though the true reason for the stop is the officer's interest in investigation whether the motorist is involved in other criminal activity. The constitutional reasonableness of a traffic stop does not depend on the actual motive of the individual officer. These types of traffic stops are known as *Whren* or "pretext" stops.

- E. Seizure – in the context of traffic stops, a seizure takes place when an officer makes an investigative or enforcement stop. Seizures during all traffic stops are subject to Constitutional constraints.
- F. Subsequent seizure – This form of seizure occurs when the original reason for the stop has been satisfied and the officer continues to detain the motorist and passenger(s). Once the underlying basis for the initial stop has concluded, a police-driver or police-passenger encounter which implicates the Fourth Amendment is constitutionally permissible only if (1) the driver and passenger(s) consents to the continuing intrusion, or (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot.

IV. Guiding Principles:

- A. Law enforcement officers have a duty and authority to investigate suspicious activities that may be associated with the violation of criminal and motor vehicle laws. This duty does not include pursuing hunches or stereotyping, but is limited to reasonable articulable factors which would likely lead any knowledgeable, reasonable officer to the same conclusion, i.e. that a violation is occurring or has occurred.
- B. Any consideration, to any degree, of a person's race, ethnicity, age, or gender in law enforcement actions, including traffic stops, is absolutely prohibited. The only exception to this standard would occur if one or more characteristics were part of a specific lookout for a specific suspect. This applies to passengers as well as drivers.
- C. The recording and evaluating of statistical data is a management tool to be used, where appropriate, as a basis for counseling and training, and, if deemed necessary, further administrative inquiry. Police management will review and evaluate traffic stop data on a regular or periodic basis for patterns of prohibited activity.
- D. Officers should receive periodic training to enhance their ability to articulate and document their actions. By and large, officers take the proper actions for the proper reasons, yet fail to provide supporting documentation.
- E. Training programs should include a review of the Constitution and relevant case law affecting police-citizen contacts.
- F. Any such training should stress the importance of communication, particularly active listening and non-verbal cues.
- G. Police-citizen encounters, when done properly and professionally, have the potential to be positive community relations tools and can be a means of confronting adverse anecdotal information.

- H. Nothing in this policy should be construed to alter the authority of a law enforcement officer to make an arrest, conduct a search or seizure, or otherwise fulfill the officer's law enforcement obligations.
- I. The record system will include data such as: race, ethnicity, age and gender of person stopped, suspicions of the officer that led to the contact, any enforcement action taken as a result of the contact, duration of the stop, and any evidence or property seized as a result of the stop.
- J. Agencies should realize the advantage in issuing the driver and/or passenger(s) a receipt documenting the circumstances leading up to the stop and subsequent actions taken thereafter.

V. Related Cases:

- A. *Pryor v. State*, 122 Md.App.671, 681, 716 A.2d 338, 343 (1997), *cert. denied* 352 Md. 312, 721 A.2d 990 (1998)
- B. *Terry v. Ohio*, 392 U.S. 1, 88S.Ct. 1868 (1968)
- C. *Whren v. U.S.*, 517 U.S. 806, 116S.Ct. 1769 (1996)
- D. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999)
- E. *Charity v. State*, 132 Md.App. 598, 753 A.2d 556 (2000), *cert. denied*, 360 Md. 487, 759 A.2d 231 (2000)
- F. *Cartnail v. State*, 359 Md. 272, 753 A.2d 519 (2000)
- G. *Whiting v. State*, 125 Md.App. 404, 725 A.2d 623 (1999)
- H. *U.S. v. Armstrong*, 517 U.S. 456, 116 S.Ct. 1480 (1996)