



# Policy 317

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<b>FAIR AND IMPARTIAL POLICING</b>	
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*By Order of the Police Commissioner*

## **PURPOSE**

The purpose of this policy is to reaffirm the ongoing commitment of the Baltimore Police Department (BPD) to fair, respectful, impartial, and non-Discriminatory Policing. Non-Discriminatory Policing is essential to the integrity and legitimacy of BPD's law enforcement mission, and to the partnerships BPD must establish and maintain with members of the community to engage in effective community policing. By contrast, Discriminatory Policing is illegal, alienates community members, fosters community distrust, perpetuates false and harmful stereotypes, and undermines effective law enforcement.

The Fourteenth Amendment to the United States Constitution, Article 24 of the Maryland Declaration of Rights, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131-12134, the Omnibus Crime Control and Safe Streets Act of 1968, 34 U.S.C. § 10101 *et seq.*, and Md. Code Ann., Crim. Proc. § 4-101.1 prohibit Discriminatory Policing.

## **POLICY**

The policy of the BPD is to treat all members of the public in a fair, respectful, impartial, and non-discriminatory manner. Discriminatory Policing, as defined below, is prohibited.

## **DEFINITIONS**

**Arrest** — The taking of a person into custody by a BPD member, requiring probable cause that a crime was committed, is being committed, or is about to be committed.

**Discriminatory Policing** — Practices and policies that result in the differential treatment of and/or have an unwarranted discriminatory impact on any individual or group on the basis of the following actual or perceived personal characteristics in either deciding to take or refrain from taking law enforcement action:

- Age
- Disability status (including physical disabilities)
- Economic status
- Familial status
- Gender expression
- Gender identity
- HIV status
- Homelessness
- Immigration status
- Language ability

- Mental illness
- National origin
- Political ideology
- Race, ethnicity, or color
- Religion
- Sex assigned at birth
- Sexual orientation
- Social status
- Veteran status

Such law enforcement actions may include, but are not limited to: contacts, stops, Weapons Pat-Downs, Searches, issuance of citations, property seizures and forfeitures, Arrests, uses of force, or responding to calls for service or other requests for assistance.

**Field Interview** — A consensual, non-hostile Voluntary Contact during which a member may ask questions or try to gain information about possible criminal activity, without indicating or implying that a person is not free to leave or is obligated to answer the member's questions.

**Gender Expression** — An individual's characteristics and behaviors (such as one's name, pronoun, appearance, dress, mannerisms, speech patterns, and body characteristics) that may express one's Gender Identity.

**Gender Identity** — An individual's deeply held internal knowledge or sense of being male, female, another gender or no gender which may or may not correspond to the individual's physical characteristics or sex assigned at birth. Gender Identity may or may not be visible to others or expressed outwardly through a person's chosen pronouns, haircut, dress, behavior or voice.

**Investigative Stop** — The temporary involuntary detention and questioning of a person where the person was stopped based on Reasonable Articulable Suspicion that the person is committing, is about to commit, or has committed a crime. It occurs whenever a member uses words or takes actions to make a person halt, or to keep a person in a certain place, or to compel a person to perform some act. If a reasonable person under the circumstances would believe that they are not free to leave, a "stop" has occurred.

**Search** — An inspection, examination or viewing of persons, places, or items in which a person has a legitimate expectation of privacy. A Search need not be visual; it may include grasping, prying into or manipulating persons or objects (e.g., reaching into a purse or pocket, feeling inside of the trunk of a car; physical manipulation of a duffel bag, etc.). In some circumstances, a dog sniff may constitute a Search as well. See Policy 1602, *Canine Procedures*.

**Vehicle Stop** — The involuntary detention of a vehicle and the driver and/or the occupants of the vehicle.

**Voluntary Contact** — A non-investigative consensual encounter between a BPD member and one or more person(s) with the intent of engaging in a casual and/or non-investigative conversation (e.g., chatting with a local business owner or resident). The person(s) is free to leave or decline any request by the member at any point.

**Weapons Pat-Down** — A brief, non-probing running of the hands over the outside of a person's clothing feeling for a weapon. A Weapons Pat-Down is authorized when the member reasonably suspects the person is armed. This can include situations in which the member reasonably suspects that the person has committed, is committing, or is about to commit a violent crime or when the member observes something on the person that they reasonably suspect is a weapon. A Weapons Pat-Down may not be conducted to discover evidence or the proceeds or instrumentalities of a crime. A member cannot "pat-down" a bag or item of personal property unless the member has a reasonable suspicion that the person is armed and the bag or item could contain a weapon and is within the person's reach.

## **DIRECTIVES**

### **Required Actions**

1. To prevent creating the perception of bias, BPD members shall use the following measures whenever reasonably possible when conducting Investigative Stops, Weapons Pat-Downs, Searches, property seizures, and Arrests:
  - 1.1. Be professional and polite.
  - 1.2. Introduce yourself and explain to the person, as soon as possible, the reason for the contact unless providing this information will compromise the investigation or the safety of members or other persons.
  - 1.3. Ensure the length of the Investigative Stop or Vehicle Stop is no longer than reasonably necessary to take appropriate action for the known or suspected offense, as well as any offense which is legitimately discovered during the course of the investigation.
  - 1.4. Ensure that the purpose of reasonable delays is explained to the person stopped/detained.
  - 1.5. Answer any questions the person may have.
  - 1.6. Provide name and badge number when requested, verbally, in writing, or on a business card.
  - 1.7. If the reasonable suspicion for the stop is dispelled or the stop was made in error, explain to the person why the error was made and apologize for any inconvenience.
2. In performing contacts, Investigative Stops, Weapons Pat-Downs, Searches, property seizures, and Arrests, BPD members shall comply with Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*, Policy 1106, *Warrantless Arrest Procedures and Probable Cause Standard*, and Policy 1109, *Warrantless Searches* which require, among other things, (a) making investigative pedestrian and traffic stops and conducting Weapons Pat-Downs based only upon reasonable articulable suspicion and (b) conducting Searches of persons and property and making Arrests based only on probable cause.
3. BPD members shall comply with Policy 1115, *Use of Force*, which requires that members use de-escalation techniques to reduce any threat or gain compliance with lawful commands, and that members use force only when reasonable, necessary, and proportional in light of the totality

of circumstances that were known (or should have been known) to the member at the time. As Policy 1115 dictates, BPD members shall immediately reduce the level of force being considered or used as the threat or resistance diminishes.

4. BPD members shall comply with all other BPD policies that govern interactions with members of protected groups, for example, Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Individuals*.
5. In performing all duties, members shall conduct themselves courteously and professionally, following the standards outlined in Policy 301, *Code of Ethics*, and Policy 305, *Departmental Values, Vision and Mission*.
6. It is the duty of BPD members who have observed, or are aware of others who have engaged in, Discriminatory Policing to specifically report such incidents to a supervisor or to the Office of Professional Responsibility (OPR), providing all information known to them before the end of the shift during which they make the observation or become aware of the incident. See Policy 320, *Duty to Report Misconduct/Whistleblower Protection*. Failure to report misconduct is itself misconduct.
7. At any point that an individual states that they would like to make a complaint against a BPD member for Discriminatory Policing or any other violation of BPD policy, the BPD member shall provide the individual with information on how to make such a complaint. The member shall promptly inform their supervisor and ask the supervisor how long it will take to respond to the scene. The member shall inform the individual that the supervisor can respond to the scene to assist the individual in filing a complaint, if the individual desires and is willing to wait for the supervisor to arrive. The member will also provide the individual with a Police Complaint Form; information about the 24-Hour Complaint Hotline; how to file a complaint with the BPD online, at any District, or by calling or visiting OPR; and how to file a complaint online or in-person with the Civilian Review Board. See Policy 306, *Misconduct Complaint Intake and Classification Process*, for further guidance on the complaint intake process.
  - 7.1. For purposes of this policy, an allegation of Discriminatory Policing does not require use of the words of “Discriminatory Policing” or “racial profiling,” but rather occurs whenever, from the perspective of a reasonable person, a person states that a member treated them or someone else differently because of any of the actual or perceived personal characteristics listed in the definition of “Discriminatory Policing” above, or affiliation with any other similarly identifiable group.
  - 7.2. All allegations of violations of this policy will be referred to and investigated by OPR and/or the Civilian Review Board, and may result in disciplinary action as specified in Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*.

### Prohibited Actions

1. BPD members shall not consider, to any extent or degree, the actual or perceived personal characteristics listed above in the definition of Discriminatory Policing while conducting investigations, or while taking (or refraining from taking) law enforcement action—including contacts, stops, Weapons Pat-Downs, Searches, issuance of citations, property seizures and forfeitures, Arrests, uses of force, or responding to calls for service or other requests for assistance—unless an allowable exception exists.

- 1.1. BPD members may not consider the actual or perceived personal characteristics listed above in the definition of Discriminatory Policing in determining reasonable suspicion or probable cause, unless an allowable exception exists.
- 1.2. An allowable exception exists **only** when the personal characteristic is physically observable, and part of a reliable and trustworthy description of a specific suspect in an ongoing investigation, where that description also includes other appropriate non-demographic identifying factors. If the member has relied on this type of information, they must document it.

**NOTE:** Some of the personal characteristics listed above in the definition of Discriminatory Policing are not physically observable, and thus they cannot be part of a reliable and trustworthy physical description of a specific suspect. Sexual orientation, Gender Identity, religion, and immigration status are examples of personal characteristics that are not physically observable.

**NOTE:** The credibility and basis of knowledge of the person providing a suspect description are important when determining whether a suspect description is reliable and trustworthy. BPD members must be aware that information provided to the police by the public may itself be the product of, or motivated by, bias or assumptions, and thus be unreliable and discriminatory. An anonymous tip alone is seldom sufficiently reliable, without further information obtained through personal observation or from a known, reliable source. For example, if the information in the anonymous tip is corroborated by a BPD member's subsequent view of that person in or near the reported location moving in the reported direction, or participating in the alleged conduct, the reliability of the tip would be enhanced. Additionally, a known informant who has provided accurate tips on prior occasions is generally considered reliable.

**NOTE:** Not every actual or perceived personal characteristic shall be documented. However, BPD members **must** document the demographic category of the individual (to include race, age, ethnicity and Gender Expression) for all Investigative Stops and Vehicle Stops, no matter the outcome of the stop. See Policy 1112, *Field Interviews, Investigative Stop, Weapons Pat-Downs & Searches*, and Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Individuals*. It is not appropriate to document other actual or perceived personal characteristics (e.g., LGBT status, religion, immigration status) unless it is disclosed by the individual and it is central to the encounter or incident (e.g., a person reports believing that he is being harassed because he is Muslim).

- 1.3. BPD members may consider the personal characteristics listed above in the definition of Discriminatory Policing, if known, in developing activities designed to strengthen BPD's relationship with the diverse communities it serves (e.g., an event organized by the Department's Hispanic Liaison or Muslim Community Liaison to address concerns specific to those communities).
- 1.4. BPD members are expected to consider relevant personal characteristics of an individual when determining whether to provide services designed for individuals with those characteristics (e.g., behavioral crisis, homelessness, addiction, etc.). See Policy 712, *Crisis Intervention Program*.

**NOTE:** The BPD is committed to its mission of maintaining a culture of service and providing for the well-being of the community. Therefore, BPD members will, as appropriate, assist persons with specific needs in accessing services.

2. Members shall not take law enforcement action based on information from members of the public that they know or should know is the product of, or motivated by, bias based on any of the personal characteristics listed above in the definition of Discriminatory Policing.
3. BPD members shall not use language, display symbols or make gestures that are commonly viewed as offensive to, or indicative of, bias toward any person based on any of the actual or perceived personal characteristics listed above.
  - 3.1. BPD members shall refer to all persons, including LGBTQ individuals, using the names, pronouns, and titles of respect as requested, expressed or clarified by the person with whom they are interacting. Proof of the person's gender identity, such as an identification card, will not be required. See Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Individuals*.
  - 3.2. Members shall not inquire about the intimate details of an individual's sexual practices, anatomy, or transition-related medical history. See Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Individuals*.
4. Members shall not engage in any form of retaliation, interference, intimidation, coercion, or adverse action against any person because that person indicates they would like to make a complaint, reports Discriminatory Policing, or attempts to make or makes a Discriminatory Policing complaint.

### Supervisory Requirements

1. Each supervisor has an individual obligation to ensure the timely and complete review and documentation of all allegations of violations of this policy that are referred to them or of which they should reasonably be aware. Commanders and supervisors shall ensure that all allegations of violations of this policy will be entered into BlueTeam and forwarded to OPR by the end of their tour of duty. See Policy 306, *Misconduct Complaint Intake and Classification Process*, Policy 320, *Duty to Report Misconduct/Whistleblower Protection*, and Policy 310 *Disciplinary/Failure to Appear and Traffic Matrix*.
2. Supervisors shall ensure that all members under their command are familiar with the contents of this policy through roll call discussions, In-Service Training and other means.
3. Supervisors shall ensure that all members under their command respond to and report any indication that Discriminatory Policing is occurring. Supervisors will accomplish this through, among other things, daily observation and monitoring, regularly checking in with members, and reviewing body-worn camera footage with regularity.
4. Supervisors shall ensure that no retaliation, intimidation, coercion or adverse action is taken against any person, including any member, who discloses information about or participates in the investigation of allegations of Discriminatory Policing. Any such action shall result in discipline, demotion, termination, or other appropriate corrective action based on the seriousness of the conduct. See Policy 306, *Misconduct Complaint Intake and Classification Process*.

## Training and Compliance

1. All sworn BPD members shall receive yearly training in fair and impartial policing, including the legal aspects of it.
  - 1.1. Training on fair and impartial policing will include the following topics: implicit bias and how to recognize and minimize its impact on policing; police legitimacy and how it is adversely affected by implicit bias and Discriminatory Policing; strategies for effective policing that rely on nondiscriminatory factors; cultural competency and cross-cultural communication; police and community perspectives related to Discriminatory Policing; legal requirements to provide equal protection of the law and legal prohibitions against unlawful discrimination; the protection of civil rights, the existence and impact of arbitrary classifications and stereotyping; data collection protocols; identification of key decision points where Discriminatory Policing can occur; strategies to reduce misunderstanding, conflicts and complaints; the history of race in Baltimore City; procedural justice and its goals; and strategies for interacting with LGBTQ individuals.
  - 1.2. Training on police actions, including stops, Weapons Pat-Downs, Searches, property seizures, Arrests, and use of force, shall include training on how to take these actions in a non-discriminatory manner.
2. BPD shall regularly, including at the yearly training, present (1) data and trends relating to complaints of Discriminatory Policing and (2) noteworthy issues involving protected groups, for example issues identified in Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Individuals*.
3. Violations of this policy will not be tolerated and will result in discipline, re-training, counseling or other remedial intervention as appropriate.
  - 3.1. BPD members who engage in, ignore, or condone Discriminatory Policing will be subject to discipline.
  - 3.2. Commanders and supervisors who fail to respond to, document, or review allegations of Discriminatory Policing will be subject to discipline.
4. A history of Discriminatory Policing or of other noted bias based on protected characteristics – including sustained violations of this policy, BPD’s sexual harassment policy, or BPD’s policy prohibiting discrimination against BPD employees – will be considered in member performance evaluations and hiring and promotion decisions. See G.O. Q-8, *Sworn Performance Evaluation*, Policy 1701, *Equal Employment Opportunity and Diversity*, and Policy 1705, *Transfer/Detail/Filling Vacancies*.
5. To determine whether BPD and its members are complying with this policy, BPD will routinely collect, analyze, and audit data on its law enforcement activities, including stops, Weapons Pat-Downs, Searches, property seizures and forfeitures, Arrests, uses of force, misconduct investigations and discipline. These analyses and audits will be designed to identify BPD practices that have a disparate impact on groups of individuals based on the personal characteristics listed above in the definition of Discriminatory Policing or that otherwise demonstrate differential treatment of individuals based on those characteristics. These analyses and audits will also include an accounting of community concerns. See Policy 306, *Complaint Intake and Classification Process*, Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*,

Policy 1007, *Search and Seizure Warrants*, Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*, Policy 1114, *Persons in Police Custody* and Policy 1115, *Use of Force*.

- 5.1. BPD shall make the results of these analyses, and the data on which they are based, publicly available.
- 5.2. The Commissioner, or another command staff member whom the Commissioner may designate, shall routinely review the results of these analyses to make determinations regarding agency policy, and how to continually improve BPD's delivery of public safety services.

### **ASSOCIATED POLICIES**

Policy 301, *Code of Ethics*  
Policy 305, *Department Values, Vision and Mission*  
Policy 306, *Misconduct Complaint Intake and Classification Process*  
Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*  
Policy 320, *Duty to Report Misconduct/Whistleblower Protection*  
Policy 712, *Crisis Intervention Program*  
Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender and Queer/Questioning Individuals*  
Policy 815, *Hate Crimes*  
Policy 1007, *Search and Seizure Warrants*  
Policy 1106, *Warrantless Arrest Procedures and Probable Cause Standard*  
Policy 1109, *Warrantless Searches*  
Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*  
Policy 1114, *Persons in Police Custody*  
Policy 1115, *Use of Force*  
Policy 1701, *Equal Employment Opportunity and Diversity*  
Policy 1705, *Transfer/Detail/Filling Vacancies*  
G.O. Q-8, *Sworn Performance Evaluation*

### **RESCISSION**

Remove and destroy/recycle Policy 317, *Fair and Impartial Policing* dated 1 July 2016.

### **COMMUNICATION OF POLICY**

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.