

# NEW ERA OF PUBLIC SAFETY

AN ADVOCACY TOOLKIT FOR FAIR, SAFE,  
AND EFFECTIVE COMMUNITY POLICING



**PROFILING AND**

**BIAS-BASED POLICING**

**Profiling is presuming that someone is involved in criminal activity based on who they are rather than what they have done.**



# Key Challenges

## **Racial and ethnic bias:**

In the United States, Black, Latinx, South Asian, Asian, Arab, and Indigenous people are routinely racially, ethnically, and religiously profiled by police officers. In some communities, more than 80 percent of people subject to traffic and/or street stops are Black or Latinx,<sup>28</sup> even though these groups make up a much smaller percentage of the general population. Profiling of Muslim, Arab, South Asian, and Middle Eastern people has been documented in the “Global War on Terror.”<sup>29</sup>

## **Criminalization of everyday activities:**

In some jurisdictions, Black and Brown people, particularly Black and Latinx youth, are disproportionately ticketed for “broken windows” offenses, such as riding a bicycle on the sidewalk, being in a park after dark, loitering (including “loitering for the purposes of prostitution”), eating or drinking in public, making “unreasonable noise” or engaging in “disorderly conduct.”<sup>30</sup>

## **Gender and sexual orientation bias:**

Police officers often deny protection to women, LGBTQ people, and gender nonconforming people who survive intimate partner violence, profiling them as perpetrators of violence rather than targets, or holding them responsible for abuse they and their children experience.<sup>31</sup> As a result, police officers sometimes fail to properly respond to allegations of sexual assault or intimate partner violence, arrest them under “mandatory arrest” laws, or criminalize them for exercising their right to self-defense.

## **Criminalization of people experiencing homelessness:**

Police officers often discriminatorily ticket and arrest people based on their housing status, and profile people who are homeless for “broken windows” offenses like sleeping or urinating in public or loitering.<sup>32</sup>

### **Religious intolerance:**

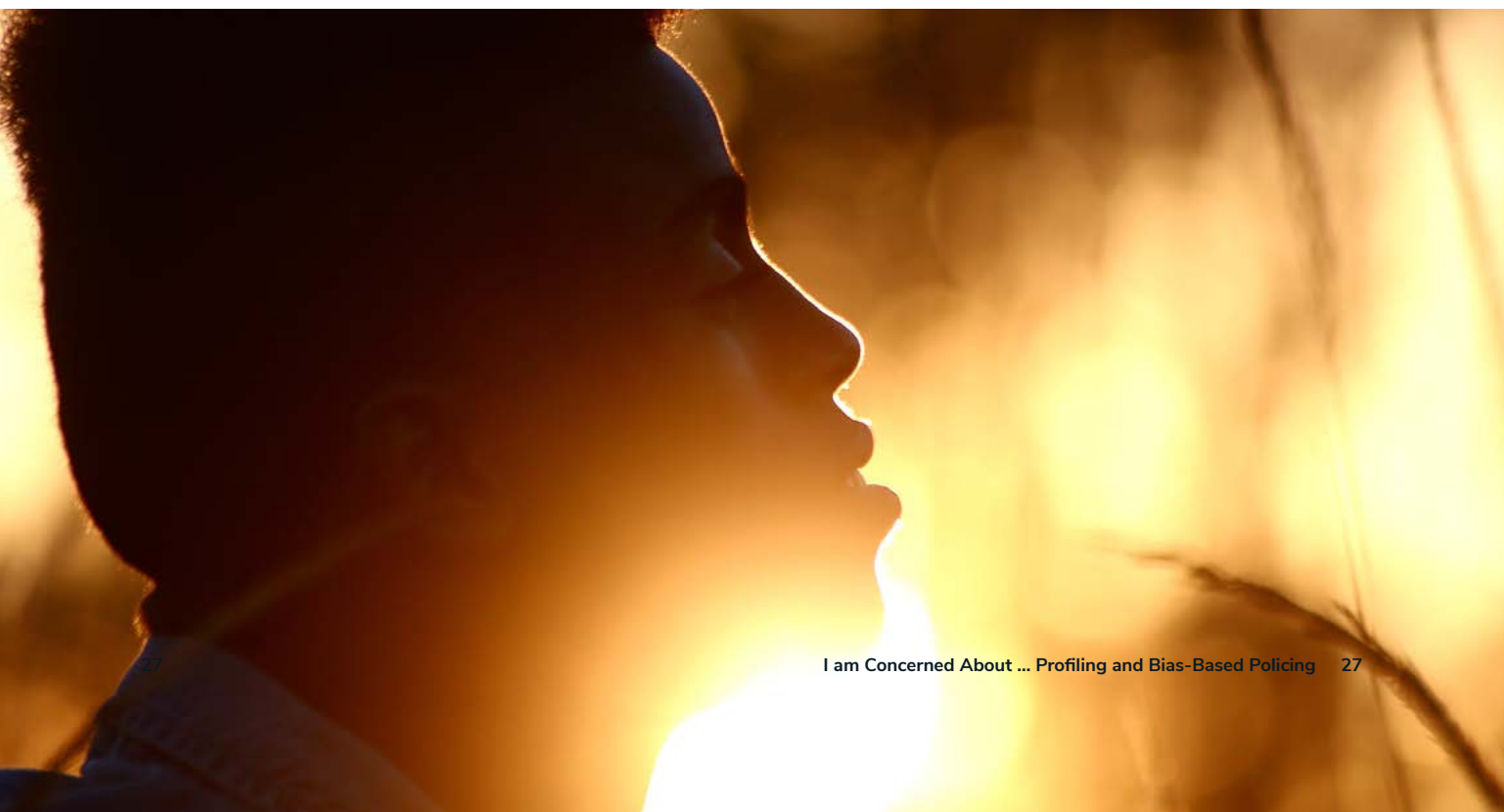
Freedom of religion is a cherished ideal in the United States, but this right is not always respected or protected. People who practice non-Christian religions are often profiled — and sometimes criminalized.<sup>33</sup> This is especially true of Muslim and Sikh people, who can be suspected of terrorism — and treated as such.

### **Disability bias:**

People with disabilities experience discriminatory policing practices, such as excessive use of force and failure to properly respond or provide necessary resources (e.g., independent nonlaw enforcement interpreters for people who are Deaf or hard of hearing or materials in braille for people who are blind) during police interactions. People experiencing mental health crises or people who require accommodations so that officers can effectively communicate with them may be perceived as resisting, failing to immediately comply, or engaging in erratic or atypical behaviors. Officers may see them as being aggressive, threatening, or noncompliant, and may respond with disproportionate and sometimes lethal force.

### **Collaboration with immigration authorities:**

While law enforcement agencies often collaborate with federal authorities regarding matters of public safety (e.g., terrorism, drug and human trafficking), few have interest in or resources to devote to immigration matters, such as deportation proceedings. The Final Report of the President's Task Force on 21st Century Policing recommends that federal immigration enforcement be decoupled from routine local policing for civil enforcement and nonserious crime.<sup>34</sup>



# Making Change

## **Expand the definition of profiling.**

Department policy should ban profiling of all members of targeted communities. Department leaders should, at a minimum, prohibit profiling and discriminatory policing based on the following categories, as well as any others found to be relevant in a specific community: actual or perceived race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, disability, familial status, immigration status, veteran status, health status, housing status, economic status, occupation, proficiency with the English language, or other personal characteristics.<sup>35</sup>

## **Ban profiling in all law enforcement activities.**

Profiling bans must apply to all discretionary decisions by law enforcement, including decisions to stop, investigate, question, search, arrest, respond to a call for service, seize property, initiate asset forfeiture, or charge an individual with a crime.

## **Profiling bans should include discriminatory impacts in policies.**

Profiling bans should also prohibit law enforcement decisions that have a discriminatory impact on particular groups of people and communities, regardless of officers' or departments' specific intent. Bias-free policies should include specific examples of prohibited conduct. It can be helpful to include specific examples of less commonly discussed types of prohibited profiling.

## **Ban reliance on perceived identity.**

Department leaders should explicitly prohibit police officers from engaging in any form of profiling or discriminatory policing, including that based on who they think people are. For instance, many Sikhs wear turbans as a form of religious observance, but people often presume they are Muslim and profile them as such.<sup>36</sup> This is a form of discrimination, even though the victim does not identify with the targeted group. Similarly, an officer's belief that an Indigenous person is Latinx or that a straight man is gay constitutes profiling. The act of profiling is wrong, even if the conclusion is correct. Profiling bans should prohibit officers from acting on actual or perceived race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, disability, familial status, immigration status, veteran status, health status, housing status, economic status, occupation, proficiency with the English language, or other personal characteristics.

## **Ban reliance on prohibited categories.**

Department leaders should prohibit officers from relying on identity to any degree, unless they are looking for someone based on a specific, reliable, and credible description of a person engaged in an activity at a specific time and location that includes information beyond the prohibited characteristics.

**Some policies only prohibit use of these factors as the sole reason for law enforcement action, or as the determinative factor. These restrictions do not go far enough, as they allow an officer to use a pretext to justify a law enforcement decision that is actually motivated by race, gender, etc.**

### **Require training for interacting with specific groups.**

To reduce bias-based policing, department leaders should provide officers with specific guidance and training on how to respect the rights of particular groups of people — such as people of color, women, gender nonconforming people, LGBTQ people, youth, undocumented immigrants, people with limited English proficiency, people with disabilities, religious and ethnic groups, low-income people, people experiencing homelessness, and other groups as relevant to your community.

### **Ban questions about sexual orientation, gender identity, or immigration status.**

Department leaders should prohibit officers from asking people about their sexual orientation, gender identity, or immigration status. Only if a person voluntarily provides information regarding their sexual orientation, gender identity, or immigration status, and it is related to the incident (e.g., a potential hate crime), may officers record the information.

### **Require supervisors' approval for discretionary enforcement activities.**

Some enforcement activities, such as arresting people for disturbing the peace or resisting orders, involve a large degree of officer discretion. To ensure these actions are not influenced by bias, departments should require that supervisors be notified and approve the arrest before it takes place.

### **Ensure accountability.**

Departments should train supervisors and officers to detect, manage, and report profiling and discriminatory policing. Communities, organizations, and oversight agencies must be able to hold officers

and department leaders accountable for violating profiling bans by filing a complaint or a lawsuit. When complaints are filed, supervisors must investigate the matter in a thorough, impartial, and timely manner.

### **Collect and publish data.**

Departments should collect, analyze, and regularly make public aggregate, anonymous data about the race, ethnicity, age, and gender of people who are stopped, searched, and arrested. Demographic data should be based on the officer's perception of a person's demographic characteristics (e.g., race or age) before and after the encounter because it may change over the course of proceedings as information comes to light. Police officers should not ask a person about their sexual orientation, gender identity, or immigration status. Only if a person voluntarily provides information regarding their sexual orientation, gender identity, or immigration status, and it is related to the incident (e.g., a potential hate crime), may officers record the information.

### **Identify and investigate hate crimes and incidents.**

Hate crimes and incidents have increased in recent years.<sup>37</sup> Police departments should encourage the reporting of hate crimes and incidents, and properly investigate them when they occur. This involves reaching out to potentially targeted communities to explain the reporting and investigation processes.

# How to Advocate for Change

## **Change the law.**

Pressure your legislators to pass a state or local law with an expansive ban against discriminatory policing that includes mechanisms — such as a private right of action — for individuals and organizations to hold officers and departments who violate the ban accountable.

## **Organize around a specific incident.**

If profiling or discriminatory policing led to a critical incident of excessive or lethal force, pressure your legislators, your mayor and/or governor, and the chief of your local police department to pass or strengthen policies and laws on bias-based policing.

## **Build a campaign.**

Build a campaign based on the profiling issue at hand. Make sure to reach out to a range of communities experiencing profiling and discriminatory policing who can create a coalition structure.

## **Build a coalition.**

Be creative when building your coalition and include community members with diverse skill sets, interests, identities, and backgrounds. Coalition members that work on the campaign can include clergy, grassroots activists, academics, attorneys, students, and artists — or anyone committed to the cause.

## **Encourage bias-free recruitment practices.**

Communities should support and encourage departments in creating cultures of equity and inclusion that prohibit racial and gender bias, and in building diverse workforces.

## **Press for proper investigation and discipline.**

Community members and organizations can advocate for change by pressuring civilian/community oversight boards to properly investigate complaints of discriminatory practices and by pressuring departments to mete out swift discipline when warranted.

## **Organize around the release of data.**

The public release of data documenting police profiling and bias-based policing is a good time to press legislators, the mayor and/or governor, and the police chief to pass or strengthen a policy or law on bias-free policing. If your law enforcement agency does not collect or release data, demand that they do so, or start a community-based data collection project.



# Talking Points

## **Police officers have a duty to uphold constitutional rights and federal laws.**

Federal laws prohibit discrimination based on race, religion, national origin, and gender. Many federal, state, and local laws, constitutions, and charters prohibit discrimination against these and other protected classes (e.g., sexual orientation, disability, and housing status). A ban on profiling is consistent with the oath police officers take when joining a police department.<sup>38</sup>

## **Profiling bans make everyone safer.**

Antidiscrimination and profiling bans make communities safer, because law enforcement activities based on stereotypes, personal beliefs, and biases (as opposed to actual evidence) do not prevent violence or increase public safety.<sup>39</sup>

## **All people deserve protection.**

Although racial and ethnic profiling is the most commonly discussed form of discriminatory policing, police officers also profile based on national origin, religion, gender, gender identity, sexual orientation, age, disability, familial status, immigration status, veteran status, health status, housing status, economic status, occupation, proficiency with the English language, and other personal characteristics.

**Everyone is entitled to the equal protection of the law — and equal treatment by law enforcement officers!**



# Overcoming Opposition

## **The Opposition:**

“Officers are just acting on data that show higher rates of crime in particular communities. Profiling bans keep police officers from going where crime is and focusing on the most likely suspects.”

## **Overcoming the Opposition:**

“Arrest rates are often higher in communities of color and low-income communities because that is where enforcement is focused — not because crime rates are necessarily higher in those communities.<sup>40</sup> All communities have crime. We cannot criminalize entire communities and then use high arrest data to justify overpolicing certain communities, profiling, and other forms of discriminatory policing. There is no evidence that profiling and overpolicing reduce crime. We do know that these activities violate civil and human rights, erode trust and confidence in police, and decrease public safety.”

## **The Opposition:**

“Profiling bans get in the way of officers doing their jobs and fighting crime.”

## **Overcoming the Opposition:**

“Profiling bans do not stop officers from responding to calls for help or from pursuing people based on specific descriptions. Instead, they make policing more effective because they require descriptions of individuals suspected of involvement in specific activities rather than generic characteristics like race or religion, which typically produce no evidence of crime.”<sup>41</sup>



# IX. ENDNOTES

## III. I am Concerned

### About ...

<sup>27</sup> See “Findings.” The Stanford Open Policing Project. Retrieved from <https://openpolicing.stanford.edu/findings/>.

<sup>28</sup> Ghandnoosh, Nazgol. (2015). “Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System.” The Sentencing Project. Retrieved from <https://www.sentencingproject.org/wp-content/uploads/2015/11/Black-Lives-Matter.pdf>.

<sup>29</sup> Ritchie, A. J., & Mogul, J. L. (2007). In the Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States. *DePaul Journal of Social Justice*, 1, 17S

<sup>30</sup> Balko, Radley. (2018). There’s overwhelming evidence that the criminal-justice system is racist. Here’s the proof. *The Washington Post*. Retrieved from [https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?utm\\_term=.40146230f958](https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?utm_term=.40146230f958).

<sup>31</sup> See “Responses from the Field Sexual Assault, Domestic Violence, and Policing.” ACLU. October 2015. Retrieved from [https://www.aclu.org/sites/default/files/field\\_document/2015.10.20\\_report\\_-\\_responses\\_from\\_the\\_field.pdf](https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf).

<sup>32</sup> See “Housing not Handcuffs.” National Law Center on Homelessness and Poverty. 2016. Retrieved from [https://www.aclu.org/sites/default/files/field\\_document/2015.10.20\\_report\\_-\\_responses\\_from\\_the\\_field.pdf](https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf).

<sup>33</sup> Goitein, Liza and Patel, Faiza. (2012). *Religious Profiling: An Unwelcome Guest*. Brennan Center for Justice. Retrieved from <https://www.brennancenter.org/analysis/religious-profiling-unwelcome-guest>.

<sup>34</sup> See “The Final Report of the President’s Task Force on 21st Century Policing.” US Department of Justice. May 2015. Retrieved from [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>35</sup> See “Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America.” NAACP. September 2014. Retrieved from [https://www.naacp.org/wp-content/uploads/2018/07/Born\\_Suspect\\_Report\\_final\\_web.pdf](https://www.naacp.org/wp-content/uploads/2018/07/Born_Suspect_Report_final_web.pdf).

<sup>36</sup> See “Hate Crimes.” Sikh American Legal Defense & Education Fund. Retrieved from <http://saldef.org/archive/legal-defense-advocacy/hate-crimes/#.XGSYylxKgDv>.

<sup>37</sup> See “Hate Magnified: Communities in Crisis.” The Leadership Conference Education Fund. January 2019. Retrieved from <https://hatemagnified.org/CAH-hatemagnified2019.pdf>. <sup>38</sup> See “The Oath of Honor.” International Association of Chiefs of Police. Retrieved from <https://hatemagnified.org/CAH-hatemagnified2019.pdf>.

<sup>39</sup> See “Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States.” U.S. Domestic Human Rights Program. October 2004. Retrieved from [https://www.amnestyusa.org/pdfs/rp\\_report.pdf](https://www.amnestyusa.org/pdfs/rp_report.pdf).

<sup>40</sup> See “The War on Marijuana in Black and White.” ACLU. June 2013. Retrieved from <https://www.aclu.org/issues/smart-justice/sentencing-reform/war-marijuana-black-and-white>.

<sup>41</sup> *Ibid.*





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