

Montana Department of Justice
2010 Report to the Law and Justice Interim Committee
Law Enforcement Efforts in Response to Racial Profiling Legislation

BACKGROUND

The Department of Justice is pleased to present its 2010 report on Montana's law enforcement community's implementation of and compliance with the provisions of the state law prohibiting racial profiling. Since passage of the racial profiling law in 2003, law enforcement agencies across Montana have made major strides in implementing the statute's provisions. The following summarizes the steps taken by state and local agencies to comply with the intent of the statute.

Under Mont. Code Ann. § 44-2-117, the Montana Department of Justice is required to give periodic reports to the Law and Justice Interim Committee regarding compliance of municipal, county, consolidated local government and state law enforcement agencies with the requirements of the state's racial profiling laws.

Montana law prohibits a peace officer from engaging in the act of racial profiling. To ensure that the racial profiling prohibition is being enforced, Mont. Code Ann. § 44-2-117 requires all municipal, county, consolidated local government and state law enforcement agencies to adopt a policy that defines the elements of racial profiling and prohibits the agency's employees from engaging in such conduct.

IMPLEMENTATION

A. State Agencies

1. Montana Highway Patrol Division

On May 1, 2002, the Montana Highway Patrol (MHP) implemented a Biased-Based Policing Policy (MHP Policy and Procedure Manual, Chapter III, Section GR-5, Biased-Based Policing). This manual is issued to every recruit when they are employed by our agency. An updated copy is also maintained on the MHP intranet website. The policy meets or exceeds the requirements set forth in Mont. Code Ann. § 44-2-117. A copy of the policy is attached for the Committee's review.

In accordance with the law, MHP collects and reviews data obtained on traffic stops by Patrol troopers. We compare this data to the population statistics within Montana, to ensure that troopers are not stopping a disproportionate number of minorities. The Department maintains these statistics and makes them available to the public on its website: <http://www.doj.mt.gov/enforcement/highwaypatrol/forms/default.asp>. The August 2010 report is attached.

To date, review of traffic stop data by MHP has identified only one potential area of concern. The data indicated a trooper had made a disproportionately high number of stops near a reservation community. Based on the data, MHP management met with the trooper and took corrective action to address his conduct. Based on continued monitoring, the situation has been resolved and the trooper's numbers are no longer outside the norm. Our regular review of traffic stop data has allowed MHP to develop a system in which any profiling problem can be quickly identified, dealt with and resolved.

In addition to data tracking, all sworn MHP personnel currently employed have attended Cultural Awareness training at various locations in the state. Beginning in January 2005, each trooper attending the MLEA Law Enforcement Basic Course and MHP Advanced Academy, attended Cultural Awareness/Diversity training. In addition, many MHP troopers stationed on or near a reservation attend periodic "Indian Country Training" provided on the reservations to educate them on the specific cultural issues of individual nations. Sixteen troopers have attended Cultural Awareness/Diversity training from July 1, 2009, through June 30, 2010.

The MHP is committed to serving the citizens of Montana and those using the highway traffic system of our state. We strive to provide the highest level of professionalism based on Service, Integrity and Respect.

2. Division of Criminal Investigation/Montana Law Enforcement Academy

As the leading provider of law enforcement training in Montana, the Montana Law Enforcement Academy (MLEA) plays a critical role in training new and experienced peace officers on the legal and cultural issues surrounding racial profiling. Since 2005, MLEA has completed the following actions in an effort to assist law enforcement officers and agencies in complying with the laws pertaining to data collection and the prohibitions against racial profiling.

- A four-hour class has been included in the law enforcement officer Basic Course since 2002.
- In March 2005, MLEA updated and revised the Prohibitions Against Racial Profiling curriculum to meet the requirements of the law.
- From August 2005 through March 2007, 36 separate training sessions were held in 24 different locations across Montana. During that time, 2,091 law enforcement officers participated in this training. MLEA still accepts requests for this type of training.
- The Academy conducted six "Train the Trainer" sessions for law enforcement instructors. Those instructors in turn, have trained 210 law enforcement officers.

- In March 2006, MLEA wrote, reviewed and published a new Model Policy on Racial Profiling, which was provided to all law enforcement agencies in Montana in both written and electronic form.
- In June 2006, MLEA contracted with Ms. Janet Robideau of the Indian People's Action to provide a quality control review of the curriculum. Ms. Robideau's review found that the curriculum was sufficient and recommended no modifications or changes.
- In May 2007, MLEA convened the Model Policy Committee to revise the Prohibitions Against Racial Profiling policy to include the statutory requirements passed by the 2007 Legislature pertaining to required data collection.
- In fall 2007, MLEA – in partnership with the Montana Municipal Insurance Authority and the Montana Association of Counties – provided training in the revised policy. The partners traveled to 24 different locations in Montana, conducted 34 training sessions and disseminated the revised policy to every law enforcement agency.

To date, MLEA has provided cultural awareness and racial profiling training to over 2,400 law enforcement officers, and has provided assistance to local law enforcement agencies in developing policies that comply with the requirements of Mont. Code Ann. § 44-2-117.

B. Municipal and County Law Enforcement Agencies

The Racial Profiling Prevention Project – a grant-funded partnership between the Montana Department of Transportation (MDT) and the Montana Sheriffs and Peace Officers Association (MSPOA) – has helped law enforcement agencies in Montana understand and implement the provisions of the state's racial profiling laws.

At this time, local law enforcement agencies are in substantial compliance with Mont Code Ann. § 44-2-117. Over the course of the Racial Profiling Prevention Project, professional associations have emphasized that law enforcement officers need to embrace both the letter and the spirit of the racial profiling laws. A 2008 survey of sheriffs' offices and police departments demonstrated that these agencies:

1. have adopted a policy prohibiting racial profiling,
2. are keeping data on traffic stops, and
3. are training their officers in the laws on racial profiling.

Technology made available to law enforcement agencies through MDT grants has also been important in the prevention of racial profiling in Montana. Most law enforcement patrol cars are equipped with audio and video recording devices activated automatically during

any traffic stop. The fact that a digital record of a traffic stop is being made acts as a “behavior monitor” for both the officer and the citizen involved in a traffic stop situation.

In the opinion of sheriffs and chiefs, this technology has settled a lot of disputes and prevented a lot of complaints.

Although data is being collected, there is no uniform method among the local law enforcement agencies for capturing and recording data on the race of people cited or warned in a traffic stop. It is generally reported that one of the following three mechanisms is being used to collect data:

1. race noted by hand on a paper citation,
2. race noted using an e-ticket, or
3. race noted through a verbal call-in by the officer at the time of the stop to the agency’s computer-assisted dispatch center.

While local law enforcement agencies are keeping data on the traffic stops made by their officers, the system, program or method to capture, aggregate and analyze this data on a statewide basis is still under development. The information can be collected and analyzed by the Montana Department of Justice through CTS-America SmartCop software. However, at this time, this technology is not being used uniformly across agencies because of a lack of funding.

The Department continues to partner with other state and local law enforcement agencies to identify potential sources of grant funding to allow statewide collection of this data and to provide the needed technical assistance to local law enforcement agencies.

CONCLUSION

Collection and compilation of traffic stop data presents an ongoing challenge in efforts by state and local governments to combat racial profiling. While data collection is an important aspect in preventing racial profiling, the Department recognizes that data alone will not solve the issues surrounding racial profiling in Montana. As acknowledged in the curriculum taught by MLEA, in addition to the data collected from traffic stops, cultural awareness and issues of perception must also be part of the equation.

The long-term solution to racial profiling lies in building trust and collaborative working relationships. In that vein, the Department will continue to work to maintain open communication between our agency and local and tribal governments, be responsive to the training needs of law enforcement in relation to racial profiling, and assist county and municipal law enforcement agencies in policy development and implementation.