

## Following New Racial Profiling Rules Up to State and Local Police's Discretion

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<http://www.governing.com/topics/public-justice-safety/tns-racial-profiling-rules.html>

Amid heightened national attention to police behavior, Attorney General Eric Holder unveiled new federal guidelines Monday restricting the use of profiling by federal law enforcement officers.

The long-awaited rules carve out some exceptions among federal agencies and provide only voluntary guidance to state and local law enforcement agencies unless they're part of federal task forces.

But after extended study, and some intense behind-the-scenes bureaucratic maneuvering, Holder added national origin, gender, gender identity, religion and sexual orientation to the characteristics for which profiling is prohibited.

"Particularly in light of certain recent incidents we've seen at the local level, and the widespread concerns about trust in the criminal justice process, it's imperative that we take every possible action to institute strong and sound policing practices," Holder said.

The policy announcement came on the heels of several recent and highly controversial incidents in which African-Americans have been killed during encounters with police. It expands on previous rules covering racial profiling, put in place in 2003. Holder's Justice Department has been reviewing the profiling guidelines since 2009, the year he took office.

The new restrictions, unlike the 2003 rules, cover national security and intelligence operations, as well as conventional law enforcement conducted by such Justice Department arms as the FBI, the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Under the new policy, spelled out in an 11-page memorandum, Justice Department officers will be prohibited from acting on the belief that possessing any of the covered characteristics by itself signals a higher risk of criminality.

"I have repeatedly made clear that profiling by law enforcement is not only wrong, it is profoundly misguided and ineffective," Holder said.

Local law enforcement agencies generally aren't obliged to follow the federal guidelines, though it's at the local level that evidence of profiling is often found.

African-Americans, for instance, make up 63 percent of the population in Ferguson, Mo., the St. Louis suburb where Officer Darren Wilson shot and killed teenager Michael Brown in August. African-American drivers accounted for 86 percent of all traffic stops by the nearly all-white Ferguson Police Department last year, according to data compiled by the state.

African-American drivers are also twice as likely to be searched as white drivers are in Ferguson.

Unless the city's police officers are participating in a federal task force, the new federal guidelines don't apply to them.

Race or the other characteristics can still be taken into account, according to the written policy, if a federal law enforcement officer has "trustworthy information, relevant to the locality or time frame, linking persons possessing that characteristic to a threat to national security, homeland security or intelligence activity."

The Justice Department cited the example of the FBI receiving reliable information that people affiliated with a foreign ethnic insurgent group intend to assassinate that country's president during a visit to the United States. Agents could focus investigative attention on identifying members of that ethnic insurgent group in the United States and who, based on other available information, might be involved in planning some such attack.

Department of Homeland Security activities will largely be covered by the new rules away from the border, though an exception is carved out for "interdiction activities in the vicinity of the border, or to protective, inspection or screening activities" at airports.

"Attorney General Eric Holder is trying to have it both ways, criticizing profiling while embracing it at the same time," Antonio Ginatta, the U.S. advocacy director at Human Rights Watch, said in a statement. "Bottom line: There's no right way to profile."

Under the guidelines, for instance, a federal officer staked out on the George Washington Memorial Parkway, a federally maintained highway near Washington, wouldn't be justified in pulling over a car simply because of the driver's ethnicity or because the car's bumper sticker touted a particular religion.

The Justice Department will track compliance with the new policy by collecting information on complaints. Federal law enforcement officers will receive training on the rules.

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