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**MINNESOTA  
DEPARTMENT  
of  
PUBLIC SAFETY**

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**RECOMMENDATIONS on  
RACIAL PROFILING  
DATA COLLECTION:  
FINAL REPORT of the WORKGROUP**

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## EXECUTIVE SUMMARY

**T**he issue of racial profiling is receiving increasing attention, both nationally and statewide. To help determine whether motor vehicle drivers in Minnesota are being stopped by law enforcement officers because of their race — and how to conduct such a study — the Department of Public Safety convened a workgroup to examine the issue and to make recommendations to the state legislature. The Department contracted with the Department of Administration's Management Analysis Division to assist with the process.

Specifically, the workgroup was charged with considering:

1. Should the state collect data on traffic stops to determine whether racial profiling is occurring in Minnesota?
2. If data is to be collected, what data should be collected?
3. If data is to be collected, how should it be collected and by whom?
4. If data is to be collected, how should it be used?

### RECOMMENDATIONS

1. The group reached consensus to recommend that the state collect data to determine whether racial profiling exists.
2. In addition, a workgroup subcommittee composed of law enforcement members drafted a proposal featuring six initiatives that called for developing model policy, curriculum, and training and voluntary data collection to address the issue of racial profiling. The full workgroup approved five initiatives, including:
  - A statewide conference to raise awareness within the law enforcement community
  - Regional seminars to highlight racial profiling issues unique to specific regions and to promote a community-oriented response
  - Development of a model policy that would become part of the Peace Officer Standards and Training (POST) Board's annual Policy and Training Compliance Review Form and be subject to inspection based on complaint or random selection for compliance review
  - Development of pre-service learning objectives on eliminating racially profiled traffic stops for inclusion in the Professional Peace Officer Education program curriculum
  - Creation by the POST Board of learning objectives to reduce the number of racially profiled traffic stops for inclusion in continuing education courses approved for POST credit. POST would be responsible for monitoring and evaluating the courses for meeting the expectations of the objectives.

The sixth initiative, voluntary data collection, was addressed as part of the group's discussion of their third charge – how data should be collected and by whom.

3. The group, after discussing the time lines presented in the proposal, recommended that the time lines for implementation be expedited, particularly for the development of

model policy. Neil Melton, Executive Director of the POST Board, agreed to approach the POST Board in this regard by Nov. 16, 2000.

4. It was also recommended that the traffic stop data be reviewed over time as the new peace officer training is implemented, to measure the effectiveness of these policy and training initiatives.
5. The group agreed on the recommendation that any data collection effort the state undertakes should include the following data elements. The first eight elements are included by consensus; the last three received majority votes.
  - location of stop
  - date and time of stop
  - age of driver
  - race/ethnicity of driver
  - reason for stop
  - disposition of stop (arrest, citation, warning, no action)
  - whether a search was conducted
  - authority for search
  - gender of driver (17 in favor, two against, one abstained)
  - whether officer knew the race before the stop (13 in favor, two against)
  - agency code (14 in favor, four against, four abstained)
6. The state should contract with an independent partner to design the data collection process, including development of baseline measures, development of a data compliance auditing process, and analysis of the data. This independent partner would likely be from academia, but could come from the private, nonprofit, or public sector.
7. With a majority vote, 14 in favor and six against, those present recommended that the state mandate statewide data collection on traffic stops for up to two years. In addition, the state should fund all costs associated with the design and collection of data, including any design and printing of paper forms. If a law enforcement agency has the means to collect the data electronically, it could do so. Data should be entered at a central location for all law enforcement agencies. The state should also fund the analysis of the data, which would occur periodically. Data collection would continue to be undertaken for the mandated period.

The group emphasized that any data collection effort must be financially supported by the legislature. Requiring such collection without providing funding for it would put law enforcement agencies in an untenable financial situation, undermine the perceived validity of the entire study, and ultimately compromise the relationship between law enforcement agencies and the communities they serve.

Group members could not agree on a specific recommendation regarding how the data should be used, other than to determine whether racial profiling exists in Minnesota.

The intent of the workgroup is for the final analysis and summarization of any data collection effort to be public information; however data collected to perform such analysis and summarization prior to reporting would be non-public.

# INTRODUCTION

**T**he issue of racial profiling is receiving increasing attention, both nationally and statewide. To help determine whether motor vehicle drivers in Minnesota are being stopped by law enforcement officers because of their race — and how to conduct such a study — the Department of Public Safety convened a workgroup to examine the issue and to make recommendations to the state legislature. The Department contracted with the Management Analysis Division to assist with the process.

Specifically, the workgroup was charged with considering:

1. Should the state collect data on traffic stops<sup>1</sup> to determine whether racial profiling is occurring in Minnesota?
2. If data is to be collected, what data should be collected?
3. If data is to be collected, how should it be collected and by whom?
4. If data is to be collected, how should it be used?

The workgroup was composed of representatives from the Department of Public Safety, law enforcement, the judicial system, the Legislature, and communities of color. A complete list of the workgroup members and the organizations they represent is found in Appendix A.

Acknowledging the potential difficulty in reaching consensus on key decisions, the workgroup agreed to strive for consensus with the understanding that, when it could not be reached, a majority vote would determine approval of a recommendation, as long as the minority opinion also was clearly stated in this report. In this case, the workgroup defined “consensus” as full agreement.

## Defining racial profiling

Because “racial profiling” has different interpretations, workgroup members wanted to agree on a working definition. After referring to an information brief by the Research Department of the Minnesota House of Representatives (House Research) (Appendix B and citation below) and the definition in a document from the Institute on Race and Poverty (Appendix C), the workgroup reached consensus on the following working definition, taken from the U.S. Department of Justice’s racial profiling study guide written by Deborah Ramirez, et al.:

We define “racial profiling” as any police-initiated action that relies upon: (a) the race, ethnicity or national origin of an individual, rather than (b) the behavior of that individual, or (c) information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

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<sup>1</sup> “Traffic stops” refers to officer-initiated stops

As part of this definition the group adopted the following two corollary principles, which were also part of Ramirez' study guide:

- 1) that police **may not use** racial or ethnic stereotypes as factors in selecting whom to stop and search; and
- 2) that police **may use** race or ethnicity to determine whether a person matches a specific description of a particular suspect.<sup>2</sup>

### **Research on other states and jurisdictions**

The workgroup reviewed summaries of key information on data collection initiatives from around the country as presented in the House Research information brief (Appendix B). Other significant documents provided to the workgroup included updated memos summarizing data collection efforts from around the country by the Institute on Race and Poverty (Appendix C).

These information briefs and documentation provided a foundation from which to examine other practices in racial profiling data collection. Because these efforts are so new, it is not yet known which practices are most effective. However, the House Research information brief and the information provided by the Institute on Race and Poverty point out that:

- Nine states have enacted legislation to collect data on traffic stops: Connecticut, Kansas, Missouri, North Carolina, Oklahoma, Oregon, Rhode Island, Tennessee, and Washington.
- Legislation regarding racial profiling data collection is pending in 17 states: Alabama, Arkansas, California, Florida, Iowa, Illinois, Indiana, Kentucky, Massachusetts, Maryland, New York, Ohio, Pennsylvania, South Carolina, Utah, Virginia, and Wisconsin. In addition, New Jersey is under a consent decree to collect data and also has pending legislation.
- The Missouri law is regarded by the American Civil Liberties Union as a national model, while it sees the Tennessee legislation as one of the weakest state laws. Voluntary action studies have been undertaken by states and cities, including Minneapolis and St. Paul; Sacramento, Calif.; San Diego, Calif.; Seattle, Wash.; Richmond, Va.; and Houston, Texas.
- The federal departments of Justice, Treasury, and Interior have been under executive order to collect race, ethnicity, and gender data on people they stop or arrest. The U.S. Congress is also considering legislation that would pertain to both states and the U.S. Customs Service.

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<sup>2</sup> Ramirez, Deborah, Jack McDevitt, and Amy Farrel. *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*. Draft. Northeastern University, 2000. Cited in: "Racial Profiling Studies in Law Enforcement: Issues and Methodology." House Research Department, Minnesota House of Representatives. June 2000. pg. 23.

The House Research information brief underscores some of the significant challenges in racial profiling studies. These include:

- Which traffic stops to monitor
- What the data collection time frame should be
- How much time and paperwork to budget for data collection
- How to collect data
- How to ensure accuracy of the data
- How to ensure full compliance by peace officers during the study
- How the data will be used
- How the data will be analyzed and interpreted, including determining an accurate baseline population estimate for comparison
- Who would analyze the data: an independent research facility, individual law enforcement agencies, or the state
- Whether the study's stakeholders can collaborate sufficiently
- Whether the stakeholders can work productively to improve this aspect of the criminal justice system

To assist in their understanding of current data collection practices in light of these challenges, the workgroup requested an overview of the recent efforts by the St. Paul and Minneapolis police departments.

In St. Paul, officers collect data on discretionary stops because the focus is on where the greatest opportunity exists for racial profiling. The data is reported by radio and stored in the Computer-aided Dispatch (CAD) program on computer. At present, the officer identifies the race or ethnicity of the person stopped. Each traffic stop is identified by the squad number, and individual officers can be identified. The St. Paul Police Department also reissues policy manual bulletins that review accepted police practices and reiterate that racial profiling is a violation of department policy.

The Minneapolis Police Department started data collection in early May; the process is similar to St. Paul's. Officers report data by radio or enter data into the mobile data system. The data is stored in a CAD system similar to that of St. Paul.

In addition to entering a race code, officers are required to indicate the specific location of the traffic stop. Minneapolis would like to identify where disproportionate numbers (by race) of stops are occurring, if such stops are occurring. However, Minneapolis acknowledges that conducting this analysis will be difficult because the 2000 Census data, not yet available, is needed to establish the racial demographics of neighborhoods. Stops are identified by squad number. The department has chosen not to identify the individual officer, but rather to indicate how officers are doing as a whole.

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Anecdotal information from other states suggests that officers reduce the number of traffic stops when data collection programs are implemented; that is, the data collection itself has a "chilling effect." To deter officers from reducing the number of traffic stops, the Minneapolis Police Department's leadership reported setting the clear expectation that officers continue doing their jobs and, in the process, collect data on traffic stops. Also, the department is not collecting data on individual officers, because it is considered by some to affect officers' performance as well as the quality of the data itself. The department reports that after three and a half months of data gathering, the number of stops appears to be similar to what it would normally be at this time of year.

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# DISCUSSION and RECOMMENDATIONS

**T**he Department of Public Safety presented four charges to the workgroup. Key discussion points and resulting recommendations are presented in this section.

## **Charge 1: To recommend whether the state should collect data on traffic stops to determine whether racial profiling is occurring in Minnesota**

The group had many questions and concerns about whether data collection would be a worthwhile effort. Among these concerns were:

- Would data collection in just the Twin Cities be sufficient, or is it necessary to collect data statewide? Should only certain areas of the state be targeted?
- Has the incidence of racial profiling been scaled down because of the studies done elsewhere?
- Would the state undertake data collection just because it is being done around the country — will the state simply be jumping on the bandwagon?
- If the community believes there is racial profiling, a study should be done.
- Why look at traffic stops only? (The answer to this question was that law enforcement already has the arrest data. Also, it is difficult to study pedestrian stops.)
- What else can be done that would decrease the practice of racial profiling?
- How are police departments collecting data now?
- How big an expenditure would this be for the state?
- There is a need to clarify the difference between the terms “data collection” and “study.”

### **Recommendations**

1. The group<sup>3</sup> reached consensus to recommend that the state collect data to determine whether racial profiling exists.

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<sup>3</sup> All references to “the group” in regard to voting imply those members present at the time of voting. The number and makeup of the workgroup membership was different at each meeting, resulting in differing totals of votes.

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2. In addition, a workgroup subcommittee composed of law enforcement members drafted a proposal featuring six initiatives that called for developing model policy, curriculum, and training and voluntary data collection to address the issue of racial profiling (Appendix D). The full workgroup approved five of the initiatives, which focus on developing model policy, curriculum and training. They are:
  - A statewide conference to raise awareness within the law enforcement community,
  - Regional seminars to highlight racial profiling issues unique to specific regions and to promote a community-oriented response,
  - Development of a model policy that would become part of the Peace Officer Standards and Training (POST) Board's annual Policy and Training Compliance Review Form and be subject to inspection based on complaint or random selection for compliance review,
  - Development of pre-service learning objectives on eliminating racially profiled traffic stops for inclusion in the Professional Peace Officer Education program curriculum, and
  - Creation, by the POST Board, of learning objectives to reduce the number of racially profiled traffic stops for inclusion in continuing education courses approved for POST credit. POST would be responsible for monitoring and evaluating the courses for meeting the expectations of the objectives.

The sixth initiative, voluntary data collection, was addressed as part of the group's discussion of their third charge – how data should be collected and by whom.

3. The group, after discussing the time lines presented in the proposal, recommended that the time lines for implementation be expedited, particularly for the development of model policy. Neil Melton, executive director of the POST Board, agreed to approach the POST Board in this regard by Nov. 16, 2000.
4. It was also recommended that traffic stop data be reviewed over time as the new peace officer training is implemented, in order to measure the effectiveness of these policy and training initiatives.

## **Charge 2: To recommend what data should be collected**

The group reviewed and discussed the more common data elements and procedures used in current data collection efforts across the country (Appendix E). Those present reached consensus that any data collection the state undertakes should include the following elements:

- location of stop
  - date and time of stop
  - age of driver
  - race/ethnicity of driver
  - reason for stop
-

- disposition of stop (arrest, citation, warning, no action)<sup>4</sup>
- whether a search was conducted
- authority for search

The following three data elements did not reach consensus but did receive majority vote and, thus, should be included in any data collection effort:

- Gender of the driver: Seventeen voted in favor, two against, and one abstained. It was noted that most data collection efforts in other states include the gender variable. Some workgroup members thought that data collection on gender would be valuable to test the perception that (young) minority males are being unjustifiably stopped.
- Whether the officer knew the race prior to the stop: Thirteen voted in favor, two against. Some participants saw this as unnecessary, while others thought that this variable could be an indicator of racial profiling.
- Agency code: Fourteen voted in favor, four against, four abstained. The main issues were that coding by agency would be essential for meaningful analysis and to inform law enforcement agencies as a management tool. The main concern was that it would be difficult to maintain the anonymity of individual officers, with so many small agencies throughout the state. The idea of aggregating some of the smaller agencies was suggested; however, it was concluded that doing so would skew the purpose of collecting data.

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<sup>4</sup> House Research, which was asked to provide ongoing information at the group's request, expressed a concern that vehicle sanctions should be included in the list of possible outcomes that are recorded on any traffic stop data form. Specifically important to note would be whether the vehicle was towed, whether the officer initiated a license plate impoundment, and whether the officer initiated administrative vehicle forfeiture.

A related concern was whether to include space to code any cited violations and/or charged offenses that arise from the stop. According to House Research, the rationale for including this data rests in part on recent Seattle study findings that a great many of the legal charges stemming from traffic stops in that city are for driver and vehicle licensing and vehicle insurance violations. Some work group members argued that, because vehicle sanctions are especially disruptive and costly to drivers, it is important to know whether those sanctions are being administered in a race-neutral manner as part of the traffic-stop dynamics in each community and whether there is a sufficient basis for applying those sanctions in any particular case.

However, there was counter-concern on the part of some other members that such a data coding recommendation would be too detailed and burdensome and might possibly be too costly to implement. Thus, the workgroup agreed that these decisions would be best left to the discretion of the independent partner contracted to finish the design and perform the analysis of the data collection study.

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Other data elements were reviewed and discussed at length but did not reach consensus or receive majority vote. These were:

- the officer's badge number<sup>5</sup>
- driver's date of birth
- year of vehicle
- contraband found: weapons, drugs, etc.
- duration of stop
- driver's license number<sup>6</sup>

The issue of whether to include the driver's license number was seen by those in favor as perhaps the most cost-effective means of providing for data compliance auditing. Without this step, the credibility of the analysis may be at risk. Many members agreed that, in order to ensure accuracy, a method for spot- or cross-checking data would be necessary. Some states and municipalities have relied on an external consultant or academic partner – contracted to design and analyze the data collection process – to create the data compliance audit component. The group agreed that it wanted to ensure the accuracy of data collection by a process for spot-checking the validity of the data, as long as there are no consequences for the individual officer.

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<sup>5</sup> The issue of the officer's badge number raised significant questions and concerns for and against including the officer's badge number:

- The need to develop a system of accountability. How can there be any real accountability if individual officers are not identified?
- The need to identify officers to build a case for training or remedial action if necessary. If officers believe they are being targeted, will the data be reliable?
- Law enforcement agencies want to look at the data by agency, not by individual officer.

No state that currently collects data identifies individual officers. (NOTE: Some states included the data element in original legislation, but it did not pass. However, some municipalities, such as Sacramento, Calif., do collect that data and New Jersey's pending legislation, which arises from a consent decree, contains this data element.)

The group voted 19 against and one in favor of including the officer's badge number as one of the data elements because the majority considered that accurate data could be achieved without consequences for the individual officer.

<sup>6</sup> Other data elements, considered important by some participants but receiving four or fewer "Aye" votes:

- driver's date of birth (considered unnecessary because age is already listed as a data element)
  - year of vehicle (considered unnecessary)
  - contraband found: weapons, drugs, etc. (already part of the disposition)
  - duration of stop (seen as unnecessary)
  - driver's license number (considered burdensome)
-

To further ensure data collection integrity, the group also agreed that any data collection effort the state undertakes should include partnering with an outside research specialist. According to reports coming from the Department of Justice, data collection initiatives are more successful if an external research specialist is involved with the process, from the design stage through data analysis and reporting of results.

### **Recommendations**

5. The group agreed to recommend that any data collection effort the state undertakes should include the following data elements. The first eight elements are included by consensus; the last three received majority votes.
  - location of stop
  - date and time of stop
  - age of driver
  - race/ethnicity of driver
  - reason for stop
  - disposition of stop (arrest, citation, warning, no action)
  - whether a search was conducted
  - authority for search
  - gender of driver (17 in favor, two against, one abstained)
  - whether officer knew the race before the stop (13 in favor, two against)
  - agency code (14 in favor, four against, four abstained)
  
6. The state should contract with an independent partner to design the data collection process, including development of baseline measures, development of a data compliance auditing process, and analysis of the data. This independent partner would likely be from academia, but could come from the private, nonprofit, or public sector.

### **Charge 3: To recommend how and by whom data should be collected**

In determining how data should be collected, two underlying concerns were reviewed: financial implications and mandatory vs. voluntary data collection efforts.

#### **Financial implications**

House Research presented preliminary findings on data collection costs incurred by other states and how these states are addressing the costs (Appendix F).

According to House Research, potential expenditure categories include:

- Planning for data collection design, regular reporting, and periodic statistical analysis
  - Designing and printing of forms
-

- Training on data collection for officers and relevant staff
- Data collection by officers (however, time expenditure per stop is reportedly negligible if the agency is already collecting data on each stop but higher when data collection is extended to other types of stops on which data is not already gathered)
- Data transmission method, which includes paper form, mobile data terminal, or laptop computer
- Data entry and data checking, which would require two to three additional full-time staff at the state level to process the estimated 2 million traffic stop data forms annually statewide (provided that the data form itself is standardized for all law enforcement agencies and is designed to be electronically scannable and that the process is centralized into a single state agency)
- Data collection compliance checking/audit function, which would depend on the scope of the auditing, possibly requiring one or two full-time staff
- Information systems management, probably requiring one full-time information systems staff person
- Statistical analysis, which would likely be periodic and ongoing, whether using agency staff or outside consultants and agency staff
- Development of baseline measures for comparison (possibly a separate study) that could involve using existing information (for example, census tract data) and primary data collection (for example, observing traffic flows for a sample of roadways over selected time periods, requiring two to four additional staff)
- Involvement of academic partners or an independent research facility for data collection design, development of baseline measures, statistical analysis, report writing, etc.

Because other states and jurisdictions are just beginning traffic stop data collection efforts, limited information exists regarding actual incurred costs. Nevertheless, there is cursory information the workgroup considered in its deliberations. For example, as explained in Appendix F on Pages 3 through 6:

- In Missouri, which has mandated a statewide data collection effort, estimated costs include: \$40,000 annually for one full-time paralegal plus related expenses for analysis and reporting, \$120,000 for three technical staff to redesign agency software, and \$5,000 in printing costs. The Missouri Department of Natural Resources will absorb costs for forms redesign, printing, and officer training; local governments also will assume some costs, and the Missouri Highway Patrol will absorb a large portion of the costs.
- Washington, which began voluntary data collection in 1999, estimated that mandatory collection by the Washington State Patrol and all local enforcement agencies would have been \$500,000 to \$840,000 per year for the State Patrol and approximately \$8 million annually for local agencies.

- Although California has yet to pass legislation mandating data collection, the state estimated in 1999 that mandatory state and local data collection would cost more than \$8 million annually, including \$5 million for the California Highway Patrol. California makes state grants available to local police departments that collect and submit data to the Highway Patrol on racial profiling traffic stops. The grants are appropriated according to the number of sworn officers within the department. For example, if a police department has 500 or more sworn officers, it can receive a \$75,000 grant; a 250- to 499-officer department would be eligible for a \$50,000 grant.

House Research also provided a rough estimate on what it would cost the Minnesota State Patrol to conduct a racial profiling study. The cost of updated technology that the State Patrol would need specifically to manage the data collection effort was estimated at approximately \$50,000. This does not include the cost of addressing other technology issues faced by the State Patrol. The group did not discuss these issues in detail.

The group considered one approach to help keep costs down: Send all data to a central data base, with each officer in the state using a scannable standardized form for reporting.

### **Data collection options**

The workgroup considered three data collection scenarios:

1. Mandatory traffic stop data collection by the State Patrol and by counties with a minority population of at least 5 percent; voluntary for all other jurisdictions, with incentives for participation
2. Voluntary statewide data collection, with incentives for participation
3. Mandatory statewide data collection for the State Patrol and all local law enforcement agencies

The following issues and concerns were raised, by scenario:

1. Mandatory traffic stop data collection by the State Patrol and by counties with a minority population of at least 5 percent; voluntary for all other jurisdictions, with incentives for participation
    - This is comparable to asking Minneapolis to collect data on just a few precincts.
    - People have a right to travel. Locking in on certain counties seems unfair because there is a lot of migration from reservations to cities and other reservations.
    - It would be important for the state to know if counties with a small percent of minority population are stopping a higher percent of minorities.
    - Five percent seems too arbitrary.
    - If only specific counties are required to collect data, does this mean they are being singled out as the only areas having a problem?
-

- The 5 percent threshold would leave out the major area of Duluth in St. Louis County.
  - Any form of mandatory data collection would place undue burden on law enforcement agencies and could have a “chilling” effect on peace officers.
2. Voluntary statewide data collection, with incentives for participation
- Providing rewards and incentives to participating agencies may be more likely to win compliance.
  - Voluntary data collection would cost the state less because, most likely, fewer agencies would participate.
  - According to unconfirmed data from the San Diego Police Department, California’s voluntary process has gained about two-thirds compliance by cities.
3. Mandatory statewide data collection for the State Patrol and all local law enforcement agencies

Pros:

- This may be needed to accurately assess the problem.
- It would get all cities and counties on board.
- It would make officers throughout the state more aware of the issue.
- It would encourage greater accountability among both law enforcement agencies and individual officers.
- Mandatory data collection would begin to build trust and credibility between law enforcement and communities of color.
- If data collection is not mandatory, results and recommendations may not be taken seriously by citizens.
- The Asian community strongly supports mandatory statewide data collection.
- If data collection is not made mandatory now, sooner or later it may become mandatory under a consent decree, as it has in New Jersey.
- Costs do not appear to be burdensome to the Minneapolis and St. Paul police departments.
- Eight of 17 states will mandate statewide collection in pending legislation.

Cons:

- Mandatory statewide data collection could be very expensive.
  - What if the legislature mandates data collection statewide but provides little or no funding?
-



- This would place an enormous burden on all law enforcement agencies, especially small police departments.
- There may not be the need to collect data from the entire state to determine what is happening.
- Only two states thus far have mandated statewide data collection.
- The State Patrol would need to purchase the appropriate technology for data collection.
- Peace officers may feel that they are being forced to do something they do not want to do.

### Recommendation

7. With a majority vote, 14 in favor and six against, the group recommended that the state mandate statewide data collection on traffic stops for up to two years, as described in scenario three. In addition, the state should fund all costs associated with the design and collection of data, including any design and printing of paper forms. If a law enforcement agency has the means to collect the data electronically, it could do so. Data should be entered at a central location for all law enforcement agencies. The state should also fund the analysis of the data, which would occur periodically. Data collection would continue to be undertaken for the mandated period.<sup>7</sup>

The group underscored that any data collection effort must be financially supported by the legislature. Requiring such collection without providing funding for it would put law enforcement agencies in an untenable financial situation, undermine the perceived validity of the entire study, and ultimately compromise the relationship between law enforcement agencies and the communities they serve.

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<sup>7</sup> An objection was voiced by one group member who voted against the recommendation, stating that he could support the recommendation only if data collection is undertaken for a *minimum* of two years, which was a necessary time period, in his opinion, to allow for meaningful data to be collected. The four other workgroup members who voted against the recommendation said they could not support any form of mandatory statewide data collection effort. Their reasons were (1) fear that the legislature would pass an unfunded mandate, (2) being against mandates in general, (3) that it is unnecessary for every agency to collect data for the analysis to be meaningful, (4) that the best way to deal with the issue of racial profiling is through model policy and training and voluntary data collection, with incentives, (5) that any form of mandatory data collection would place an undue burden on law enforcement agencies, and (6) that mandatory collection could have a “chilling” effect on peace officers.

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**Charge 4: To recommend how data should be used**

Group members could not agree on a specific recommendation regarding how the data should be used, other than to determine whether racial profiling exists in Minnesota. Other states plan to use data to identify law enforcement agencies that need training, and one state indicated that it would withhold state funding from agencies found to be practicing racial profiling.

The intent of the workgroup is for the final analysis and summarization of any data collection effort to be public information; however data collected to perform such analysis and summarization prior to reporting, would be non-public<sup>8</sup>.

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<sup>8</sup> One group member voiced an objection, stating the importance of having the raw data available through out the collection process to increase accountability and community support.

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# APPENDICES

## **Appendix A**

*Racial profiling workgroup members*

## **Appendix B**

House Research Information Brief  
*Racial profiling studies in law enforcement:  
Issues and methodology*

## **Appendix C**

Institute on Race and Poverty  
*Racial profiling data collection status report*

## **Appendix D**

Workgroup subcommittee  
*Draft proposal of six initiatives*

## **Appendix E**

*Essential elements of successful data collection and analysis efforts*

## **Appendix F**

*Cost considerations for racial profiling studies*

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# **APPENDIX A**

## *Racial profiling workgroup members*

## Racial Profiling Workgroup Members

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## APPENDIX B

House Research Information Brief  
*Racial profiling studies  
in law enforcement:  
Issues and methodology*

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### Racial Profiling Studies in Law Enforcement: Issues and Methodology

Many communities have undertaken racial profiling studies to examine if and how someone's race and ethnicity plays a part in stops by law enforcement. This information brief describes the central concepts, issues, and methodological challenges involved in studying racial profiling in law enforcement.

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## Introduction

The concern about racial profiling is erupting throughout the nation. Many cities and states have decided to study racial profiling, or how race and ethnicity may play a part in stops by law enforcement in their jurisdictions. Minnesota is no different. Efforts are underway to begin racial profiling studies of traffic stops in Minnesota, including separate studies by the Minnesota State Patrol, the Minneapolis Police Department, and the St. Paul Police Department.<sup>1</sup> A larger study is also being planned by the Minneapolis-based Council on Crime and Justice to evaluate the role of race in the broader justice system in Minnesota. That study reportedly will have a three-year, \$3 million budget, and will be funded with grants from the Minnesota Department of Public Safety and other sources, including private contributions.<sup>2</sup>

Generally, the announcement of a racial profiling study by police and/or other public officials typically includes a denial that racial profiling exists "within this jurisdiction," but also an acknowledgment that it would be helpful to study the pattern of police stops within the jurisdiction. The very act of undertaking such a study reaffirms the general public policy goal that policing decisions should be race-neutral. However, it also signals to law enforcement officers that extra caution may be needed to ensure that the data they collect while performing their duties should reflect a lack of bias in their own performance. Officers and their unions may publicly accept the political need for such a study, provided that such data will not be used to monitor or discipline individual officers. Simultaneously, they may feel that their integrity is being questioned, that their exercise of judgment is being limited, and that their ability to fight crime is being eroded. Finally, the announcement of such a study provides hope to many communities of color that help may finally be at hand, that something is being done about the problem that they have long claimed to exist and which, they may feel, the data will surely reveal.<sup>3</sup>

It seems unlikely, given this rather disparate set of perceptions and desires, that any racial profiling study will ever be able to satisfy all interested constituencies. The experience of other researchers in this area suggests that, more than likely, the results of the study will be at least somewhat ambiguous, with much of the resulting debate perhaps centering on data integrity and the selection of appropriate baseline measures for comparison.

The purpose of this information brief is to describe some of the central concepts, issues, and methodological challenges involved in law enforcement racial profiling studies generally,

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<sup>1</sup> "Police to Gather Race Data: St. Paul, Minneapolis Addressing Question of Bias in Traffic Stops." *St. Paul Pioneer Press* 14 April 2000: 1A.

<sup>2</sup> "Justices's Disparities in Race Draw Scrutiny: Minorities Locked up in Disproportionate Numbers." *Minneapolis Star Tribune* 9 April 2000: 1A.

<sup>3</sup> For an example of the expression of these conflicting viewpoints at the start of a racial profiling study, see: Barovick, Harriet. "DWB: Driving While Black: Incidents in New Jersey and Maryland Heat up the Issue of Racial Profiling by State Highway Patrols." *Time* 15 June 1998: 35.

borrowing heavily from the rapidly developing literature on this topic. It is intended that this overview be useful to legislators and other public officials who may be considering whether to fund or undertake such a study, or who may need to understand and critically evaluate the findings of such studies. The information brief may also be useful to police administrators contemplating or conducting a racial profiling study, as well as to community advocates involved in monitoring or using the study's findings.

It is important to note that this information brief does not contain a legal analysis or constitutional review of the underlying issues involving search and seizure, equal protection, and so on. Such an analysis and review will be forthcoming from other House Research Department analysts.

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## Part I: Issues Relating to Racial Profiling Studies

### Competing Definitions of "Racial Profiling"

The term "profiling" refers to the police practice of viewing certain characteristics as indicators of criminal behavior.<sup>4</sup> Profiling is reportedly an established law enforcement practice throughout the nation, having evolved during the past few decades with the incorporation of social science theory and statistical methodology into law enforcement's crime solving and crime prevention strategies. Although not a panacea, profiling has been shown to be a successful supplement to older and more fundamental policing strategies.<sup>5</sup>

The term "racial profiling," on the other hand, is a relatively new term and, thus, there is not yet a clear consensus on its meaning. It is partly because of this ambiguity that discussions about racial profiling are often so confusing and controversial.<sup>6</sup> In the literature to date, there appear to be at least two clearly distinguishable definitions of the term "racial profiling:" a narrow definition and a broad definition.<sup>7</sup> In both cases, the term relates to the behavior of law enforcement officers in engaging members of racial and ethnic minority groups for police scrutiny.

#### The Narrow Definition

Under the narrow definition, **racial profiling** occurs when a police officer stops, questions, arrests, and/or searches someone **solely on the basis of the person's race or ethnicity**. Critics typically use this definition when condemning racial profiling, as do law enforcement agencies when denying the existence of racial profiling.

At least some legal authorities equate this type of strict racial profiling to racial discrimination itself—which is both unconstitutional and widely scorned in this nation—and they feel that it is relatively rare among law enforcement officials. That is, they assert that it is rarely the case that

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<sup>4</sup> Barovick, op. cit.

<sup>5</sup> See for example: Douglas, John, and Mark Olshaker. *Mind Hunters: Inside the FBI's Elite Serial Crimes Unit*. New York: Simon and Shuster, Inc., 1995.

<sup>6</sup> Cole, David, and John Marcello. "Symposium: Opposing Views of Racial Profiling." *Insight on the News* 19 July 1999: 26. Cole is a professor at Georgetown University in Washington, D.C., and the author of *No Equal Justice*. Marcello is a former DEA agent who in the early 1970s developed the DEA's drug-courier profiles.

<sup>7</sup> See, for example: Kennedy, Randall. "Suspect Policy." *The New Republic* 13 Sept. 1999: 30.

police stop and subsequently investigate a person based *only* on that person's race or ethnicity; rather, they believe that other factors typically come into play.<sup>8</sup>

### **The Broader Definition**

Under the broader definition, **racial profiling** occurs when a law enforcement officer **uses race or ethnicity as one of several factors** in deciding to stop, question, arrest, and/or search someone. An example of racial profiling under this broader definition would be a police stop based on the confluence of the following factors:

- age (young);
- dress (hooded sweatshirt, baggy pants, etc.);
- time of day (late evening);
- geography (in the "wrong" neighborhood); and
- race or ethnicity (black or Hispanic).<sup>9</sup>

Under this broader definition, then, **racial profiling occurs whenever police routinely use race as a factor that, along with an accumulation of other factors, causes an officer to react with suspicion and take action.**

### **Application of the Concept to Traffic Stops and Other Policing Contexts**

Racial profiling is often discussed in the context of traffic stops by local or state police officials. However, it appears from the literature that the term is gradually being generalized to apply to other types of stops or checks by any type of federal, state, or local law enforcement official or other authority.<sup>10</sup>

The literature mentions the following examples:

- traffic stops by the highway patrol or local police;
- police questioning and searching of pedestrians in public places in urban areas;
- immigration status checks by INS officials of persons either driving or walking across the nation's borders;
- airport checks or searches of people or luggage by drug enforcement (DEA) officials; and
- ID (age) checks of bar or club patrons by bouncers.

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<sup>8</sup> For example, Kennedy wrote, "Not even Mark Fuhrman was known to detain elderly women who happened to be black." Kennedy, *op. cit.*, 35.

<sup>9</sup> Kennedy, *op. cit.*, 35.

<sup>10</sup> In a recent town meeting in Oakland, Calif., for example, one African American woman said: "All of my four sons, who are in their 40s, have been hassled by police. And we have filed three complaints... in Oakland and Berkeley. It's not only about 'driving while black,' but also 'walking while black' and 'bicycling while black'." *Oakland Tribune* 31 March 2000.

## Varying Viewpoints on Racial Profiling

As noted in the introductory section of this information brief, there are widely differing viewpoints on racial profiling, which are likely to be expressed by one or another constituency for any given racial profiling debate or study. This section summarizes the most prominent of those alternative viewpoints.

### Claims that Racial Profiling is Widespread: Growing Evidence

Many members of minority groups across the nation have long claimed that police commonly use traffic violations as a pretext to stop a vehicle to investigate other possible crimes, such as drug and/or weapons violations. For example, one of the earliest scholarly articles on this issue states:

“The stopping of black drivers, just to see what officers can find, has become so common in some places that this practice has its own name: African Americans sometimes say they have been stopped for the offense of ‘driving while black’....I have heard this phrase often from clients I represented in Washington, D.C., and its surrounding Maryland counties; among many of them, it was the standard way of describing the common experience of constant stops and harassment of blacks by police....Profiling is not the work of a few ‘bad apples’ but a widespread, everyday phenomenon that will require systemic reform.”<sup>11</sup>

In several recent incidents, empirical evidence supports claims of the existence of significant racial profiling, at least in the few jurisdictions in which data are available to test these assertions. For example, a New Jersey study reported that while black and Hispanic motorists made up only 13.5 percent of the drivers on that state’s highways, they represented 73.2 percent of those stopped and searched by the New Jersey State Patrol. Similarly, a recent study of traffic stops in Maryland from 1995 to 1997 revealed that, though black motorists made up only 17.5 percent of the drivers on certain roadways, they composed more than 72 percent of the motorists stopped and searched by the Maryland State Police. Yet another study in four large Ohio cities revealed that black motorists are two to three times as likely to be ticketed as white motorists.<sup>12</sup> Yet another study, by the American Civil Liberties Union in Illinois, showed that, although Hispanics make up less than 8 percent of the state’s population, they were 27 percent of those stopped and searched by a highway drug interdiction unit.<sup>13</sup> Finally, the U.S. General Accounting Office (GAO), a congressional research agency, recently reported finding that, of the passengers returning to U.S. airports on international flights during 1997 and 1998 who were

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<sup>11</sup> Harris, David. “‘Driving while Black’ and all other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops.” *The Journal of Criminal Law and Criminology*, vol. 87 (2), 1997.

<sup>12</sup> For a detailed discussion of these three studies, see: Harris, David. “The Stories, the Statistics, and the Law: Why ‘Driving While Black’ Matters.” *Minnesota Law Review* Dec. 1999: 277-288.

<sup>13</sup> Cole, David. “The Color of Justice: Courts Are Protecting, Rather than Helping to End, Racial Profiling by Police.” *The Nation* 11 Oct. 1999.

selected by customs officials for personal searches, a disproportionate number of African American women were subjected to more invasive searches; i.e., strip searches and x-rays.<sup>14</sup>

In several situations, lawsuits have been filed claiming racial profiling in police stops. The list of defendants in these suits includes a wide range of law enforcement agencies, including but not limited to the following: the Maryland State Police, the New Jersey State Police, the U.S. Customs Service, the Philadelphia Police Department, and the police departments in three Illinois cities: Mt. Prospect, Highland Park, and Hillside.<sup>15</sup>

Finally, the growing publication of anecdotal information supports the assertion that racial profiling is widespread nationally. The following is a typical case:

“In 1997, Charles and Etta Carter, an elderly African American couple from Pennsylvania, were stopped by Maryland State Police on their 40<sup>th</sup> wedding anniversary. The troopers searched their car and brought in drug-sniffing dogs. During the course of the search, their daughter’s wedding dress was tossed onto one of the police cars and, as trucks passed on I-95, it was blown to the ground. Ms. Carter was not allowed to use the restroom during the search because police officers feared that she would flee. Their belongings were strewn along the highway, trampled, and urinated on by the dogs. No drugs were found and no ticket was issued by the state trooper. The Carters eventually reached a settlement with the Maryland State Police.”<sup>16</sup>

### Public Perceptions of Racial Profiling

A recent Gallup Poll—involving 2,006 telephone interviews with randomly selected U.S. adults and conducted during the period from late-September to mid-November, 1999—found that 56 percent of whites and 77 percent of blacks believe that racial profiling is a widespread practice in the United States. Only 6 percent of whites but 42 percent of blacks believe that they had been stopped by the police just because of their ethnic background.

Fully 72 percent of young black males (aged 18 to 34) surveyed felt that they had been previously subjected to racial profiling by law enforcement. Correspondingly, a greater proportion of young black males reported holding “unfavorable” views of their local police (54 percent) and their state police (35 percent), compared to older black males or whites. The study

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<sup>14</sup> *U.S. Customs Service: Better Targeting of Airline Passengers for Personal Searches Could Produce Better Results*, GAO Report [GGD-00-38] April 2000. Altogether, 102,000 out of the 140 million passengers (7 per 10,000) were selected for personal searching by customs officials; the report does not indicate whether the initial selection was itself race-neutral.

<sup>15</sup> See, for example: “Congressman Seeks Illinois Racial Profiling Probe: Suburban Cops Say They Were Told to Target Minorities.” *Chicago Tribune* 27 March 2000; “Police Officers Charge Racial Profiling in Another Illinois Town.” *Chicago Tribune* 10 April 2000; “Hillside Mayor Backs Cops: Seeks Probe.” *Chicago Tribune* 11 April 2000.

<sup>16</sup> “‘Driving while Black’ is Not a Crime; So Why Are Incidents Like These Occurring Across the Country?” American Civil Liberties Union, 2 May 2000. See also: Harris, “The Stories,” *op. cit.*



reported that young black females also disproportionately held unfavorable views of local and, to some extent, state law enforcement officials, compared to older black females or whites.

The Gallup Poll study defined the term “racial profiling” in the following way, intending to be as neutral as possible so as not to steer responses:

“It has been reported that some police officers stop motorists of certain racial or ethnic groups because the officers believe that these groups are more likely than others to commit certain types of crimes. Do you believe that this practice, known as ‘racial profiling,’ is widespread or not?”

### **Denying the Existence of Racial Profiling**

Some officials assert that their disproportionately higher stop rates and arrest rates for racial minority groups do not, in fact, reflect the factoring of race into their decision making regarding whom to stop, question, detain, search, and arrest. They claim to be focusing on factors other than race in their decision making—such as driving violations and suspicious activities—and assert that if their results are racially disproportionate, this is only because these other factors are present in disproportionate amounts among the various racial groups. In essence, these officials deny that racial profiling is occurring in their organizations.

For example, John Marcello, a retired Drug Enforcement Agency (DEA) official, who reports having played a key role in developing the DEA’s airport interdiction program during the 1970s, notes that race is not on the list of common characteristics used by the agency to identify illegal-drug couriers.<sup>17</sup> He also claims that DEA agents themselves rarely, if ever, factor in a person’s race when determining whether a person fits the profile of a drug courier. Nevertheless, he acknowledges that couriers arrested by the DEA do happen to disproportionately represent various racial or ethnic groups, which change from time to time. However, as revealed in his lengthy description below, he simultaneously highlights the perceived importance of race in drug smuggling patterns and DEA agent perceptions, while nevertheless denying that race enters into interdiction decision making.

“In the mid-1970s the Colombians decided to eliminate the middleman and to control all aspects of the cocaine business from growing the plant, to processing it, to smuggling and finally to distribution on the streets of New York and Los Angeles. Most couriers arrested were Colombian. After the ‘Mariel’ boat lift of 1982, we started to see more and more Cuban couriers. In the early 1980s, in response to increased law enforcement pressure in Miami, we saw the Medellin cartel in Columbia and the Mexican Guadalajara cartels join in smuggling cocaine to the western U.S., and the courier mix came to include Mexican nationals. In 1985, the Colombian cartels started supplying cocaine to black entrepreneurs in the major cities, who would then convert it to ‘crack’ cocaine and distribute it across the U.S. There was a surge in arrests of young, black, male couriers. The Nigerian heroin smugglers in the 1980s carried the drugs themselves,

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<sup>17</sup> Cole and Marcello, *op. cit.*, pp. 24, 26.

and then they started recruiting young, white females. In the early 1990s these traffickers were using older, white males and females.

Couriers come in all races, but the courier characteristics have remained rather constant during the years. The standard profile of drug couriers includes such key elements as: cities of departure and arrival; the method of payment; the trip itinerary; the trip route; and the trip duration. These elements, coupled with the trip reservation history and the telephone callback numbers...set one passenger apart from another."<sup>18</sup>

### Arguments Acknowledging and Defending Racial Profiling

Some authorities acknowledge the existence of racial profiling under the broader definition, with race being only one of several factors used, but nevertheless defend it as appropriate given the different patterns of crime involvement by different racial groups. For example, Randall Kennedy, a professor at Harvard Law School and the author of *Race, Crime, and the Law*, has written:

"Defenders...of racial profiling maintain that, in areas where young African American males commit a disproportionate number of the street crimes, the cops are justified in scrutinizing that sector of the population more closely than others, just as they are justified in scrutinizing men more closely than women....For [some] cops, racial profiling is a sensible, statistically based tool that enables law enforcement to focus their energies more efficiently; it lowers the cost of obtaining and processing information...and [thus reduces] the overall cost of policing.... Racial profiling then...is good police work...empirically based, and above all, an effective tool in fighting crime."<sup>19</sup>

As is reflected in Professor Kennedy's statement, those who defend racial profiling generally do so on statistical grounds, by citing the empirical fact that, in certain jurisdictions, individuals associated with particular racial groups commit a disproportionate number of the crimes. National statistics could be viewed as supporting this assertion. For example, recent federal data reveal that in 1996 nationwide, blacks, who made up approximately 12.8 percent of the nation's population, represented 43.2 percent of the persons arrested for Part I violent crimes, and 32.4 percent of persons arrested for Part I property crimes.<sup>20</sup>

A related rationale for racial profiling is that it may help to deter some crimes. For example, one police officer noted in conversation that the tactic of assertively stopping, questioning, and

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<sup>18</sup> Cole and Marcello, *op. cit.*

<sup>19</sup> Kennedy, *op. cit.*, p. 30.

<sup>20</sup> *Sourcebook of Criminal Justice Statistics*, published annually by the U.S. Department of Justice, Bureau of Justice Statistics, using data gathered for the FBI's Uniform Crime Report (UCR). According to the FBI/UCR classification schema, Part I violent crimes against persons include murder, rape, robbery, and aggravated assault; Part I property crimes include burglary, larceny-theft, motor vehicle theft, and arson.

identifying young males seen driving during evening and nighttime hours explicitly identifies those drivers at a given time and place, thus depriving any potential perpetrator among them of the anonymity that is necessary to avoid arrest for certain crimes like burglary, robbery, or rape. Thus, he noted, racial profiling might well deter some would-be criminals from following through with some planned crimes.

### **Arguments Against Racial Profiling**

Arguments against racial profiling include both constitutional concerns and practical considerations. In Professor Kennedy's view, one of the strongest arguments against racial profiling is based on the equal protection clause (Fourteenth Amendment) of the U.S. Constitution.<sup>21</sup> Kennedy explains as follows:

"The argument begins with an insistence upon the special significance of racial distinctions in American life and law. Racial distinctions are and should be different from other lines of social stratification. That is why, since the civil rights revolution of the 1960s, courts have typically ruled—pursuant to the Fourteenth Amendment's equal protection clause—that mere reasonableness is an insufficient justification for officials to discriminate on racial grounds. In such cases, courts have generally insisted on applying 'strict scrutiny'—the most intense level of judicial review—to the government's actions. Under this tough standard, the use of race in governmental decision making may be upheld only if it serves a compelling government objective and only if it is 'narrowly tailored' to advance that objective. Strict scrutiny embodies the recognition, forged in the difficult crucible of American history, that the presence of a racial factor in governmental decision making gives rise to the presumption that officials may be acting in violation of someone's civil rights."<sup>22</sup>

Nevertheless, Professor Kennedy acknowledges, "Even some courts are suggesting that decisions distinguishing between persons on a racial basis do not constitute unlawful racial discrimination when race is not the sole consideration prompting disparate treatment." He notes, for example, that in a key court decision upholding a DEA agent's stop and search of a young black man at the Kansas City Airport in the early 1990s—a case in which the agent admitted considering the person's race, along with other factors, in making the stop—that "The court... declined to describe the agent's action as racially discriminatory, and thus evaded the requirement of subjecting the government's action to strict scrutiny."<sup>23</sup>

Without conceding the constitutional argument, Professor Kennedy goes on to argue against racial profiling based on its social costs. He asserts that racial profiling essentially alienates

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<sup>21</sup> For a related scholarly review of Supreme Court decisions related to racial profiling in police traffic stops, see: Harris, "Driving While Black," *op. cit.*

<sup>22</sup> Kennedy, *op. cit.*, p. 32.

<sup>23</sup> Kennedy, *op. cit.*, p. 32.

members of racial minority groups of every social stratum by adding to their resentment of the law enforcement establishment:

“Alienation of that sort gives rise to witnesses who fail to cooperate with the police, citizens who view prosecutors as ‘the enemy,’ lawyers who disdain the rules they have sworn to uphold, and jurors who yearn to ‘get even’ with a system that has, in their eyes, consistently mistreated them. For the sake of law enforcement, we need to be mindful of the deep reservoir of anger toward the police that now exists within many racial minority neighborhoods. Racial profiling is a big part of what keeps this pool of accumulated rage filled to the brim.”<sup>24</sup>

### **Critique of the "Rational Discrimination" Basis for Racial Profiling: Circular Reasoning**

As noted earlier, officials who defend racial profiling often do so on the basis of a statistically based “rational discrimination” logic, citing statistics showing that certain minorities are often disproportionately arrested or convicted for crime. However, in his recent testimony before Congress, University of Toledo law professor David Harris articulated the circularity of this rational discrimination argument.

According to Professor Harris, the rational discrimination argument rests on the assertion that African Americans commit a disproportionate share of certain crimes in the United States and, thus, it only makes sense to focus law enforcement efforts on members of that group. He noted that, as a spokesman for the Maryland State Police has said, “this is not racism; rather, it is the unfortunate byproduct of sound police policies.”<sup>25</sup>

However, Harris maintains that this argument fails because its underlying premise is wrong. He asserts that racial profiling (in traffic stops, at least) is primarily about drug enforcement, rather than other crime, and he cites statistics that purport to show little if any difference between black and white Americans in their rates of drug use or drug trafficking. He argues that statistics for drug crime, unlike those for most other types of serious crime, are largely “enforcement driven,” since drug crime is seldom reported or statistically measured apart from situations resulting in an arrest. Nevertheless, he reasons, to the extent that law enforcement targets minorities by disproportionately stopping and searching minority drivers, flyers, and pedestrians, then there will be a disproportionate number of minorities among those arrested for drug crimes.

Thus, Professor Harris concludes, racial profiling is itself responsible for producing the skewed statistics that are used to justify its continue use.

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<sup>24</sup> Kennedy, *op. cit.*, p. 33.

<sup>25</sup> Harris, David. “Data Collection: The First Step in Coming to Grips with Racial Profiling.” Testimony. U.S. Senate Subcommittee on Constitution, Federalism, and Property Rights. Washington, D.C. 30 March 2000. See also: Harris, “The Stories,” *op. cit.*

He notes that:

“The belief that blacks are disproportionately involved in drug crimes will become a self-fulfilling prophesy. Because police will look for drug crime among black drivers, they will find it disproportionately among black drivers. This will mean more blacks arrested, prosecuted, convicted, and jailed, which of course, will reinforce the idea that blacks are disproportionately involved in drug crimes, resulting in a continuing motive and justification for stopping more black drivers as a rational way of using resources to catch the most criminals.”<sup>26</sup>

As noted above, Professor Harris cites statistics purporting to show nearly equal drug usage rates by blacks and whites in the United States. Yet it would seem that his critique is not dependent on the accuracy of such statistics. That is, it would seem that to the extent that law enforcement efforts may be disproportionately focused on minorities, then minority drug violation arrest rates will be upwardly skewed, irrespective of their actual rate of drug usage and whether it is actually greater than, less than, or the same as for whites. This, however, begs the question of whether, in fact, law enforcement is or is not engaging in racial profiling. Professor Harris asserts that data collection is “surely the first step” in assessing and addressing racial profiling.

### **Levels of Police Discretion: An Important Distinction**

In explaining how racial profiling may occur in police stops, Professor Deborah Ramirez, Northeastern University School of Law, explains that traffic and pedestrian stops can be viewed on a continuum based on the degree to which an officer has the discretion to choose whether or not to make the stop.<sup>27</sup>

#### **Low-Discretion Stops**

According to Professor Ramirez, low-discretion stops are those in which an officer has very little discretion not to stop the vehicle or person. Low-discretion stops, for example, often involve an externally generated report of a crime or suspicious activity, as when a victim describes a particular suspect and the officer spots a person resembling that description. A low-discretion situation in the traffic context, for example, might involve a motorist running a red light, or speeding by more than 8 to 10 miles per hour over the limit, or driving in a manner suggesting alcohol or chemical impairment. In these kinds of situations, good policing norms may compel an officer to make the stop. Professor Ramirez cites statistics indicating that currently only about one-quarter to one-third of police stops involve situations of this type.

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<sup>26</sup> Harris, congressional testimony, op. cit., p. 4.

<sup>27</sup> Ramirez, Deborah, Jack McDevitt, and Amy Farrel. *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*. Draft. Northeastern U, 2000.

## High-Discretion Stops

According to Professor Ramirez, high-discretion stops typically involve minor infractions, for which an officer has ample discretion to decide whether or not to make a stop. In the traffic context, this might involve a driver failure to signal a turn, or a vehicle with underinflated tires, an unlighted license plate, or something hanging from the mirror. An example in the pedestrian context would be when an officer sees a person who in some way “looks suspicious” but is not engaged in any specific criminal behavior.

Ramirez explains that high-discretion stops invite both intentional and unintentional abuse. She notes that:

“Police, obviously, are just as subject to [society’s] racial and ethnic stereotypes...as any other citizen. Unless documented, such stops create an environment that allows the use of stereotypes to go undetected.”<sup>28</sup>

## Broken Windows vs. Community Policing: The Context of Racial Profiling Studies

The recent concern over racial profiling in police stops can be viewed as part of a larger law enforcement debate, pitting the broken windows theory against the community policing approach to law enforcement.

Some experts maintain that the aggressive use of high-discretion police stops can deter crime, as when the stop results in detection of contraband like guns and drugs, or when it intercepts and frightens off a would-be criminal on the way to commit a burglary, rape, robbery, or other serious crime. Indeed, aggressive police stops of this type are a basic element of “zero-tolerance” tactics, a component of the “broken windows theory” policing strategy that was pioneered by New York City, and which has been adopted by numerous other jurisdictions throughout the country.<sup>29</sup> Though this theory of policing has been widely credited with much of

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<sup>28</sup> Ramirez, et al., op. cit., p. 18.

<sup>29</sup> Wilson, James Q., and George E. Kelling. “Broken Windows.” *Atlantic Monthly*. March 1982: 29+. While the theory of “broken windows” was developed by professors Wilson and Kelling, the theory was first implemented in the early 1990s by Bill Bratton, then director of the New York City transit police, who is widely credited in law enforcement circles with restoring order and lawfulness to the NYC subway system. Then in 1994, when Rudolph Giuliani was elected mayor of New York City, he appointed Bratton to the position of chief of the NYPD so that the broken windows policing strategy could be implemented throughout the city. Crime rates in New York City plummeted through the 1990s. See: Bratton, Bill, with Peter Knobler. *Turnaround: How America’s Top Cop Reversed the Crime Epidemic*. New York: Random House, 1998.

the crime reduction seen throughout the nation during the 1990s,<sup>30</sup> it is increasingly being questioned as being overly harsh and subject to excessive use of force.

The broken windows policing strategy has been criticized, for example, for its possible role in some recent mistaken shooting deaths<sup>31</sup> and other allegedly harsh behaviors by a few NYPD officers; incidents that have been widely publicized<sup>32</sup> and, which some say, may be unfairly targeting members of minority groups.<sup>33</sup> Some critics have suggested that such excesses of police force are an inevitable development under zero-tolerance policing tactics. Such critics claim that racial profiling in both traffic and pedestrian stops is yet another consequence of this policing approach.

Some who criticize the broken windows theory of policing instead advocate the community policing approach to law enforcement. They note that a number of the major cities that have implemented community policing—including San Diego, San Jose, and San Francisco—have experienced dramatic crime reductions during the 1990s that rival or even exceed the widely publicized reductions in New York City. They further assert that these crime reductions were accomplished without resorting to racial profiling that, they say, has become commonplace in cities practicing broken windows policing. One such critic is Joseph D. McNamara, who served on the New York Police Department prior to serving as police chief first in Kansas City, Missouri, and later in San Jose, California. McNamara has written:

“During my 15 years as police chief of San Jose, California, I found that even the most valiant police work often failed to reduce crime. On the other hand, when neighborhood citizens organized and worked with teams of police officers, it was possible to drive out drug dealers, pimps, and prostitutes, reduce burglaries, and solve other problems resistant to traditional police methods. Strict enforcement was frequently part of the solution, but it was enforcement demanded by neighborhood people as opposed to the

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<sup>30</sup> For data reflecting the broad-based crime reductions since 1991, see: *Sourcebook of Criminal Justice Statistics*, published annually by the U.S. Department of Justice, Bureau of Justice Statistics.

<sup>31</sup> The most infamous of these actions has been the Amadou Diallo case in New York City in 1999, in which an unarmed black immigrant was shot and killed in a police fusillade when four white NYPD undercover officers working in an elite street-crimes unit approached Diallo in the dimly lighted vestibule of his apartment building and mistakenly judged that he was reaching for a firearm. The officers were subsequently tried and acquitted of all charges. See, for example: “Unarmed Immigrant Killed by Police is Mourned.” *Washington Post* 13 Feb. 1999.

<sup>32</sup> *Newsweek*, for example, recently critiqued the “get-tough” policies of several U.S. cities, noting that New York City has just experienced “the fourth police killing of an unarmed civilian in a little more than a year.” Cose, Ellis. “Cracks in the Thin Blue Line: Police are Under Fire from New York to Los Angeles to Louisville.” *Newsweek* 10 April 2000: 33.

<sup>33</sup> Amnesty International, a human rights organization, describes the Diallo case as “one of more than a dozen incidents in the past five years in which unarmed racial minorities have been shot in disputed circumstances [by NYPD police officers].... In many cases, the bereaved relatives of New Yorkers shot by the police have told Amnesty they are convinced the officers would have responded differently had the victims been white. The perception remains that officers are able to act with impunity in these cases.” See: “After the Verdict: The Diallo Case Should Prompt a Review of NYPD Tactics.” *Amnesty Now*, Spring 2000: 19.

random arbitrary and repressive enforcement of 'Fixing Broken Windows'....The major flaw in the 'Fixing Broken Windows' philosophy is that it creates an 'enemy class' made up of minor offenders for cops to harass and attack based on the unproved theory that doing so prevents crime."<sup>34</sup>

Criminologist George Kelling, co-creator of the broken windows theory, has responded to such criticism by working to develop a set of guidelines for police discretion, while maintaining that officers should, and inevitably do, exercise discretion in their daily encounters with citizens.<sup>35</sup> In the conclusion to his guidelines publication, Kelling notes:

"Viewing the police...as an administrative agency [that is] obliged to develop guidelines publicly that will shape its inevitable use of discretion offers one more way to develop community support and involvement in policing urban America. This viewpoint not only will improve the quality of policing but will also improve public understanding and support of police."

## Race Data Collection Practices Among the States

Recent news reports suggest that most law enforcement agencies steadfastly deny that their officers engage in racial profiling. However, it would be difficult to prove whether or not that is the case, in part because relatively few state or local law enforcement agencies record the race of all the drivers they stop. DOJ recently surveyed all state police/highway patrol agencies to determine how many of them routinely collect race information at traffic stops.<sup>36</sup> It found that whether a state collects such information depends largely on the outcome of the stop. Generally, the more serious the action taken by the officer in a stop, the more likely that a given state's protocol requests the race information.

For example, as shown in the table on the following page (recreated from the federal report), only three of the nation's 49 state police/highway patrol agencies report that their officers are required under state law to record race/ethnic information on all their traffic stops. Twelve states require that race information of the driver be recorded when a written warning is issued; 15 states require it when a vehicle or occupant search is made; 31 states require it when a citation is issued; 37 states require that it be recorded when an arrest is made; and 32 require it when the stop involves use of force. However, the study notes that not all of the states collecting racial information are doing so electronically, as would also be needed to statistically analyze racial profiling.

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<sup>34</sup> McNamara, Joseph D. "The Secret War."  
Internet: [www.IntellectualCapital.com/issues/issues92/item2277.asp](http://www.IntellectualCapital.com/issues/issues92/item2277.asp) 12 June 1997.

<sup>35</sup> Kelling, George L. *Broken Windows and Police Discretion*. Washington, D.C.: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice: October 1999: 57.

<sup>36</sup> *Traffic Stop Data Collection Policies for State Police, 1999*. U.S. Department of Justice, Office of Justice Programs.



<b>Collection of Race Information by State Police/Highway Patrol Agencies by Type of Action Taken in the Traffic Stop 1999</b>			
	<b>Number of States Collecting Race Data</b>		
<b>Type of Police Action Taken in the Traffic Stop</b>	<b>Total</b>	<b>Driver Only</b>	<b>Driver and Passengers</b>
Offer of Assistance, Verbal Warning, and/or Other Discussion	3	N.A.	N.A.
Written Warning Issued	12	9	3
Search of Vehicle or Occupants	15	6	9
Traffic Citation Issued	31	22	9
Arrest Made	37	20	17
Use-of-Force Encounter	32	N.A.	N.A.
N.A. signifies that the DOJ survey did not ask states about their policies in this situation.			
Source: <i>Traffic Stop Data Collection Policies for State Police, 1999</i> . U.S. Department of Justice, Office of Justice Programs.			

House Research Department

Despite the very recent publication date of the DOJ survey study<sup>37</sup> (February 2000), it may already be somewhat out-of-date. At a March 30, 2000, hearing held by a U.S. Senate Subcommittee on a bill that would mandate race data collection by all state and local law enforcement agencies,<sup>37</sup> a witness testified that there are now a number of similar proposals under consideration among the states.<sup>38</sup> That testimony noted the following recent developments:

- In April, 1999, North Carolina became the first state to enact legislation to require its state police—the North Carolina Highway Patrol (NCHP)—to collect data on all its traffic stops in order to determine whether racial profiling may be occurring. The New

<sup>37</sup> That proposed legislation is S.B. 821, the Traffic Stops Statistics Study Act, sponsored by Senators Coyners and Lautenberg.

<sup>38</sup> Harris, congressional testimony, *op. cit.*

Jersey state police are already collecting racial profiling information, but that is being done under a consent decree with the DOJ. This testimony seems to imply that in the other two states, reported by the DOJ survey to be collecting race information for all traffic stops (Nebraska and New Mexico) that the state police may be acting on their own volition.

- In June 1999, Connecticut became the second state to enact legislation mandating data collection in all traffic stops to assess racial profiling. This legislation is even more comprehensive than the North Carolina law, since it covers every police agency in the state.
- Bills mandating data collection for measuring racial profiling have subsequently been introduced or enacted in at least 15 other states, including: California, Florida, Illinois, Maryland, Massachusetts, Missouri, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Virginia, and Washington. According to the testimony, almost all of these state bills are variations on the theme of comprehensive data collection in the proposed federal legislation.
- Local police departments in San Diego, Houston, San Jose, Salt Lake City, San Francisco, and more than 100 other municipalities are reportedly beginning studies of racial profiling in their communities. Some of these cities—San Diego, for example—have already started data collection.

It is unclear from the congressional testimony and news reports viewed to date whether these state and local studies will be limited to traffic stops or will include other kinds of police intervention as well. What is clear from the extensive list of participating cities and states, however, is that the topic of racial profiling has caught the attention of law enforcement agencies and their governing bodies throughout the nation, and many of them are taking action to investigate whether it exists and how extensive it may be in their own jurisdictions.

As noted in the introduction, efforts are underway to begin racial profiling studies of traffic stops in Minnesota, including separate studies by the Minnesota State Patrol, the Minneapolis Police Department, and the St. Paul Police Department. These racial profiling studies are independent of a larger study which will evaluate the role of race in the broader justice system in Minnesota, planned by the Minneapolis-based Council on Crime and Justice.<sup>39</sup>

As with most other states and cities, it appears that, until now, racial data on police traffic stops have not generally been collected by law enforcement agencies within Minnesota. For example, the Violation Report Form used by the Minnesota State Patrol through 1999 does not include the race of the driver. Furthermore, unless a citation was issued or an arrest was made, the information on that form has not been stored electronically. For a state patrol traffic stop resulting in only a written warning, the officer has to complete the paper form, which routinely

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<sup>39</sup> See footnotes 1 and 2 for sources.

has been kept for only one year and then is discarded. If the traffic stop did not result in a written warning or other enforcement action, no information is logged or kept.<sup>40</sup> While House Research has not systematically inquired into local law enforcement reporting practices in Minnesota, it would appear from recent news reports that, like the state patrol, local law enforcement agencies in Minnesota generally have not previously collected the race information that would be needed for a racial profiling study.

Finally, race information is not recorded on Minnesota driver's licenses or in the Minnesota driver's license data base; thus, there appears to be no possibility for electronically linking existing traffic citation information in Minnesota to any other existing data base to obtain the necessary racial information for stopped drivers.

Thus, it would appear that in Minnesota—as has been the case in other states—any proposed study of racial profiling would need to be designed as a prospective, rather than retroactive, study. Part II provides a more in-depth discussion of a range of research design considerations for racial profiling studies.

### **Possible Behavioral Responses to Racial Profiling Studies**

The racial profiling literature suggests that both police and criminals might well change their behavior in response to the implementation of racial profiling studies. It would seem possible that law abiding members of minority groups, as well, might also respond with behavioral changes. Each of these possibilities is discussed below.

The very implementation of a racial profiling study is likely to heighten police awareness of their stop patterns.<sup>41</sup> After all, the implementation of the study signals concern about the racial profiling issue. It is not unusual for the key decision makers (e.g., the governor and state patrol chief; or the mayor and police chief) to announce at the start of a racial profiling study that they expect to find no racial profiling among their officers' stops, but that if it is found, they will deal with it.

Officers might reasonably feel that they are expected to examine their policing behavior. To be cautious, they may decide to make fewer stops, particularly of minority drivers, in the less compelling (i.e., high-discretion) stop situations. Indeed, this outcome would be consistent with the goals of those advocating racial profiling studies—that racial profiling be reduced and eliminated from policing behavior to the extent possible.

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<sup>40</sup> This information is based on a phone conversation with a spokesperson from the Minnesota Department of Public Safety.

<sup>41</sup> The expectations about police responses presented in this section are described in more detail in the later section Potential Uses of the Data.

It would appear from the public announcements that in most of the racial profiling studies currently being planned and undertaken, the data will be analyzed only in the aggregate for use in evaluating the system itself, rather than on an individual basis for purposes of monitoring and disciplining individual officers. Nevertheless, in many of those studies officer identity will be recorded along with other stop information; thus, officers might feel there is always the possibility that the data could be used against them. This could have the effect of making officers exceptionally cautious and perhaps even unwilling to make stops involving minorities.

For example, Professor Ramirez relates the findings of a racial profiling study in Great Britain in which officer identity was recorded and the data were used to monitor and discipline individual officers for their stop practices.<sup>42</sup> That study found that police behavior was indeed affected, in part beneficially.

“The volume of arrests has decreased. Indeed, the overall number of arrests and searches has dropped by nearly one-third among the selected pilot sites....[Nevertheless,] the new philosophy emphasized the quality rather than the quantity of searches. This meant focusing on the percentage of searches that resulted in arrests for serious offenses. As a result, the search productivity and arrest rates have improved.”

However, it also found that the study negatively impacted officer morale.

“At the same time, officers [who were] interviewed expressed the deep loss of morale that has influenced the effectiveness of the Metropolitan Police Department during and after the McPherson inquiry [i.e., the study]. FitzGerald indicates that ‘many officers felt a deep sense of personal injustice, perceiving their integrity systematically and relentlessly being called into question and believing they each stood indicted individually of institutional racism.’...Many officers feel frustrated by the mounting paperwork and the barriers which constrain their professional judgment. Only part of this is due to the [study]....All of this is compounded by the demoralizing effect of the McPherson inquiry and report.”<sup>43</sup>

Of equal concern in the long run is whether the changed policing practices resulting from racial profiling studies will impact crime rates. There is some fear that any reduction in police aggressiveness might result in increased crime. For example, the study in Britain argues that “there is a clear statistical relationship [i.e., a correlation] between the reduction in searches and the rises in crime [in London] during the spring of 1999.” Nevertheless, FitzGerald cautions that this relationship might not indicate a causal effect, noting that “additional analyses are necessary to determine if the reduction of searches had any direct influence on the increased rise in crime.”<sup>44</sup>

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<sup>42</sup> FitzGerald, Marian. *Stop and Search Interim Report*. London: Stationary Office, 1999.

<sup>43</sup> Ramirez, et al., op. cit., pp. 60-62.

<sup>44</sup> Ramirez, et al., op. cit., p. 63.

It is conceivable that racial profiling studies might, instead, reduce crime in at least two possible ways. First, the focusing of police stops on the more compelling (i.e., low-discretion) stop situations could result in higher rates of arrest per stop, as was found in the British experience.<sup>45</sup> Thus, such policing may better target criminals. Secondly, as claimed by the community policing advocates, the elimination of racial profiling could result in improved police-community relationships that may lead to a more effective engagement of the community in assisting the police in solving and preventing crime.<sup>46</sup>

Finally, any widespread reductions in racial profiling and improvements in police-community relations could have other benefits for minority communities. For example, many of the accounts of personal experiences involving racial profiling, such as those cases in the recent congressional testimony, suggest that persons who have been subjected to race-based police stops often develop a deep-seated fear of traveling outside their immediate community, a realistic response under the circumstances.<sup>47</sup> It would seem, then, that the elimination of race profiling in policing would reduce such fears, and that the resulting increase in the freedom to travel could have many social, economic, educational, recreational, and other benefits. For example, a poor urban minority youth might feel more comfortable about enrolling in a college, applying for job, visiting friends, shopping, recreating, and pursuing other opportunities in suburban and outlying areas, even very distant places, and even when such opportunities might involve traveling in those areas after dark.

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<sup>45</sup> Ramirez, et al., op cit., p. 59.

<sup>46</sup> Taqi-Eddin, Khaled, and Dan Macallair. "Shattering 'Broken Windows': An Analysis of San Francisco's Alternative Crime Policies." San Francisco: The Justice Policy Institute. Also see: McNamara, op. cit.

<sup>47</sup> See, for example: Fletcher, Michael A. "Driven to Extremes, Black Men Take Steps to Avoid Police Stops." *Washington Post* 29 March 1996: A22. Fletcher writes: "To cope, African Americans often make adjustments in their daily activities. They avoid certain places where they think police will 'look' for blacks. Some drive bland cars. 'I drive a minivan because it doesn't grab attention,' says Kevin. 'If I was driving a BMW'—a car he could certainly afford—'different story.' Some change the way they dress. Others who drive long distances even factor in extra time for the inevitable traffic stops they will face." Also see: Harris, "The Stories," op. cit., p. 305. Harris writes: "Many African Americans cope with the possibility of pretextual traffic stops by driving drab cars and dressing in ways that are not flamboyant so as not to attract attention. More than that, 'driving while black' serves as a spatial restriction on African Americans, circumscribing their movements. Put simply, blacks know that police and white residents feel that there are areas in which blacks 'do not belong.' Often, these are all-white communities or upscale commercial areas....Consequently, blacks try to avoid these areas, if for no other reason than that they do not want the extra police scrutiny."

## **Part II: Research Methodology for Studying Racial Profiling**

Agencies and communities undertaking racial profiling studies are being assisted in part by DOJ, particularly through its sponsorship of the development of a soon-to-be-published racial profiling study design guide by law professor Deborah Ramirez and her colleagues at Northeastern University in Boston—hereafter referred to as the Ramirez-DOJ guide or the study design guide.<sup>48</sup> Much of the information presented in the following paragraphs is synthesized from that guide.

The authors note in their introduction to the study design guide that within the past year or so “there has been a flurry of activity in this area [of racial profiling studies] and that hundreds of jurisdictions have begun to initiate data collection efforts.” They further note that many jurisdictions have undertaken these studies voluntarily, though others have done so under federal consent decrees or as a part of settlements with the ACLU. Whatever the impetus for the racial profiling study in any given state or community, the study design guide provides considerable methodological advice for collecting and analyzing the necessary racial and other information relating to the law enforcement stops within the jurisdiction.

### **Summary of Challenges in Any Racial Profiling Study**

The Ramirez-DOJ guide notes that there are major challenges in any given racial profiling study, and it summarizes them as follows.<sup>49</sup>

- How can officers determine the race or ethnicity of the citizens they stop in the least obstructive manner and without increasing the intrusiveness of the stop?
- What budgetary, time, and paperwork burdens will data collection impose on police departments?
- Will data collection procedures result in police “disengagement” by leading police officers to scale down the number of legitimate stops and searches they conduct?
- How can departments ensure the accuracy of data collection procedures and be certain that reporting requirements are not circumvented by officers who fail to file required reports or who report erroneous information?

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<sup>48</sup> See footnote 27 for citation information.

<sup>49</sup> Ramirez, et al., *op. cit.*, p. 24.

- How can departments ensure full compliance by line officers and deal effectively with any officer resistance?
- Will the data that is collected be used for research and training purposes or will it be used to discipline officers and facilitate lawsuits?
- Will the data be analyzed and compared to an appropriate measure of the statistically correct representative population? How can the parameters of that population be ascertained?

To these questions, one might add the following:

- Can the study's stakeholders collaborate sufficiently in planning and conducting the study that they will be in agreement in interpreting the findings of the study?
- Can the study's stakeholders work productively to strategize possible enhancements to the state or local justice system that could be pursued jointly following the study?
- Will the study itself bring about changes in crime rates or violation rates in the jurisdiction, and if so, will the stakeholders be able to anticipate, detect, and respond to such changes in an effective manner?

Many of these challenges are discussed in the following parts of this section.

## Defining "Racial Profiling"

Professor Ramirez and her co-authors note that one of the first tasks in studying racial profiling is to define the concept, since the results of "any analysis concerning the nature and scope of the problem will depend on the definition of racial profiling used." In their study design guide, they provide the following definition:

"We define 'racial profiling' as any police-initiated action that relies upon: (a) the race, ethnicity or national origin of an individual; rather than (b) the behavior of that individual, or (c) information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity."<sup>50</sup>

The study design guide notes that there is almost uniform consensus about two corollary principles that follow from adopting this definition of racial profiling:

- 1) that police **may not use** racial or ethnic stereotypes as factors in selecting whom to stop and search; and

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<sup>50</sup> Ramirez, et al., op. cit., p. 5.

- 2) police may use race or ethnicity to determine whether a person matches a specific description of a particular suspect.<sup>51</sup>

## Involving Stakeholders

By their very nature, racial profiling studies are likely to be controversial. The demand for such a study by communities of color is typically accompanied by assertions that racial profiling is indeed occurring in the community. Frequently, police officers take the community demand for a study as an affront to their integrity or, at a minimum, may feel unappreciated for their previous crime control efforts. Police administrators and other policymakers typically feel that racial profiling is not occurring under their watch, but nevertheless may feel torn between the community demands both to reduce crime and to avoid antagonizing communities of color and other constituencies.

It would seem predictable, then, that the results of nearly any racial profiling study will also be controversial, particularly given the ambiguities that almost necessarily arise from the fact that there is typically no perfect baseline measure against which to gauge police stop practices.

Given this strong possibility, it would benefit all stakeholders to collaborate in the study, from the design stage through the data collection, analysis, and interpretation of results. Since control over the study is typically in the hands of the law enforcement agency being studied and/or higher public officials, then it is recommended that those officials extend an invitation to communities of color and other possible stakeholders to participate in some way. Even if that involvement is limited to a consulting role, such collaboration might serve to enhance the quality of the study through improved decision making at every stage of the study, as police officials strive to understand and respond in a proactive manner to the concerns raised about the study by community representatives. Such collaboration might also help to enhance the mutual trust and respect among the stakeholders, and thereby serve to reduce the potential controversy related to interpretation of findings. Finally, such collaboration would help lay the foundation for cooperative actions that might follow.

The Ramirez-DOJ guide expressed this need in the following way:

“A critical first step to any data collection design process is to convene a task force comprised of representatives from law enforcement, members of the local community, and citizen group representatives....A local task force is best able to recognize the specific needs of community members and police within a particular jurisdiction.”<sup>52</sup>

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<sup>51</sup> Ramirez, et al., op. cit., pp. 5-6.

<sup>52</sup> Ramirez, et al., op. cit., p. 65.



## Including an Academic/Research Partner

The Ramirez-DOJ guide also recommends that outside professional research expertise be incorporated into the study from the beginning:

“Additionally, we recommend that local jurisdictions develop a relationship (either through the task force or outside the task force) with an academic or research partner. During the data collection design phase, local jurisdictions should consider who is going to analyze the stop and search data. When possible, the local jurisdiction should include members of the analysis team into the data collection design process. Knowing how the analysis will be conducted and what is needed for analysis is a critical step in the data collection design process.”<sup>53</sup>

Indeed, the design stage is the “make or break” stage of a research study. Mistakes and omissions at the design stage are often impossible to overcome later on during the analysis. Furthermore, it may be impossible to find a reputable expert willing to take on the data analysis in such a high profile study unless that person or research office has had some meaningful role in designing and conducting the study from the outset. Finally, such outside expertise may be necessary to establish broad credibility for a racial profiling study.

## Deciding Which Police Stops to Study

Next, one must decide which law enforcement “stops” to study, including the geographic area(s) and time frames of interest. For example, the study might be limited to traffic stops by the state patrol on certain interstate highways on summer weekend nights, or it might include all traffic stops by the state patrol statewide on all types of roadways on an ongoing basis. Alternatively, the study might focus on all traffic stops by local law enforcement within a particular city or neighborhood. Yet another option would be to study all police stops—whether traffic or pedestrian—within a jurisdiction.

As a practical matter, perhaps, most racial profiling studies currently underway are focusing on traffic stops rather than pedestrian stops.<sup>54</sup> From a methodological viewpoint, it would seem that the highway traffic stop situation may offer fewer methodological complexities than either city traffic stops or pedestrian stops, given the difficulty of defining a “stop” and of determining relevant baseline comparison measures for pedestrian stops.

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<sup>53</sup> Ramirez, et al., *op. cit.*, p. 65.

<sup>54</sup> For example, the planned or ongoing racial profiling studies by each of the following cities or states involve tracking only traffic stops: San Jose Police Department, San Diego Police Department, Houston Police Department, Philadelphia Police Department, North Carolina Highway Patrol, Maryland State Police, New Jersey State Police, Illinois State Police, Florida Highway Patrol, and Ohio Highway Patrol. See: Ramirez, et al., *op. cit.* Also see: Cole, “The Color of Justice,” *op. cit.*

The Ramirez-DOJ guide deals only with traffic stops, and it offers the following definition:

“A ‘stop’ is defined as any time an officer initiates contact with a vehicle resulting in the detention of an individual and/or vehicle.”<sup>55</sup>

Whatever the decision regarding which stops to study, in order to avoid bias in case selection it is important that the study pertain to all stops of the selected type, irrespective of the action taken or the outcome of the stop. For example, a traffic stop may result in a range of actions or outcomes, such as providing assistance, a fix-it citation, a verbal warning, a written warning, a traffic citation, a search of the vehicle or person(s), arrest, use of force, seizure of contraband, and/or seizure of the vehicle itself. Only by focusing on all stops, irrespective of action taken or disposition, can racial profiling be reliably measured.

The necessity to focus on all stops of a given type, however, does not preclude the use of statistical sampling of those stops, provided the sampling is designed to yield a statistically representative sample of those stops. Nevertheless, from the recent literature on racial profiling, it would appear that statistical sampling is not being used in any of the studies to date; instead, the studies generally are being designed to gather data on all relevant stops of the selected type.

### **Self-Reporting by Officers and Data Integrity**

There appears to be a consensus in the literature to date that the majority of data required for racial profiling studies should be collected by the law enforcement officers themselves. This practice is driven by practical considerations, since the alternative of assigning a ride-along observer for each squad car would likely be both intrusive and quite costly.

Nevertheless, one may anticipate perceived problems of data integrity developing out of this arrangement. For example, it might be alleged later on in the study that some stops of minorities have actually been self-coded by the officer as stops of whites. To guard against such a possibility, it would seem wise to build in some means for data checking, perhaps on a random basis throughout the study. This, of course, would increase the workload and cost of the study. And, to be meaningful, the officers would need to be kept prospectively unaware of the data checks until after they have been performed (i.e., a “single-blind” method).<sup>56</sup>

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<sup>55</sup> Ramirez, et. al., op cit, p. 64.

<sup>56</sup> One possible method of data checking, for example, would involve randomly selecting stop reports and comparing the race (and other) information reported on them to the race information reported on the drivers license record of the person to whom the vehicle is registered. The Driver and Vehicle Services Division data files would be needed for such a data check.

## Potential Uses of the Data: Effects on Police Morale, Arrests, and Crime Rates

Any concern about data integrity depends, in part, on the intended and potential uses of the stop data. Most current and planned racial profiling studies to date intend that the stop data will be used only for research purposes; thus, the identity of the officer may not need to be recorded or, if recorded, need not be analyzed.

For example, the Ramirez-DOJ guide has noted of the racial profiling study design being implemented by the San Jose Police Department that:

“In order to garner the support of the San Jose Police Officer’s Association, the local police union, it was necessary to keep the identity of the citizen and the police officer involved in the stop anonymous. Thus, the data will not be used to discipline or analyze the stops of individual officers; instead it will be used solely to evaluate the department on a system-wide basis.”<sup>57</sup>

However, it continues:

“Of course, even though the data is [sic.] not tabulated by officer identification number, since the name of the officer, the time, and date of the stop and the computer on which the data was [sic.] recorded are potentially available, the identification of the officer is not truly anonymous. It could be obtained; however, it is not routinely collected and analyzed.”

The Ramirez-DOJ guide notes that the San Diego study takes a further step, in comparison to the San Jose study, to ensure that the stop data will be used only for research purposes:

“The San Diego Police Department has ensured that during the data collection process neither the officer nor the motorist will be identified by name. The data will only be collected, used, and analyzed in the aggregate. The identification of officers was omitted from the data collection process in order to assure officers that the purpose of collecting the data was to assess whether the department as a whole was acting professionally, rather than to isolate or punish individual conduct.”<sup>58</sup>

Likewise, according to the Ramirez-DOJ guide, the study underway by the North Carolina Highway Patrol (NCHP) will not be systematically collecting individual officer identification numbers, since the department plans to use the data only to assess the prevalence of any system-wide problems in traffic stops.

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<sup>57</sup> Ramirez, et al., op. cit., p. 32.

<sup>58</sup> Ramirez, et al., op. cit., pp. 45-46.

Apparently, the collection of data identifying the officer can be perceived as a serious threat by officers, enough to affect the outcome of the study. Ramirez relates, for example, that:

“The Houston Police Department began data collection using officer identification. In response, officers began to write fewer tickets which, in turn, forced the agency to reverse its decision.”<sup>59</sup>

However, as noted earlier, Great Britain provides one example in which racial profiling data was used for monitoring, supervising, and disciplining individual officers, in addition to studying system-wide trends. As discussed earlier, the British police officers expressed deep loss of morale and sense of personal injustice upon such perceived questioning of their professional integrity.<sup>60</sup>

It is possible that there may be a related behavioral response on the part of criminals to racial profiling studies (i.e., an increased willingness to engage in crime in the context of fewer police stops and searches). That is, due to a perceived reduction in the risk of apprehension stemming from fewer random police stops, some criminals may feel more emboldened to commit crimes. Indeed, as noted earlier, the British study found that “there is a clear statistical relationship between the reduction in [police stops and] searches and the increases in crime during the spring of 1999 [in the study areas].”<sup>61</sup>

## Defining the Baseline Standard for Comparison

As noted earlier, it is often commonly assumed—though often falsely—that minorities are disproportionately involved in committing certain types of crime. Thus, what is one to conclude from a study showing that minorities are disproportionately subjected to police stops? Would such a finding then reflect: 1) good police work; 2) racial profiling; or 3) some other possibility? Obviously, the racial data on police stops cannot be analyzed in a vacuum. Ultimately, the data must be compared to other information in order to determine whether the stops of minorities have been comparatively excessive.

This comparative benchmark, or “*baseline standard*,” is perhaps the most methodologically elusive feature in any racial profiling study.<sup>62</sup> It refers to the rates at which the various racial subgroups in any given population actually engage in unlawful behavior.

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<sup>59</sup> Ramirez, et al., op. cit., p. 69.

<sup>60</sup> FitzGerald, Marian. *Final Report into Stop and Search*. London: Metropolitan Police, 1999.

<sup>61</sup> FitzGerald, *Final Report*, op. cit.

<sup>62</sup> Ramirez, et al., op. cit., p. 77.

Unfortunately, there is probably no direct, broad-based, reliable measure of violation rates (if studying traffic stops) or criminality rates (if studying pedestrian stops) that is applicable to racial/ethnic subgroups of the population. Clearly, one may not simply assume that police stops, arrests, or convictions are a valid measure of the baseline standard, since these statistics themselves are likely to reflect enforcement efforts—i.e., to be enforcement driven.<sup>63</sup>

A common approach in racial profiling studies is to use the area population breakdowns (by racial subgroup) as the measure of the baseline standard for comparison. Such a decision essentially assumes that the racial subgroups of area residents have equal or nearly equal rates of unlawful behavior. However, in any given area this assumption may be erroneous. In addition, in some areas, people from outside the study area might be responsible for much of the crime that occurs within it.<sup>64</sup> Either way, the study's findings may be invalid. Even mere skepticism about the validity of such an assumption may lead to controversy over or rejection of the study's findings by one constituency or another. This possibility has prompted researchers to consider other possible measures for use as a baseline standard in racial profiling studies.

In some studies focusing on traffic stops only, researchers have developed a baseline standard through systematic observation of the apparent racial composition of drivers using the specific roadways selected for study.<sup>65</sup> This approach is no doubt a marked improvement over the use of area population breakdowns for that purpose. However, its use nevertheless assumes that traffic and equipment violation rates and other causes for police stops are equivalent among the various racial/ethnic groups using the roadway, which might not necessarily be the case.

This measure of the baseline standard—i.e., the observed racial composition of drivers on given roadways—may be even more problematic for studies of traffic stops within urban areas and neighborhoods. For example, the racial composition of drivers in the city or neighborhood might vary considerably by hour of the day, day of the week, or even season of the year, and any given

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<sup>63</sup> Ramirez, et al., report that, despite the limitations of arrest data for use as a baseline standard, arrest data were nevertheless used for that purpose in a racial profiling study by the New York Attorney General. A variation on this approach was the use in the San Jose study of the rate of 911 calls to police from each area of the city. However, Ramirez notes that, "Such markers are already skewed or biased because the number of arrests may be the result of the disproportionate stop and searches of minorities which [they] are seeking to study" (p. 79).

<sup>64</sup> For example, statistics regularly show that white males are generally disproportionately involved in alcohol-impaired driving. In addition, arrests for alcohol-impaired driving often occur near popular bars and other entertainment facilities where alcohol is served (e.g., sports arenas), which are frequently located in or near the downtown areas of inner cities. To the extent that white suburbanites frequent those inner city entertainment facilities and are stopped for suspicion of impaired driving, their stops would statistically offset in a racial profiling study a number of other police stops of minorities, thus masking to some degree any racial profiling that might be occurring. See: *Sourcebook of Criminal Justice Statistics 1998*, U.S. Department of Justice, Bureau of Justice Statistics, tbl. 4.12, p. 346.

<sup>65</sup> For example, Professor Lamberth of Temple University, in a study of racial profiling on the New Jersey Turnpike, developed a baseline standard by determining through systematic observation the percentage of black drivers on the stretch of roadway under study. See: *State v Soto*, 734 A. 2d 350, 352 (N.J. Super. Ct. 1996) (discussing Lamberth Study).

racial subgroup might itself vary in its propensity for unlawfulness from one time period to another. For example, white motorists might be disproportionately drawn into inner city neighborhoods of color for such diverse activities as: a) daytime work (probably with low criminality); b) evening entertainment, such as to attend a professional sports event (possibly with somewhat greater criminality, such as drinking and driving); or c) explicitly to commit crimes, such as to purchase drugs or to solicit prostitution. Clearly, different methods of measuring the racial composition of drivers in the neighborhood (i.e., the baseline measure in this example) can impact the outcome of the study. However, it is not always so clear just which measure(s) ought to be used.

These challenges notwithstanding, to the extent possible any racial profiling study should attempt at the outset to define the baseline standard(s) that will be used for comparison during the analysis stage. There should also be a plan up front for acquiring the information needed for determining that standard.

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## Reasons for the Stop

Another approach that can be used to either complement or skirt the baseline standard issue involves measuring and comparing: a) the stated reason for the stop; with b) the outcome of the stop. The Ramirez-DOJ guide notes that measurement of the reason(s) for a stop is also methodologically perplexing, since officers typically consider several factors in making a stop and yet often have difficulty describing their decision making in any given case:

“Many officers have spoken of the difficulty in quantifying the decision to stop. These officers have correctly noted that the decision to stop a vehicle is the result of a large number of factors, including: the behavior of the operator of the vehicle, the experience of the officer, the particular policies and procedures of the department...the crime problems faced by a particular neighborhood, and specific police tactics.”<sup>66</sup>

Of course, the person's race or ethnicity may also constitute one of the factors being considered by the officer, whether consciously or subconsciously. It seems highly unlikely, in the context of a racial profiling study, that most officers would be willing to admit to this reason, perhaps not even to themselves.

A statistical comparison (using casewise matching) of the outcomes of police stops with the reason(s) for those stops, may help indicate whether the stops of any given officer or in any specific area involve racial profiling. The pattern most characteristic of racial profiling, perhaps, involves: a) the frequent stopping of minority drivers, followed by a vehicle and/or person search, without there being any citation issued or arrest made; coupled with b) the proportionately less frequent stopping of white drivers, but with a citation or arrest more typically resulting from the stop. Generally, such a stop and outcome pattern is interpreted as

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<sup>66</sup> Ramirez, et al., op. cit., p. 77.

reflecting not that police are treating whites more harshly, but that they are making proportionately more pretextual stops of persons of color.

As noted in an earlier section, the very existence of a racial profiling study provides an incentive for officers to minimize any stop behavior which could be interpreted as involving racial profiling. Unfortunately, it may also provide a perverse incentive for the officer to minimize the number of apparently unfounded stops of minority drivers by ensuring that those who are stopped do get cited or arrested. To the extent that officers act on that incentive, some minority drivers who might otherwise have received only a warning might now receive a citation. This possibility also highlights the difficulty of interpreting the data in a racial profiling study, since an increased citation rate for minorities could reflect either a reduction in pretextual stops associated with racial profiling or harsher treatment of the minorities who are stopped.

### **How to Record the Stop Information**

There are at least three alternative methods for gathering and recording traffic stop information:

- 1) a paper form, to be filled out by the officer immediately following each stop;
- 2) police radio, with the officer immediately communicating the essential information for each stop to the dispatcher, who immediately enters it into an electronic data base; and
- 3) mobile data terminal or on-board computer, to enable the officer working in the squad car to electronically enter the data.<sup>67</sup>

Generally, the data entry strategy chosen for a given racial profiling study builds on the existing technology in the department or agency, so that new equipment requisitions and cost are kept to a minimum.

### **Deciding What Information to Record**

Racial profiling studies vary considerably regarding which and how many data items are to be collected for each stop. In any given study, the decision regarding the scope of data to be collected may depend on such factors as: the cost of data collection; the method that will be used to code and transmit the data; the racial diversity of the jurisdiction; the particular questions of the stakeholders; and various political concerns.

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<sup>67</sup> Ramirez, et al., report the following: for the British study, a paper form is being used for data collection (p. 56); for the San Jose study, police officers have the option of entering the stop information via police radio to the dispatcher or via the mobile data terminal (MDT) located in each squad car (p. 26); for the North Carolina Highway Patrol study, the data are being electronically entered via pull-down menus using the MDT located in each patrol vehicle (p. 49); for the San Diego study, police officers enter data using laptop computers located in the squad cars (p. 38).

For example, in the study of traffic stops by the **San Jose Police Department**, only five data items are being recorded:

- driver's race/ethnicity (selecting one of eight possible codes);<sup>68</sup>
- driver's gender;
- driver's age;
- the reason for the stop (selecting from four possible codes);<sup>69</sup> and
- the disposition or outcome of the stop (selecting from eight possible codes).<sup>70</sup>

In the racial profiling study recently begun by the **San Diego Police Department**, on the other hand, the officer must record 14 data elements for each stop, including:<sup>71</sup>

- district;
- date and time;
- cause for the stop
  - moving violation
  - equipment violation
  - radio call/citizen complaint
  - personal observation/knowledge
  - suspect information
  - municipal/county code violation
- race (as perceived by the officer, using 18 possible categories);<sup>72</sup>
- sex;
- age;
- disposition
  - citation issued
  - oral warning
  - written warning
  - FI (this term is undefined in the source)
  - other

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<sup>68</sup> The eight race/ethnicity categories are Asian American, African American, Hispanic, Native American, Pacific Islander, Middle Eastern/East Indian, White, and Other. Ramirez, et al., op. cit., p.28.

<sup>69</sup> The four possible reasons for the stop are violations of the vehicle code, the penal code, the municipal code, or an APB (be on the lookout or an all points bulletin); see Ramirez, et al., op. cit., p. 29.

<sup>70</sup> Disposition or outcome of the stop is coded as: Arrest made; Warrant Arrest made; Criminal Citation issued; Traffic Citation issued, hazardous; Traffic Citation issued, non-hazardous; Field Interview card; Courtesy Service/Assistance; or No Report Completed; see Ramirez, et al., op. cit., p. 29.

<sup>71</sup> Ramirez, et al., op. cit., pp. 39-41.

<sup>72</sup> The categories used include: White, Black, Chinese, Cambodian, Filipino, Guam, Hispanic, Indian, Japanese, Korean, Laotian, Pacific Islander, Samoan, Hawaiian, Vietnamese, Asian Indian, Other Asian, and Other; see Ramirez, et al., op. cit., pp. 41-42.



- arrest (yes/no);
- search (yes/no);
- search type (vehicle/driver/passengers);
- basis for the search
  - contraband visible
  - odor of contraband
  - canine alert
  - inventory search prior to impound
  - consent search
  - fourth [amendment] waiver search (this term is also undefined)
  - search incident to arrest
  - inventory search
  - observed evidence related to criminal activity
  - other
- obtained search form (yes/no);
- contraband found (yes/no); and
- property seized (yes/no).

To further illustrate the range of possibilities for data collection, a study being undertaken by the **North Carolina Highway Patrol** will require that troopers collect the following information on each traffic stop made:

- initial reason for the stop;
- identifying characteristics of the driver (race/ethnicity, sex, and approximate age);
- type of enforcement action taken, if any, as a result of the stop;
- whether any physical resistance was encountered; and
- whether a search was conducted;

and, if a search was conducted:

- type of search;
- basis for the search;
- whether search was of vehicle, driver, and/or passengers;
- race/ethnicity and gender of each person searched; and
- description of any contraband found and whether any property was seized.<sup>73</sup>

### **Coding the Driver's Race/Ethnicity**

The various studies also differ considerably regarding the level of detail being coded for driver race/ethnicity. In the study by the **North Carolina Highway Patrol**, for example, the driver's

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<sup>73</sup> Ramirez, et al., op. cit., pp. 48-49.

race/ethnicity will be recorded based on the officer's perception using the following five categories:

- White;
- Black;
- Indian;
- Asian; or
- Other;

in addition to noting whether the person appeared to be:

- Hispanic or Non-Hispanic.

The **San Diego study**, on the other hand, will use an 18-category schema to code the driver's race/ethnicity, including such narrow categories as "Laotian," "Cambodian," and "Vietnamese," as well as "Filipino," "Guam," "Samoan," "Hawaiian," and "Pacific Islander." It would seem that the use of such a complicated coding schema might be more time-consuming and error prone and yet, perhaps no more useful in analysis, than the simpler North Carolina schema. Nevertheless, the highly detailed coding schema developed for the San Diego study may indeed be optimal for that community, since the level of detail for race/ethnicity (and for any other data items collected) must be tailored to needs of local policymakers and should reflect the actual racial/ethnic diversity in the locality under study. In short, no single coding schema can be expected to fit everywhere.

This principle applies to all data items in any racial profiling study. The data collection protocol should be designed to be used as efficiently as possible to accurately gather only the data that will indeed prove useful during analysis. In addition, the data collection protocol should be tailored to the local or state situation, recognizing that no single study design will be optimal everywhere.

Perhaps the following six-category schema would be adequate for coding race/ethnicity in race profiling studies in Minnesota:

- White
- Black
- Latin American/Hispanic
- Asian/Pacific Islander/Native Hawaiian
- Native American/Eskimo/Inuit/Aleutian Islander
- Middle Eastern/East Indian/Mediterranean-North African

Most racial profiling studies base the identification of the driver's race/ethnicity on the officer's perception rather than employing any more direct method of inquiry. Not only is this approach less intrusive than a direct inquiry of the driver, but to the extent that racial profiling may be occurring, it is the officer's perception of the driver's race/ethnicity, rather than the person's actual race/ethnicity, that is the operative factor in the stop decisions. Nevertheless, it should be

anticipated that any perception-based, race-coding schema will be less than perfectly reliable, since astute officers might well occasionally disagree on the apparent racial identity of people whom they stop. Such measurement error will inevitably complicate the analysis to some degree.

## Epilogue: Looking Beyond the Study

Given the inherent methodological limitations to even the best-designed racial profiling study—especially the difficulty of defining a suitable baseline measure for comparison of the stop data—it is unlikely that any given study will completely satisfy the competing expectations and desires of all the study's stakeholders or constituencies. For this and other reasons, it would seem advisable at the outset of a racial profiling study for the stakeholders to begin collaborative planning for justice system improvements to address the underlying goal of racial equality within the justice system. It may not be necessary to conclude that the system is broken and to assign blame before moving forward to enhance that system. The underlying rationale for such action might be more consistent with the assumption that no system is perfect and, thus, that there is always opportunity for improvement.

Presumably, race-neutral justice is a shared goal within communities throughout the nation. The very undertaking of a racial profiling study within a community is essentially a reaffirmation of this community value. Such a study focuses community attention on that goal and provides the community with an opportunity to work toward its attainment, even apart from the exact findings of the study itself.

One strategy for immediate system enhancement that arises often in the emerging racial profiling literature calls for enhanced training for law enforcement personnel to better sensitize officers to the subtle and unintended ways in which broad-based racial assumptions and stereotypes may lead to racial profiling and other racially skewed justice outcomes, just as they may lead in the larger society to racially skewed patterns in employment, housing, education, and other major societal activities. Convincing police officers and other public officials of the continuing need for such training may turn out to be one of the chief consequences of racial profiling studies.

Another strategy for the attainment of equal justice might involve redoubling efforts to recruit minority members into positions of responsibility throughout the justice system.<sup>74</sup> Of course, officials system-wide regularly note that their offices have long been pursuing the recruitment and retention of qualified minorities, and they bemoan the difficulty of attracting qualified and interested applicants. This experience would seem to suggest that broader strategies may be needed, as well, such as strategies aimed at the earlier preparation and encouragement of children of color for careers in the justice system.

These are merely two examples of strategies that might help to enhance race-neutrality within the justice system. Collaborating groups formed for the immediate purpose of conducting racial profiling studies could undoubtedly brainstorm other strategies and develop related specific

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<sup>74</sup> One example of the benefits that can result from such a strategy involves the recent recruitment by the Minnesota Department of Natural Resources of Hmong persons into conservation officer positions, resulting in increased awareness of and concern for state hunting laws by members of the Hmong community. Members of the Hmong community have also been recruited into the St. Paul Police Department to serve in a similar capacity as liaison officers.

methods for implementing those strategies, with the ultimate goal of enhancing race neutrality in the justice system. Perhaps they could save valuable time and avoid much unnecessary controversy by beginning that effort early on in the context of the study itself.

## APPENDIX C

Institute on Race and Poverty  
*Racial profiling*  
*data collection status report*

**The Institute on Race and Poverty**  
**Racial Profiling Data Collection Status Report**  
**September 6, 2000**

## **I. Background**

Racial profiling can be defined in various ways. Under the narrowest definition, racial profiling occurs when a law enforcement officer stops and questions, searches and/or arrests someone *solely on the basis of that person's race or ethnicity*. This definition, which unfortunately has been incorporated into a few states' anti-profiling statutes, is so narrow that it would exclude police actions based, for example, on a person's race and age, or on a person's race and the high crime rate of the neighborhood. A broader definition, encompassing officers' *use of race or ethnicity as a factor* in deciding to stop, question, search or arrest someone, is more realistic. A racial profiling study design guide produced for the U.S. Department of Justice by Northeastern University law professor Deborah Ramirez and her colleagues, contains this definition:

We define "racial profiling" as: any police-initiated action that relies upon: the race, ethnicity or national origin of an individual rather than the behavior of that individual, or information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.<sup>1</sup>

Minnesota's disparate imprisonment rates for whites and persons of color have been the subject of much discussion since the release in May, 2000 of a report by Human Rights Watch, showing that a black man in Minnesota is 27 times more likely than a white man to be in prison.<sup>2</sup> Given the devastating impact of the disproportionate imprisonment rates on individuals, families and communities of color, the eradication of any policies and practices of law enforcement agencies that unfairly contribute to the disparities must be considered one of today's most pressing civil rights issues. Available evidence suggests that racial bias in the criminal justice system may be most acute in the initial stages of interaction between law enforcement and the general public.

In most states, police are not required by law to collect data regarding the race and ethnicity of individuals they stop, so evidence regarding the extent of racial bias is limited. However, the few studies conducted so far reveal substantial overrepresentation

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<sup>1</sup> Deborah Ramirez, Jack McDevitt and Amy Farrel, A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned. Draft. Northeastern U. (July 15, 2000), p. 6.

<sup>2</sup> Human Rights Watch, Punishment and Prejudice: Racial Disparities in the War on Drugs (May 2000), p. 11.

of people of color among those stopped by the police. For example, a 1996 study in Maryland found that while African Americans accounted for only 16.9 percent of the drivers on I-95, 72.9 percent of the drivers stopped and searched by the Maryland state police on I-95 were African American.<sup>3</sup> Studies of racial profiling have also shown that people of color are not more likely than whites to be carrying drugs in their vehicles.<sup>4</sup> Thus, the traditional law enforcement justification for racial profiling – people of color are targeted because they are more likely to be guilty – is unfounded.

Racial profiling is most commonly associated with DWB (driving while black/brown). This practice extends into other aspects of the lives of people of color. For example, African Americans and Latinos are stopped in white neighborhoods simply because they look like they “don’t belong.”<sup>5</sup> The literature examines other “. . . while black” phenomena: walking while black, idling while black, standing while black, shopping while black, and breathing while black.<sup>6</sup> This injustice cuts across racial, class, and generational lines, creating an opportunity to form broad-based coalitions to address the problem.

Because the so-called “war on drugs” targets people of color, it has resulted in pervasive racial profiling by the police in the enforcement of drug laws. In fact, some would argue that skin color has now become a proxy for criminality.<sup>7</sup> The emergence of crack cocaine in 1986 and the exaggerated press accounts of inner-city crack use have reinforced the public’s impression that drug use is predominately a problem among low-income, urban, communities of color. Subsequent operations undertaken in cities across the nation have targeted these communities where drug dealing is easy to detect.<sup>8</sup> As a result, arrests for drug possession reported by state and local police nearly doubled between 1981 and 1988.<sup>9</sup>

In 1986, the Drug Enforcement Agency (DEA) introduced a racially biased drug courier profile into the highway patrol in a nationwide drug interdiction training program called “Operation Pipeline.” Approximately 27,000 police officers in 48 states have been trained to use pretext stops in order to find drugs in vehicles under this program.<sup>10</sup>

These policies of racial profiling are based on the untrue premises that most drug offenses are committed by minorities, and that profiling practices help catch criminals. Because

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<sup>3</sup> David A. Harris, *Driving While Black: Racial Profiling on Our Nation’s Highways*, An American Civil Liberties Union Special Report, (June 1999), at 21-22.

<sup>4</sup> Ramirez, et. al., *supra* note 2, at p. 19-20.

<sup>5</sup> John Gibeaut, *Marked for Humiliation*, 13 Nat’l B.A. Mag. 20 (1999).

<sup>6</sup> See David A. Harris, *The Stories, the Statistics, and the Law: Why Driving While Black Matters*, 84 Minn. L. Rev. 265, 292-94 (1999); Russell, *Driving While Black*, at 721-725.

<sup>7</sup> Harris, *Driving While Black*.

<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.* at 7.



police look for drugs mainly among African Americans and Latinos, they find disproportionate numbers of people of color with contraband. Consequently, more minorities are arrested, prosecuted, convicted, and jailed, thus reinforcing the perception that drug trafficking is primarily a minority activity, and perpetuating the assumption that it makes sense to stop a disproportionate share of blacks.<sup>11</sup> The government admits, however, that 80 percent of the nation's cocaine users are white, and typically middle-class and suburban.<sup>12</sup> Moreover, using minor traffic violations to find drugs on the highway is like trying to find needles in the haystack. For example, in 1997, the California Highway Patrol canine units stopped nearly 34,000 vehicles, of which only two percent were carrying drugs.

The consequences of these policies and practices – along with harsher sentencing guidelines and mandates – are alarming. According to a 1999 report by The Sentencing Project for the U.S. Commission on Civil Rights, out of a total of 1.7 million inmates in the U.S. either awaiting trial or serving time, approximately 400,000 are in for drug offenses. African Americans constitute 13% of the country's drug users; 37% of those arrested on drug charges; 55% of those convicted; and 74% of all drug offenders sentenced to prison.<sup>13</sup>

The notion that minorities are more likely to engage in criminal activity means that, to the police, anyone who is African-American is automatically suspect every time s/he drives a car. Suspicion is thus focused on an entire racial group, and race becomes a proxy for general criminal propensity.<sup>14</sup>

The use of racial profiling demands our attention. By addressing this issue, we may be able to reduce discriminatory incarceration rates and reduce a source of tension between law enforcement agencies and personnel and communities of color. Further, the costs associated with race-related police abuses are significant, and include psychological trauma, humiliation and degradation, and a decline in the legitimacy of the criminal justice system.<sup>15</sup> Police brutality lawsuits and institutional racism cost taxpayers tens of millions of dollars.<sup>16</sup> It is intolerable to accept "blackness" as a standard indicator of criminality.<sup>17</sup>

#### A. The Effect of *Whren v. United States*

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<sup>11</sup> Id at 3.

<sup>12</sup> Id. at 6.

<sup>13</sup> Id. at 7.

<sup>14</sup> Harris, at 268.

<sup>15</sup> Kathryn Russell, *THE COLOR OF CRIME* (1999) AT 44.

<sup>16</sup> Id at 45.

<sup>17</sup> KATHERYN K. RUSSELL, *Driving While Black: Corollary Phenomena and Collateral Consequences*, 40 *Boston College L. Rev.* 717, 721 (1998).

The literature concludes that the U.S. Supreme Court's *Whren* decision marked a significant decline in the civil rights of minorities. *Whren* held that the temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective.<sup>18</sup> A police officer who observes a minor traffic violation – a burned-out taillight, a cracked windshield, failure to signal when changing lanes – may stop the driver even if a hypothetical “reasonable officer” would not have “been motivated to stop the car by a desire to enforce the traffic laws.”<sup>19</sup> The officer may ask the driver questions unrelated to the purported purpose of the stop, and may attempt to secure consent to search the car.

The *Whren* decision has given the police virtually unlimited authority to stop and search any vehicle they want.<sup>20</sup> David Harris suggests that under *Whren* we can expect African Americans and Latinos to be subjected to a greater number of pretextual traffic stops. *Whren* authorizes the use of police power against racial minorities in a disparate way, and Harris expresses disdain that the Supreme Court has failed to curb such abuse.<sup>21</sup>

*Whren* is just one in a series of cases that has undermined the rights of African Americans in the criminal justice system. *Terry v. Ohio*, for example, held that police can conduct a limited seizure and patdown search of a person based on a degree of suspicion that is less substantial than the “probable cause” standard that police must satisfy when conducting arrests.<sup>22</sup> “Reasonable” suspicion was held to be enough to perform a “*Terry* stop and frisk” in response to “the need for law enforcement officers to protect themselves and other prospective victims of violence.”<sup>23</sup>

The *Terry* case involved two black men standing on a street corner, peering into store windows in downtown Cleveland. A white plainclothes police officer concluded that the men were in the process of “casing a job.” The officer grabbed Terry, pat down his outer clothing, and ultimately found guns on both men. In its decision to protect public safety over individual liberties, the Supreme Court excluded any discussion of race, which presented a dilemma in its analysis.<sup>24</sup> The search and seizure had to be supported by specific facts that gave rise to reasonable suspicion, yet the officer articulated no reason for stopping the men other than “they didn’t look right to me.” In response to an amicus curiae brief filed by the NAACP, the Court explained, “the wholesale harassment by

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<sup>18</sup> *Whren v. United States*, 517 U.S. 806 (1996).

<sup>19</sup> *Id.* at 808.

<sup>20</sup> Harris, *Driving While Black*, at 8.

<sup>21</sup> David A. Harris, *Driving While Black and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 *J. Crim. L. & Criminology* 554 (1997).

<sup>22</sup> 392 U.S. 1, 20-27 (1968).

<sup>23</sup> *Id.* at 24.

<sup>24</sup> Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 *N.Y.U. L. Rev.* 956, 964-69 (1999).

certain elements of the police community, of which many minority groups, particularly Negroes, frequently complain, will not be stopped by the exclusion of evidence from any criminal trial," and explained that exclusion would unnecessarily hamper and endanger police officers.<sup>25</sup>

In *United States v. Martinez-Fuerte*, the Court upheld the use of racial profiling for inspections at fixed checkpoints along the Mexican border without probable cause or reasonable suspicion of criminal activity. The Court upheld the practice on the ground that the intrusion was "sufficiently minimal that no particularized reason need exist to justify it."<sup>26</sup>

### B. Racial Profiling as a Civil Rights Issue

At every stage in the criminal justice process, people of color are treated far more severely than their white counterparts. Black citizens face a greater danger than whites that police will violate their Fourth Amendment protections: police use greater force against blacks, and black suspects may face greater difficulty in distinguishing between police requests that are mandatory and those that may be obeyed at the suspect's discretion.<sup>27</sup> In response to this institutional injustice, David Harris writes, "[i]n a society dedicated to the ideal of equal justice under the law, forcing one group of citizens to put up with disparate treatment because of the color of their skin is positively abhorrent." Harris rejects the policy of treating all citizens like criminals in order to catch the offenders, because this policy choice favors crime prevention over all other values.<sup>28</sup>

Robin K. Magee asserts that the Supreme Court "has perpetuated a paradigm that privileges (often) white police officers with a presumption of innocence, contrasted with the presumption of guilt that burdens black males, which undermines their ability to receive fair hearings in cases involving police brutality, misconduct, or corruption."<sup>29</sup> She further explains that "racially biased results in the criminal justice system are a consequence of the combined disadvantages of persons of color and the advantages of whites and symbols of 'the whiteness.'"<sup>30</sup>

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<sup>25</sup> *Terry*, 392 U.S. at 14-15.

<sup>26</sup> 428 U.S. 543, 563 (1976).

<sup>27</sup> Christo Lassiter, *Eliminating Consent from the Lexicon of Traffic Stop Interrogations*, 27 *Cap. U. L. Rev.* 79 (1998).

<sup>28</sup> David A. Harris, *Car Wars: The Fourth Amendment's Death on the Highway*, 66 *Geo. Wash. L. Rev.* 556 (March 1998).

<sup>29</sup> Robin K. McGee, *The Myth of the Good Cop and the Inadequacy of Fourth Amendment Remedies for Black Men: Contrasting Presumptions of Innocence and Guilt*, 23 *Cap. U. L. Rev.* 151 (1994).

<sup>30</sup> *Id.*

Pretextual stops aggravate years of accumulated feelings of injustice, resulting in distrust by African Americans toward the criminal justice system. Many courts have upheld the “out of place” doctrine, which allows officers to use a person’s race as a basis for a stop if that person is in an area where another race predominates.<sup>31</sup> Such a policy encourages police to view black men as de facto guilty, and results in the restriction of African Americans’ freedom of movement.

Katheryn K. Russell has identified protective mechanisms that persons of color have developed to avoid stops – sitting with perfect posture while driving, traveling at precisely the posted speed limit, avoiding certain neighborhoods, not wearing baseball caps, avoiding flashy cars – or to minimize potential for harm if stopped – placing both hands on steering wheel, responding to officer’s questions with “sir” and “ma’am,” keeping the car radio tuned to a classical music station.<sup>32</sup>

A majority of whites believe that blacks face racism at the hands of the police, so the bias in the system undermines the integrity of the entire criminal process in the eyes of all people.<sup>33</sup>

### **C. Racial Profiling is Unsound Policing**

Racial profiling not only discriminates against communities of color, it is also simply an unsound, inefficient method of policing. The percentage of cars stopped for pretextual reasons that are found to be actually carrying contraband is extremely low. As noted above, in 1997 the California Highway Patrol Canine Unit stopped and searched 34,000 vehicles as a part of “Operation Pipeline”, a major drug interdiction program that relies on pretext stops to search for illegal drugs. Of the 34,000 vehicles stopped, only 2% contained any illegal drugs. David Harris points out that programs like “Operation Pipeline,” which are based on a high volume of pretext stops and searches, rely heavily on racial profiling. He highlights a study of a similar program that was initiated by the Illinois State Police called “Operation Valkyrie.” Troopers assigned to Valkyrie units stopped Hispanic drivers for traffic violations two or three time more frequently than other ISP officers. This discrepancy became especially clear in the case of discretionary offences such as failing to signal a lane change. In addition, while Hispanics comprise less than eight percent of the Illinois population, and take fewer than three percent of the personal vehicle trips, they comprised 27 percent of the searches conducted by Valkyrie officers. In one district, where less than 1 percent of the population is Hispanic, 41 percent of the people subjected to police searches were Hispanic. Similar disparities were found for African-Americans.<sup>34</sup>

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<sup>31</sup> RUSSELL at 38.

<sup>32</sup> Id. at 34.

<sup>33</sup> Harris, *The Stories* at 268-69.

<sup>34</sup> Harris, *Driving While Black*, at 18.

A common law enforcement justification for such disparities is that it makes sense to stop people of color in greater numbers, because they are more likely to be guilty. Yet data collected in [Maryland? New Jersey?] show that neither African Americans nor Hispanics are more likely than whites to be found with contraband in their vehicles. [citation] As a result, state and local police departments put a lot of effort and resources into these racially discriminatory strategies and get very little out of them.

Another crucial reason why racial-profiling is an inefficient method of policing has to do with community policing. Racial-profiling, or the widespread pretextual stopping and searching of innocent people of color, tends to alienate communities of color from those who are supposedly there to "serve and protect" them. This makes citizens of color less likely to cooperate with law enforcement officers. Because a major impediment to successful police work is a lack of community support, racial profiling actually reduces, rather than enhancing, police effectiveness.

Data collection can be a useful management tool for law enforcement agencies to monitor the performance of their officers, and to eliminate the discriminatory and inefficient practice of racial profiling. Although racial profiling often occurs because of systemic factors, procedures, and law enforcement structures, it cannot be disputed that there are some bad police officers that engage in unacceptable behavior. By using data collection as an oversight and management tool to insure officer accountability, departments could identify officers who engage in profiling and other unacceptable forms of behavior and thereby work to eliminate the problem on both a personal and a departmental scale.

#### **D. Suggested Solutions**

The literature offers many strategies for curbing the use of racial profiling for the alleged purpose of reducing crime. Sean Hecker suggests that "[p]olice civilian review agencies, vested with the power to investigate and address the problems associated with pretext stops, offer the best approach to fighting the real and perceived discrimination in pretextual traffic stops."<sup>35</sup> Jennifer Larabee asserts that there should be a new equal protection test for analyzing consideration of race by police in detaining motorists for traffic violations.<sup>36</sup>

Similarly, Tracey Maclin suggests that because pretextual traffic stops unreasonably use racial profiling, the Supreme Court should make racial impact a factor in determining the constitutionality of the pretextual seizure.<sup>37</sup>

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<sup>35</sup> Race and Pretextual Traffic Stops: An Expanded Role for Civilian Review Boards, 28 Colum. Hum. Rts. L. Rev. 551 (1997).

<sup>36</sup> Note, "DWB (Driving While Black)" and Equal Protection: The Realities of Unconstitutional Police Practice, 6 J.L. & POL'Y 291 (1997).

<sup>37</sup> Race and the Fourth Amendment, 51 Vand. L. Rev. 333 (1998).

The ACLU explains that Title VI of the Civil Rights Act of 1964 could serve as an important protection against civil rights violations. Title VI prohibits any program or activity that receives federal funding from discriminating on the basis of race.<sup>38</sup> Every law enforcement agency receives federal funding.

The ACLU-Northern California has established a hotline for people to call if they believe they have been stopped or searched by police only because of their race.

Most authors advocate the passage of legislation requiring law enforcement officials to collect data on the race and ethnicity of the motorists they stop. Without such data it is extremely difficult to prove that race-based stops actually happen and that this problem deserves the voting public's attention. Other plans of action include policy reform and voluntary data collection, police training, litigation, grassroots organizing, and expanding public education efforts. Additionally, the ACLU advocates ending the use of pretext stops, such as the use of minor traffic violations to find drugs on the highways; passing the federal Traffic Stops Statistics Study Act to document the disproportionate number of minorities stopped; ensuring that racial profiling is not used in federally funded drug interdiction programs; and collecting traffic stop data in every major city.<sup>39</sup>

David Crump warns that "Driving While Black Bills" do not make an individual claim of racial discrimination by the police more readily available than it is under current equal protection precedent. The results of statistical studies of racially motivated stops are generally not admissible in judicial or administrative proceedings.<sup>40</sup> Litigation about profiling is challenging, given that the Supreme Court fails to provide an effective remedy for discriminatory pretextual traffic stops.<sup>41</sup> Precedent shows that the Equal Protection Clause will not protect racial minorities from racially motivated stops.<sup>42</sup>

## II. Who is Collecting Race and Other Data on Stops and Why

Police departments begin collecting racial data under one of four circumstances:

- Legislation mandates data collection;
- Litigation forces data collection;
- Executive order or local ordinance requires data collection;
- Departments volunteer due to general public concern or request.

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<sup>38</sup> ACLU, 1999 at 2.

<sup>39</sup> ACLU May 1999 at 38-41.

<sup>40</sup> Evidence, Race, Intent, and Evil: The Paradox of Purposelessness in the Constitutional Racial Discrimination Cases, 27 Hofstra L. Rev. 285 (1998).

<sup>41</sup> Angela J. Davis, Race, Cops, and Traffic Stops, 51 U. Miami L. Rev. 425 (1997).

<sup>42</sup> Jennifer Larabee, Note, "DWB (Driving While Black)" and Equal Protection: The Realities of Unconstitutional Police Practice, 6 J.L. & POL'Y 291 (1997).

## **A. Legislation**

Nine states have enacted legislation aimed at curbing racial profiling: Connecticut, Kansas, Missouri, North Carolina, Oklahoma, Oregon, Rhode Island, Tennessee, and Washington.

### **Connecticut Act**

The Connecticut Act, passed June 28th, 1999, outlaws racial profiling by law enforcement agencies. Law enforcement agencies in the state must adopt a written policy that prohibits stops, searches, and detentions based on race, color, ethnicity, age, gender or sexual orientation.

Beyond the basic prohibition of racial profiling, the Act establishes requirements for the collection of information at all traffic stops. Departments are required to record:

1. The total number of people stopped;
2. The race/ethnicity, gender, and age of each person stopped;
3. The reason for the stop (the alleged violation);
4. Whether the stop resulted in a search, citation, or arrest.

This information is the minimum required, but departments may collect more at their own discretion.

The collected information must be presented to the state attorney general in annual reports. In addition, each complaint received by a department pursuant to the Act, along with written documentation of the review of the complaint, must be given to the attorney general. Finally, the attorney general's office, having received these reports, must review the information, and present their findings regarding police stops to the Governor and Assembly by Jan. 1 2002. The Act's requirements of department reports and state review are in effect only until January, 2002.

### **Kansas Act**

The Kansas Act requires the governor, with the assistance of the attorney general and the Kansas Law Enforcement Training Commission, to "develop a request for proposal for a system" to collect and report statistics relating to people who come into contact with law enforcement.

Proposals submitted are to include a system to collect data on a "statistically significant" sample of people arrested, stopped while driving, and stopped as pedestrians. The data collected is to include the race, ethnicity, gender, age, and residency by state and county

of each person stopped or arrested. Data collected may not contain any information revealing the identity of any individual.

Proposals must also include a schedule and plan of implementation, including training, and a system for collecting complaints of bias received by law enforcement agencies.

The governor will select the most comprehensive proposal for implementation, "subject to the availability of any grant or grants for such purpose from the United States department of justice or any other governmental or private agency.

The results of the study are to be submitted to the governor and attorney general within 90 days of the conclusion of the study. The governor will then submit a report to the legislature, with at least one of the following: an evaluation of the study, recommendations for expanding the study and/or making the study permanent, or recommendations to improve law enforcement training and operations to address racial, ethnic, gender, age or residency bias.

### **Missouri Act**

The Missouri Legislature recently passed a bill mandating data collection that is expected to be signed in June. Every time peace officers stop a car, the bill requires them to record:

1. The age, gender, and race of the person stopped;
2. The alleged violation;
3. Whether a search was conducted;
4. If a search was conducted, whether the person consented, what the probable cause for the search was, whether the person's property was searched, and the duration of the search;
5. Whether any contraband was found and what kind;
6. Whether a warning or citation was given, and if so what for;
7. Whether an arrest was made and what for;
8. The location of the stop.

Each agency reports to the attorney general, and the attorney general analyzes the information and reports to the governor, the assembly, and local agencies. The attorney general's report must include the total number of vehicles stopped, the number and percentage of stopped vehicles that were driven by each particular minority group, and a comparison between that percentage and the percentage for the state's population.

In addition to mandating the collection of the above information, the bill sets guidelines for law enforcement agencies to follow regarding race-based stops. Agencies must adopt policies that prohibit the routine use of pretextual traffic stops. Furthermore, agencies must conduct periodic reviews of the attorney general's report to determine if any of their officers are disproportionately stopping minorities. If they are, an investigation must be



held, and officers who don't comply must submit to appropriate counseling and training. Annual "sensitivity" training is to be given that "shall stress understanding and respect for racial and cultural differences" and noncombative law enforcement methods for a multi-cultural environment. Also, agencies are authorized to use federal community policing funds to purchase video cameras or microphones for their squad cars.

Finally, the bill states that cities or counties "may" set up civilian review boards. These boards are authorized only to make recommendations, and may not make recommendations based solely on an unsworn complaint or statement, or on unsubstantiated or withdrawn complaints.

### **North Carolina Act**

This Act, passed April 22, 1999, adds the collection of traffic stop information to the duties of the pre-existing Division of Criminal Statistics, which is under the auspices of the Department of Justice and the State Attorney General. The information that is required to be collected at each stop is more thorough than the Connecticut requirements. The officers must record:

1. The number of drivers stopped and whether a citation or warning was given;
2. The race, ethnicity, age, and gender of each person stopped;
3. The alleged violation;
4. Whether a search ensued;
5. Whether the vehicle, personal effects, driver, or passengers were searched, and the race, age, and gender of each person searched;
6. Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion, as well as the basis for consent or the reasons for probable cause or suspicion;
7. Whether contraband was found, and what type and the amount of contraband;
8. Whether a citation or warning was given;
9. Whether an arrest was made;
10. Whether any property was seized, and what it was;
11. Whether the officers encountered any physical resistance;
12. Whether the officer used force;
13. Whether any injuries resulted;
14. Whether the circumstances of the stop were the subject of an investigation, and the results of the investigation.

This information need not be collected in connection with impaired driving checks or other types of roadblocks, vehicle checks, or checkpoints.

The Division is also required to analyze the information, correlate it with information collected by federal agencies, and provide reports to the governor and assembly biennially.

## **Oklahoma Act**

The Oklahoma Act outlaws racial profiling, and states that race may not be used as a basis for probable cause or suspicion. The Act makes racial profiling, defined as "the detention, interdiction or other disparate treatment of an individual solely on the basis of the racial or ethnic status of such individual," a misdemeanor.

The Act requires every state and local law enforcement agency to adopt a written policy outlawing racial profiling as defined in the Act.

The Act also sets up a procedure by which a person who believes s/he has been stopped or arrested in violation of the Act can file complaints with the Oklahoma Human Rights Commission, and with the local prosecutor. A copy of each complaint will be forwarded to the employer of the officer in question for investigation for purposes of disciplinary action and/or criminal prosecution. The Human Rights Commission shall provide an annual report to the governor and legislature of all complaints of racial profiling.

## **Oregon Act**

The Oregon Act is primarily concerned with the establishment of basic police procedure when making stops, frisking people, searching vehicles, etc. It stresses that an officer must have reasonable cause to make stops, make searches, and so forth, and provides vague guidelines for what is to be considered reasonable, while leaving much to the discretion of the officer. The Act does not mention race, or race-based stops until the end, and then is far less specific than either the Connecticut or North Carolina Acts.

The Act requires that agencies adopt policies prohibiting the stopping, detention, or searching of people when the action is motivated by the officer's perception of race, age, or gender, or when it would violate the person's civil rights. Additionally, the Act requires the establishment of a process to facilitate the reporting of complaints, to review complaints, and to collect data. The Act states that violations of this portion that deals with race-based stops is grounds for corrective action, and that the data collected under this Act must be provided to the Asset Forfeiture Oversight Committee, which in turn will submit a report to the legislature.

## **Rhode Island Act**

The Rhode Island Act creates an advisory committee to advise and assist the attorney general in conducting a study of traffic stops in Rhode Island. The 13-member committee is to be made up of: three members of the house, three members of the senate, two members to be appointed by the governor, the president of the Rhode Island Police Chiefs Association, the executive director of the Urban League of Rhode Island, the executive director of the National Conference for Community and Justice, the executive director of the Rhode Island Commission for Human Rights, and a professor of statistics from a Rhode Island University to be appointed by the governor.

The study requires officers to fill out a form for each motorist stopped, including the following information:

1. The date, time, and location of the stop;
2. The race or ethnicity, gender, and approximate age of the driver stopped;
3. The alleged violation that led to the stop;
4. Whether a search was conducted;
5. The scope of any search;
6. Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion;
7. Whether any contraband, including money, was seized, and what it was;
8. Whether a citation or warning was given;
9. Whether an arrest was made;
10. The approximate duration of the stop;
11. Whether the vehicle is registered in Rhode Island or out of state.

Law enforcement agencies are required to submit monthly reports to the attorney general that include all of the forms collected, and any complaints filed by motorists who believed they were the subject of racial profiling, without identifying the complainant, or the officer involved. The attorney general is to conduct the study for twenty months, and submit a final report to the governor and the general assembly. In addition, the attorney general is to prepare a quarterly report summarizing the monthly reports received from police departments. This quarterly report would be a public record.

The attorney general is directed to procure the services of an outside organization with an expertise in statistics to assist with the study. The outside entity will help with the design of the methodology of the study, monitor compliance with the Act, and conduct a final statistical analysis at the conclusion to determine if racial profiling is happening.

In contrast to many states' bills, Rhode Island's provides funding to the attorney general for implementation of the study.

Finally, police departments are to adopt written policies banning racial profiling and outlining a plan to collect and transmit the data to the attorney general. They will be held accountable for compliance through civil actions taken by either the attorney general or outside organizations.

### **Tennessee Act**

The Tennessee Act directs the Tennessee Highway Patrol and any local law enforcement agencies that volunteer to participate, to record the following data:

1. The number of people stopped for traffic violations;

2. The race, age, and gender of each person stopped (according to the officer's perception);
3. The alleged violation that led to the stop;
4. Whether a warning or citation was given, or an arrest made;
5. Whether a search was conducted, and if so, the type of search and the legal basis for the search, and whether any contraband was found or property was seized.

Agencies are required to report the data collected to the comptroller of the treasury, who reports on the prevalence and disposition of stops to the governor and the general assembly. The program will be in effect only until July 1, 2002.

### **Washington Act**

The Washington State Act requires the Washington State Patrol to collect information on traffic stops and report semi-annually to the Criminal Justice Training Commission. The state patrol officers are required to record:

1. The number of people stopped for routine traffic stops;
2. The race, age, and gender of each person stopped;
3. The nature of the alleged violation;
4. Whether a search was made;
5. Whether an arrest was made or citation given.

The Criminal Justice Training Commission is required to make a report on the information to the legislature by Dec. 1, 2000.

In addition, the state patrol is instructed to work with the Training Commission and the Washington association of sheriffs and police chiefs to further develop collection and evaluation criteria, and to create training materials on racial profiling for local law enforcement agencies. The state patrol and the association of sheriffs is also instructed to "encourage" local law enforcement to voluntarily collect data on traffic stops, and to provide the legislature with information regarding which agencies are collecting information, what information they are collecting, and how the information is being used.

### **Analysis of the legislation**

Of the nine Acts that have been passed, three – the laws of Oregon, Oklahoma, and Kansas – are unspecific and largely ineffective. The Oklahoma Act does not mandate any sort of data collection, and simply outlaws racial profiling, which is already illegal under Title IV of the 1964 Civil Rights Act. The Oregon Act mandates data collection, but is the least specific about what data is to be collected. It prohibits race-based stops, but it does not provide any specific requirements for the manner in which data is collected or monitored by police. Therefore, it leaves the formulation of policies and data collection procedures to the discretion of the individual departments or agencies.

The Kansas Act also leaves a good deal to the discretion of local departments, and could be described as a statewide suggestion box for how to create a data collection program, rather than a bill that mandates one. In fact, the Act does not specifically require data to be collected, it merely solicits ideas about how a data collection program *could* be initiated. However, the Act does create some requirements for what sorts of data are to be collected. Interestingly, the Act requires that departments plan to collect data on pedestrian stops as well as on traffic stops, an important feature that no other bill contains.

The Washington and Tennessee Acts are also weak, in that they only require the state patrol to collect data, while local law enforcement agencies are simply encouraged to act voluntarily. This leaves even more discretionary powers to individual police departments than does the Oregon Act, which at least requires some sort of data collection, however vaguely delineated.

The North Carolina Act requires the collection of a more extensive set of information than does the Connecticut Act, but the two laws are comparable regarding the requirements for reporting the data collected. The Connecticut Act is more specific about the collection and reporting of individual complaints, but the program outlined in the Act is in effect only for a short time, until January 2002. The requirements set forth in the North Carolina Act, on the other hand, are built into the operations of the Criminal Statistics Division, a permanent state agency within the Department of Justice.

The Missouri Act, although thorough in terms of the information it requires and innovative in its use of counseling, diversity training, and the use of non-combative techniques, does not hold the police accountable to an outside authority. The department itself is responsible for reviewing the attorney general's report, and is responsible for investigating itself in the event that a pattern of racial bias appears. Furthermore, the Act allows for, but does not mandate, civilian review boards. Even if they were mandated, the civilian review boards have no real authority over police departments. Although the governor can limit an agency's funding for non-compliance, the Act does not provide a strong outside authority to force the police to change in the event that they themselves don't find anything wrong with their own conduct.

The Rhode Island Act is comparable to the Missouri Act, although the data collection program mandated in Rhode Island is more thorough. The Rhode Island law provides for more oversight by a relatively balanced state committee, and reports are to be made more often. Moreover, the reports are to be made public. Importantly, the state is required to enlist the assistance of an outside entity in the design and implementation of the data collection program. Failure to comply with the requirements of the Act may be grounds for a civil suit, and the Act explicitly allows and encourages such legal action. Rhode Island, unlike virtually all other states, provides additional state funds for its data collection program. However, like the Missouri Act, the Rhode Island law does not tie the data collection program into police management or early warning systems. The

Rhode Island law does not emphasize a potential change in police practices, should evidence of racial profiling come to light, as the Missouri Act hints at by requiring police departments to stop the use of pretext stops. The data collection program in Rhode Island could be strengthened by integrating the collection of data with police management, oversight, and officer accountability structures.

## **B. Pending Legislation**

Racial profiling and data-collection legislation is pending in at least 17 states. The following is a summary and analysis of bills currently pending in Alabama, Arkansas, Florida, Iowa, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Utah, Wisconsin, and Virginia.

### **Alabama Bill (SB 374)**

The bill outlaws racial profiling, and requires the Department of Public Safety and all municipal police departments to adopt written policies that prohibit stops and searches on the basis of race, gender, or sexual orientation. The bill further requires that the Department of Public Safety and all municipal departments to record the following information:

1. The number of motorists stopped;
2. The race, color, ethnicity, and age of each person stopped, according to the officer's perception;
3. The alleged traffic violation that resulted in the stop;
4. Whether a warning or citation was issued, an arrest made, or a search conducted;
5. Any additional information that the department deems appropriate.

Departments are required to provide the attorney general with a copy of each complaint in reference to this bill, and notification of a review of the complaint.

Each department is required to provide the attorney general with an annual report, beginning October 1<sup>st</sup>, 2001, based on the collected information. The attorney general will then provide a review of prevalence and disposition of traffic stops and complaints, and submit a report to the legislature and governor, along with recommendations.

Departments will be held accountable for fulfilling the requirements of the Act through the withholding of funding.

### **Arkansas Bill (HB 1261)**

The Arkansas bill is directed at the Arkansas State Police. It requires all troopers to record the following:

1. The number of individuals stopped for routine traffic violations;
2. The race or ethnicity and approximate age of each person stopped;
3. The alleged infraction that led to the stop;
4. Whether a search was conducted;
5. The scope of the search and the rationale for the search;
6. Whether any contraband was found and what it was;
7. Whether a warning or citation was given
8. Whether an arrest was made.

The director of the State Highway Patrol is required to publish an annual summary of the data collected.

### **California Bill (SB 66)**

State Senator Murray originally introduced a bill called SB 1389, that mandated the collection of traffic stop data, and annual reporting of the data until 2005. The data that was to be collected included:

1. The number of vehicles stopped
2. Whether a citation was issued
3. The race of the person stopped
4. Whether the stop was based on a violation of the penal code, the vehicle code, a local ordinance, or the fact that the appearance of the vehicle or driver matched the description of a crime suspect or vehicle used in a crime
5. Whether a search took place
6. Whether weapons, controlled substances, cash, or other property believed to be unlawful were found
7. Whether a citation, warning, or arrest was made

However, under pressure from Governor Davis, Murray withdrew the data-collection bill and re-introduced an amended version of a different bill: SB 66, or the Anti-Racial Profiling Act of 2000. The Act would have outlawed racial profiling, stating that it is a practice that "presents a great danger to the fundamental principles of democratic society," that it is "abhorrent" and "cannot be tolerated."

Aside from outlawing racial profiling, the bill contained two new requirements. First, law enforcement officers would have been required to provide their business card to any person detained in a traffic stop. The card would have included the officer's name, division, precinct, and badge number, as well as a phone number that "may be used for any comments, positive or negative, regarding a specific incident."

Second, the bill required all law enforcement officers to participate in expanded training programs that will include an examination of the patterns, practices, and protocols that result in racial profiling.

SB 66 was vigorously opposed by the ACLU and the Northern California Racial Justice Coalition. On August 15, 2000, during the Democratic National Convention in Los Angeles, the ACLU took out a full-page ad in the New York Times, consisting of a letter signed by over a dozen prominent national civil rights leaders, criticizing Governor Davis for opposing data-collection legislation.

On August 24, 2000, bowing to pressure from the civil rights community, the bill's sponsor withdrew SB 66.

### **Florida Bill (HB 177)**

The Florida bill creates the Florida Traffic Stop Evaluation Task Force and establishes its duties, and creates requirements for the collecting, reporting, and analyzing traffic stop data. The task force must conduct a study of the practices used by law enforcement agencies in making traffic stops, to analyze the data and draw conclusions, and to report its findings to the governor and to the legislature.

The bill specifies that the task force is to include seven members: the attorney general or the attorney general's designee, a member of the Florida Sheriffs Association, a member of the Florida Police Chiefs Association, a member of the Florida Highway Patrol, an at-large member who is a representative of the ACLU, a member of the house of representatives, and a member of the senate. The governor appoints the members, except for the legislators, who are appointed by their respective speakers. The staffing for the task force is to be provided from the attorney general's office, and the task force may appoint sub-committees.

The bill requires all law enforcement officers to collect the following the data on traffic stops from July 1, 2000, to June 30, 2001:

1. A description of the vehicle, including manufacturer;
2. The license number;
3. The race, age, and gender of all occupants of the vehicle;
4. The exact location and time at which the stop occurred;
5. The alleged violation that was the basis for the stop;
6. Whether a stop was conducted of the vehicle or the occupants, the rationale for the search, and how it was instituted;
7. The nature of any contraband found;
8. Whether a warning or citation was given, or whether an arrest was made;
9. Whether any items were seized for forfeiture.

Departments are required to transmit the data each month to the Office of the Attorney General, and the attorney general then will transmit the data to the task force. In addition, the attorney general is required to prepare a quarterly analysis of the data, which is to include, at minimum:



1. The total number of vehicles stopped;
2. The number and percentage of motorists stopped who are members of racial or ethnic minorities;
3. A comparison between the percentage of minority drivers stopped and the percentage of that minority in the state's population;
4. A statement on the benefit of traffic stops with regard to the interdiction of drugs and proceeds from drug trafficking, including the approximate quantity and street value of seized drugs and drug trafficking proceeds.

Finally, the bill provides \$150,000 to the Office of Civil Rights to fund two positions and to carry out the purposes of the act and the duties of the task force.

#### **Iowa Bill (Senate File 2183)**

The Iowa bill would require the Department of Public Safety to create a central data depository. Law enforcement agencies would be required to furnish the following data for each stop:

1. The driver's race, age, and gender;
2. Whether a search was conducted;
3. Whether a citation was given or an arrest made.

The department would be required to submit an annual report to the general assembly.

#### **Illinois Act (HB 3911)**

The Illinois bill establishes a four-year traffic data collection program, and states that whenever a State law enforcement officer issues a uniform traffic citation or warning citation for an alleged violation of the Illinois Vehicle Code, the officer will provide the following additional information on the citation:

1. The race of the motorist;
2. Whether a search was conducted.

The director of the state police will then submit the data to the secretary of state, who is required to study the data to determine whether discrimination is taking place. The bill states that the report shall not contain any information regarding the identity of persons stopped, or of any law enforcement officer.

#### **Indiana Bill (SB 487)**

This bill initiates a study to be conducted by the Indiana Attorney General's Office on routine traffic stops. The study is to include the collection and analysis of information about all traffic stops in the state. The information collected is to include:

1. The number of individuals stopped;
2. Race, ethnicity, age and gender of each motorist stopped;
3. The location of the stop;
4. The time of the stop;
5. The alleged violation that led to the stop;
6. Whether a search was conducted;
7. The scope of the search and the rationale;
8. Whether the search was pursuant to consent, probable cause, or reasonable suspicion
9. Whether any contraband was discovered;
10. The nature of the contraband;
11. Whether a warning or citation was given;
12. Whether an arrest was made;
13. Other factors deemed appropriate by the attorney general.

The study is to last from July 1<sup>st</sup>, 2001, to July 1<sup>st</sup>, 2002. According to the bill, the report that the attorney general is to submit to the legislature may not be used for any legal or administrative proceedings to establish an inference of discrimination based on certain characteristics, and, just as in the Illinois bill, the report may not reveal the identity of any individual stopped or any law enforcement officer.

#### **Kentucky Bill (SB 222)**

The Kentucky bill requires officers to record and report to the attorney general the following information on each traffic stop:

1. A description of the vehicle, including its manufacturer and license plate number;
2. The race, approximate age, and gender of the driver and occupants;
3. The exact time and location of the stop;
4. The alleged breach of the criminal law that resulted in the stop;
5. If the stop resulted in a search, the rationale for the search and how the search was instituted;
6. Whether and contraband was discovered and the nature of the contraband;
7. Whether an oral or written warning or citation was given or an arrest made;
8. Whether any item was seized for forfeiture.

The attorney general is required to analyze the data and report on:

1. The total number of vehicles stopped during the year;
2. Of the total, the number and percentage of vehicles driven by each particular minority group;
3. A comparison between the percentage of stops for each minority group and the population percentage of that group;

4. The benefit of traffic stops with regard to the interdiction of controlled substances and proceeds from the trafficking in controlled substances, including the amount and value of seized contraband and proceeds.

The attorney general is required to submit a report along with recommendations annually to the general assembly.

#### **Massachusetts Bill (SB 1180)**

The Massachusetts Traffic Stops Statistics Act directs the attorney general to conduct a study of routine traffic stops by collecting the following data:

1. The number of individuals stopped;
2. The race or ethnicity and approximate age of each motorist stopped;
3. The alleged infraction;
4. Whether a search was conducted
5. How the search was conducted;
6. The rationale for the search;
7. Whether any contraband was discovered;
8. The nature of the contraband;
9. Whether a warning or citation was given;
10. Whether an arrest was made;

The data is not to be used for legal or administrative proceedings to establish an inference of discrimination, and may not reveal the identities of those stopped or of law enforcement officers. A report on the study is to be made to the legislature no later than two years following the passage of the bill.

#### **Maryland Bill (HB 225)**

The program for data collection outlined by HB 225 is to be formulated and overseen by the Police Training Commission, which is a unit with the Department of Public Safety, along with the Maryland Justice Analysis Center (MJAC). These organizations are responsible for creating: a uniform form for recording traffic stop data, guidelines to be used by agencies as a management tool to evaluate data collected for use in counseling and training, a standardized format for the reporting of data to the MJAC, and a model policy against race-based traffic stops.

The requirements of the bill would apply initially to agencies with 100 or more officers. Agencies with 50 or more officers would be included after a year, and all agencies after two years.

Officers are required to record the following information at all traffic stops until December 31, 2005:

1. The date, location, and time of the stop;
2. The approximate duration of the stop;
3. The alleged violation
4. Whether a search was conducted;
5. Whether any search was consensual or nonconsensual, and whether the person or the person's property was searched;
6. Whether any contraband or other property was seized;
7. Whether a warning, safety repair order, or citation was given;
8. The warning, citation, or order given;
9. Whether an arrest was made;
10. The crime charged in the case of arrest;
11. The state in which the stopped vehicle is registered;
12. The gender of the driver;
13. The birth date of the driver;
14. The state and, if available, the county of residence for the driver;
15. The race or ethnicity of the driver as Asian, Black, Hispanic, White, or other.

Agencies are required to compile the data and submit an annual report to the MJAC. The MJAC, in consultation with the Police Training Commission, will analyze the annual reports, and submit an annual report to the governor, the general assembly, and each law enforcement agency.

In addition, each law enforcement agency is required to adopt a policy against race-based traffic stops that is to be used as a management tool to promote nondiscriminatory law enforcement and in the training and counseling of its officers. The policy will prohibit race-based stops, but may not undermine police authority to make stops, arrests, searches, or conduct other obligations.

If an agency fails to comply with this law, its non-compliance will first be reported to the Police Training Commission, who will urge compliance, and will then be reported to the Governor and the General Assembly. However, there are no consequences specified for non-compliance.

#### **New Jersey Bill (SB 863)**

The New Jersey bill calls for the establishment and maintenance of a database of information collected by the state police. The information collected by the state police and entered in the database is to include:

1. The race, sex, and age of any subject of a motor vehicle stop, pursuit, search or arrest;
2. The time and location of any stop, pursuit, search, or arrest;
3. The reason for any stop, pursuit, search, or arrest, and any charge brought;
4. The race, sex, and age of any person taken into custody;
5. The identity, including name and badge number, of all law enforcement officers who make stops or arrests;

6. A description of any force used in the stop or search, and the identities of those who used such force;
7. The reason for the use of force;
8. A description of any property seized;
9. The disposition of any charge brought as a result of the stop or search;
10. The identity of any witnesses to the incident;
11. The nature and disposition of any formal or informal complaint lodged by the subject or others as a result of the stop or search;
12. Disciplinary actions taken against an officer or trooper, including the type of complaint and degree of seriousness;
13. Criminal or civil actions filed against the officer alleging criminal acts, domestic violence or civil rights violations;
14. Any other information deemed necessary.

The superintendent of state police is required to make an annual report to the governor and legislature on the data collected.

The information collected and entered into the database is to be used to create a computerized personnel early warning system, so that the performance of individual officers can be analyzed over time. The early warning system will be aimed at identifying those officers who show a tendency to stop, search, or use force against people based on their race. When a pattern of unacceptable behavior is found, the officer's supervisor will be informed, as will the state police superintendent.

In addition, the superintendent will be responsible for establishing a program to address and eliminate patterns of unacceptable behavior in individual officers. This program will include psychological testing, counseling, re-education and training, as well as disciplinary procedures. Officers who persist in unacceptable behavior will be dismissed. "Unacceptable behavior" is taken to mean law enforcement activity initiated on the basis of race or sex, other sorts of discrimination, excessive force, or any other violation of State Police policy.

Finally, the superintendent will establish a training program for personnel in supervisory or administrative roles to train them in the purpose and operation of the early warning system; the reason for data collection; how to use the system as a tool to improve management and performance, performance assessment and counseling; and the training and re-education for officers engaging in unacceptable behavior.

#### **New York Bill (SB 6094)**

The New York bill calls for the collection of the following data by all law enforcement officers:

1. The number of drivers stopped and whether a citation or warning was issued;
2. The race, sex, and age of each driver stopped;

3. The alleged violation that led to the stop;
4. Whether a search was conducted;
5. Whether the vehicle, personal effects, driver, or passengers were searched, and the race, gender, and age of each person searched;
6. Whether the search was based on consent, probable cause, or reasonable suspicion, and the basis for the search;
7. Whether any contraband was found, and the type and amount of contraband;
8. Whether a citation or warning was given;
9. Whether an arrest was made;
10. Whether any property was seized, and what it was;
11. Whether the officer encountered any resistance;
12. Whether the officer used any force;
13. Whether any injuries resulted from the stop;
14. Whether the circumstances of the stop were subject to any investigation and if so, the results of that investigation.

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The information is to be compiled and analyzed to look for statistical aberrations – e.g., if the percentage of minority drivers stopped is significantly higher than that group's percentage in the population, or if a significant number of false stops (i.e., stops where no citation or warning was given) occur – and an annual report made to the governor and legislature.

The data collected is to be made available to the department of law and to the attorney general in the event of any complaints, and these bodies will be responsible for investigating complaints.

### **Ohio Bill (HB 363)**

The Ohio bill requires law enforcement officers to collect the following data for all traffic stops:

1. A description of the vehicle;
2. The license plate number;
3. The race, approximate age, and gender of the driver and all occupants;
4. The exact location of the stop;
5. The time of the stop;
6. The alleged violation that resulted in the stop;
7. Whether a search was conducted;
8. The rationale for any search and how the search was conducted;
9. Whether any contraband was found and what it was;
10. Whether a citation or warning was given;
11. Whether an arrest was made;
12. Whether any items were seized.

Agencies are required to report the data to the attorney general at least once a year. The attorney general will analyze the data to determine the total number of motor vehicle stops made, a comparison between the percentage of minorities stopped and the percentage of minorities in the population, and the benefit of traffic stops to the interdiction of drugs and the proceeds from drug trafficking, including the amount and value of drugs and proceeds seized. The attorney general will report to the general assembly annually.

### **Pennsylvania Bill (HB 873)**

The Pennsylvania bill requires the attorney general to collect the following information:

1. The number of individuals stopped;
2. The race, gender, and approximate age of each person stopped;
3. The alleged violation that led to the stop;
4. Whether a search was conducted;
5. The manner in which the search was instituted;
6. The rationale for the search;
7. Whether any contraband was found;
8. The nature of such contraband;
9. Whether a warning or citation was given;
10. Whether an arrest was made;
11. The benefit of traffic stops to the interdiction of drugs and proceeds from trafficking, including the approximate quantity and value of drugs and proceeds seized;
12. Any other information deemed appropriate by the Attorney General.

The bill specifies that the data may not be used in legislative or administrative proceedings to establish discrimination, and that it may not identify those stopped or the law enforcement officers involved.

The attorney general is to report on the findings of the study no later than two years after the law takes effect.

### **South Carolina Bill (SB 778)**

The South Carolina bill mandates the collection of the following information by all law enforcement agencies:

1. The number of drivers stopped who are issued warnings or citations;
2. The race, age, and gender of each driver stopped and given a citation or warning;
3. The alleged violation that led to the stop;
4. Whether a search was conducted;
5. The basis for the search;
6. The race or ethnicity of the officer.

The Department of Public Safety must report annually to the legislature the number of licensed drivers in each county, and categorize the licensed drivers by age, gender, and race. In addition, the collected data must be reported to the legislature each year. Also, the Department of Public Safety and other agencies must annually publish reports regarding formal complaints by the public. These reports must include the following information:

The number of complaints received by type and location of incident  
The gender, age, and race of the complainants, and of the officers involved;  
The disposition of each complaint: a.) the officer is exonerated because actions taken were justified; b.) the investigation proved the allegation; c.) sufficient evidence was not provided to prove or disprove the allegation; or d.) the allegation was unfounded;  
The total number of disciplinary actions, organized by type of action.

The annual report may not include the name or badge number of officers involved, or any other identifying information on complainants or officers.

#### **Utah Bill (HB 106)**

The Utah bill prohibits racial profiling and requires law enforcement agencies to adopt written policies prohibiting racial profiling. In addition, it requires the collection of the following information:

1. The number of traffic stops made by the agency;
2. The race, gender, and age of each driver stopped;
3. The reason for stopping the vehicle;
4. Whether a search was conducted;
5. The time and location of the stop;
6. Any additional information the agency deems appropriate.

After recording each traffic stop, the officer must issue a form letter to the driver of the vehicle that indicates the benefits of pro-active traffic enforcement, the procedure to file a complaint, and the officer's name and badge number.

Agencies are required to report to the Department of Public Safety quarterly on the information collected regarding traffic stops and citations, as well as a copy of each complaint and written documentation of review. The Commissioner of Public Safety shall study the information and report to the attorney general, the governor, and the legislature by January 1, 2004. Agencies that do not comply with the Act will lose their state funding.

#### **Virginia Bill (SB 743)**

The Virginia bill requires the Superintendent of State Police to record:



1. The race, gender, and age of each motorist stopped;
2. The reason for the stop;
3. Whether the traffic stop results in a search of the driver or vehicle;
4. Whether the driver is detained for questioning, or is charged or arrested for an alleged criminal offense.

The superintendent is also responsible for developing a mechanism for collecting, analyzing, synthesizing, and validating the data collected, as well as reporting annually to the governor and the general assembly. The superintendent may seek outside support from other public or private institutions in analyzing and reporting the results. The mechanism must ensure that the superintendent is able to determine:

1. Whether racial profiling is used by agencies to make traffic stops;
2. A profile of motorists in traffic stops;
3. Whether stops, particularly along I-95, involve primarily minority drivers, whether these drivers are detained, searched, or had property seized, and how they compare to white drivers in similar circumstances;
4. The reasons given by police for such stops;
5. Whether minority drivers are advised of their constitutional rights;
6. The extent to which officers know the constitutional rights of citizens;
7. Public perspectives regarding racial profiling;
8. Whether minority communities are aware of their rights regarding search and seizure and;
9. Accurate conclusions from the data.

#### **Wisconsin Bill (AB 716)**

The Wisconsin bill requires law enforcement agencies to collect the following information on all traffic stops:

1. The reason for the stop;
2. The age, gender, and race of the driver;
3. The number of people in the vehicle;
4. Whether a search was conducted, and for each search the following information: whether the search was based on probable cause or reasonable suspicion, whether the search was consensual, the age, race, and gender of each person searched, and whether anything was seized as a result of the search.
5. Whether any person who was asked refused consent to search the vehicle;
6. Whether a warning or citation was given, and what the alleged violation was;
7. Whether an arrest was made, and the reason for each arrest;
8. Any other information deemed appropriate.

Each agency is required to report the collected information to the Department of Justice. The Department will then analyze the information to determine whether a disproportionate number of minorities were stopped, and whether the stops appear to be

due to racial bias. The Department will report annually to the governor, the legislature, and the director of state courts.

In addition, the bill mandates police training to prevent racial profiling and racial bias.

### **Federal Bills**

The U.S. Congress is also considering legislation pertaining both to states and to the U.S. Customs Service.

### **Analysis of Proposed Legislation:**

There is no model bill, although clearly some are better than others. No single bill contains all of the elements that we are looking for in effective legislation, but many of the things needed to make strong legislation can be found in separate bills; by piecing together these different elements, it would be possible to synthesize something like a model bill. In addition, many of the bills contain elements that should be noted in terms of what *not* to include in a bill, as they are ineffective and counterproductive.

The Maryland and New Jersey bills are among the most comprehensive. Both collect a wide range of data indicators for every stop, and more importantly, are specific about tying the data collection program into early warning systems and other tools for improved police oversight, management, and accountability. In addition to the standard indicators on race, location, whether or not searches or arrests were made, and so forth, a number of the data indicators required by the New Jersey bill are specifically linked to these oversight and management plans. For instance, the bill requires that the officer's name and badge number be recorded, along with a description of any force used, the people who used force, the reason for the use of force, the identity of witnesses to the incident, the nature and disposition of any complaints brought as a result of the incident, any disciplinary actions taken against the officer, and any criminal or civil charges filed against the officer. The Maryland and New Jersey Acts are more effective than others, because they go beyond the simple collection of data, to integrate evaluative and oversight procedures into the data collection programs themselves. Under these bills, the evaluation, oversight, and improvement can take place while the data collection is still going on.

However, there are other desirable elements that the Maryland and New Jersey bills do not include. One important element that appears in a few, sometimes otherwise ineffective, bills was the requirement that the usefulness of traffic stops be examined in terms of how effective they are in the interdiction of drugs. Florida, Kentucky, Ohio, and Pennsylvania all include this element in their requirements for analysis of the data. Similarly, South Carolina's bill, which is otherwise one of the least effective, includes a requirement that the number of false stops – stops in which no citation or warning was given – be analyzed. These requirements are crucial for a couple of reasons. First of all,

the rise in pretext stops has been directly influenced by the “war on drugs.” Police strategies like “Operation Pipeline” have used pretext traffic stops as a central component of drug interdiction programs. However, as the ACLU of Northern California has pointed out, the use of pretext stops is a highly ineffective drug interdiction strategy. By requiring the traffic stop data to be analyzed in this way, these bills could draw attention to the facts that pretext stops not only tend to disproportionately affect people of color, but also that they are simply an ineffective police strategy, and that resources used for such efforts could be better used elsewhere. In addition, by focusing on drug interdiction programs, the acts may provide a closer look at the real, detrimental affects of the “war on drugs.”

In another effort to build accountability into the process, the Utah bill contains an improvement on the California law that requires officers to give drivers they stop a business card with the number for a “suggestion line.” The Utah bill requires officers to issue all drivers they stop a form letter that includes the name and badge number of the officer who stopped them, and information on the procedure to file a formal complaint. Unlike the California law, this act would provide drivers with information that connects them with the formal accountability structure. Although the Utah act does not specifically mention it, such a program could also easily be tied into a personnel early warning and management system like those outlined in the Maryland and New Jersey bills.

Another useful component of some bills is the creation of permanent evaluative and oversight committees or task forces like the one contemplated by the Florida bill. However, the creation of such committees can be deceptive and problematic, as the Florida bill demonstrates. Although it does create a permanent oversight and evaluative task force, the Florida bill should not be viewed as a model. The seven-member task force created by the bill, aside from the legislative and administrative members, is comprised almost exclusively of law enforcement officials. Police accountability may be specious when law enforcement agencies are left to oversee and evaluate themselves. A police accountability task force should be comprised of independent monitors, who are not under the control of law enforcement or executive branch forces. The advisory committee established in the Rhode Island bill, which includes more outside members from the civil rights and academic communities, is a much better example.

The problems with the Florida task force highlight a major shortcoming of all of the proposed bills: they do not make sufficient provisions for police accountability. Although some bills give attorneys general or public safety departments the authority to cut police funding for non-compliance, virtually all of the bills leave evaluation, disciplinary action, and behavior modification to the discretion of individual departments or state law enforcement agencies. There is a need for independent analysis and evaluation of the data, and independent, effective, outside monitoring to ensure that departments are held accountable for improving police behavior and eliminating racially biased practices. The most glaring examples of this shortcoming are found in bills that prevent the identities of individual police officers from being revealed in reports. The bills from Illinois, Indiana, Massachusetts, Pennsylvania, and South Carolina all fall into this category. This

restriction prevents any kind of effective evaluation or behavior modification, and actually undermines the purpose of the entire data collection effort by preventing the discovery of patterns of racial bias in individual departments and officers.

As the Northern California ACLU has pointed out several times, the California legislation was basically meaningless. Although it was long on rhetoric (racial profiling is "abhorrent") it was short on substance. Racial profiling is already illegal under the Fourth Amendment and under Title IV of the Civil Rights Act of 1964, so SB 66 was redundant. Also, the business card handout was a gimmick with little utility. As a close reading of the bill made clear, the card handout was a toothless suggestion box, in that the number on the card is not specifically tied to other established formal complaint processes or early warning systems. SB 66 was considered by the ACLU to be worse than no statute at all, because it might have given the impression that improvements had occurred when in fact they hadn't.

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#### **Summary of Effective Legislation:**

Four crucial aspects should be included in any effective data collection legislation:

- **Many Data Indicators:** As many different categories of data as possible should be collected at each traffic stop to provide for a complex and wide-ranging analysis. Indicators such as race and age should be based on the perception of the officer, because racially motivated behavior will be based on the officer's perception of the driver's race, whether or not that perception is accurate.
- **Police Accountability:** The data collection program should be designed to work in connection with on-going law enforcement management and evaluative structures, such as early warning systems or other personnel management and accountability systems. Rather than concealing the identity of officers, data collection reports should work to identify and modify patterns of racially biased behavior in individual departments and officers. Outside organizations, such as universities or other statistical research organizations, should be enlisted to monitor or actually undertake the data analysis to ensure that the information is processed accurately and effectively. Finally, the data collection program should be connected with existing structures for police accountability such as formal complaint and investigation processes.
- **Length and Breadth:** To ensure that the data collection program provides accurate information, and to monitor how police behavior changes over time, it is important to collect data for a long period of time; ideally, data should be collected indefinitely. Similarly, the requirements for data collection should apply to all law enforcement agencies in the state, rather than just the state patrol.
- **Effects on Drug Interdiction:** The use of pretext traffic stops has been a major component of many police strategies as a result of the "War on Drugs." Therefore, it

is important to analyze whether or not the use of traffic stops is an effective method to find drugs and curtail drug-related crimes.

### **C. Litigation**

Notable litigation includes:

New Jersey entered into a consent decree with the U.S. Department of Justice in return for the DOJ not pursuing a lawsuit against the state police. The decree requires the New Jersey State Police to record race data from all arrests and traffic stops, and to compile reports on the data every six months. New Jersey also agreed to overhaul its training and procedures. An independent monitor will oversee implementation.

Maryland settled a lawsuit alleging profiling by the Maryland State Police in 1995 by agreeing not to use race as a factor in traffic stops and agreeing to keep records of searches and arrests.

A four-year Department of Justice investigation into the Montgomery County, MD police ended in January with an agreement requiring officers to collect race, gender and date of birth information on every traffic stop made on a public highway.

Police in Mount Prospect, Illinois will begin tracking traffic stops as part of a settlement reached between a fired Hispanic police officer and the police department.

Accusations of racism against the Pittsburgh police department led to a consent decree with the DOJ in 1997. Pursuant to the decree, the police department has compiled records of stops, arrests and use of force.

The U.S. Department of Justice is pursuing a racial discrimination case against the police department in Columbus, Ohio, and has reached a consent decree similar to the New Jersey decree with Steubenville, Ohio.

The Ninth Circuit Court of Appeals ruled in April that the Border Patrol may not use "Hispanic appearance" as a reason for stopping motorists near the U.S.-Mexico border.

The ACLU has filed lawsuits challenging racial profiling in California, Illinois, Maryland, Pennsylvania, Florida, Colorado, Oklahoma, New Jersey and Indiana, as well as against the U.S. Customs Service. One request in at least some of the lawsuits is for departments to maintain comprehensive traffic-stops records.

### **D. Executive Order or Local Ordinance**

On June 9, 1999 President Clinton ordered the Justice, Treasury and Interior Departments' law enforcement agencies to collect race, ethnicity and gender data on the people they stop or arrest. The departments must report on the findings of the data collection after one year, and make additional recommendations on ensuring greater fairness in law enforcement procedures.

Police in Ann Arbor, Michigan will begin to record race data under a policy approved by the Ann Arbor City Council.

Governor Davis in California ordered the California Highway Patrol to collect race data on traffic stops.

Governor Paul Patton of Kentucky issued an executive order on April 21, 2000, prohibiting racial profiling and declaring it to be a violation of the civil rights of the person stopped, requiring data collection by all state-level law enforcement agencies, creating a commission of cabinet officials to design a model policy for data collection to be distributed to all local law enforcement officials, and urging all local law enforcement agencies to adopt the model policy within six months of its dissemination.

#### **E. Voluntary Data Collection**

Most police departments that record race do so voluntarily. The ACLU reports that at the beginning of 1999, there was almost no data collection, but by the start of 2000, there were well over 100 law enforcement agencies tracking race data, including:

Brookline, Massachusetts has been voluntarily collecting ethnic data since 1997 to try disprove allegations of racial profiling.

Ohio has collected traffic stop data for a year and a half.

At least 55 law enforcement agencies in California are voluntarily collecting race data now, according to the California Highway Patrol.

Michigan State Police, Florida Highway Patrol and Washington State Police are beginning to collect race data to monitor racial profiling.

Other municipalities collecting data include:

- Dearborn, Livonia and Farmington, MI
- Portland, Oregon
- Philadelphia, PN
- Spartanburg, SC
- Houston, TX
- Salt Lake City and St. George, UT

- Richmond, VA
- Seattle, WA
- Milwaukee, WI
- Minneapolis and St. Paul, MN
- Sacramento, CA

Prince George's County, Maryland will begin outfitting police cruisers with video cameras this summer to better monitor brutality and profiling.

#### **F. Other public statements against racial profiling:**

International Association of Chiefs of Police passed two resolutions in November condemning racial profiling and urging all law enforcement agencies to implement a variety of steps, including traffic-stop data collection. They also urge states to incorporate race and ethnicity as a data element on driver's licenses.

Two dozen Portland, Oregon-area police agencies endorsed a resolution against racial profiling.

The National Organization of Black Law Enforcement Executives passed a resolution on July 20, 1998 denouncing racial profiling and supporting U.S. legislation calling for collection of traffic stop data.

Police departments throughout the state of Massachusetts signed a resolution against racial profiling.

The policy wing of the Democratic Leadership Council called for an end to racial profiling, outlining an anti-crime strategy aimed to foster better police-community relations.

Stanford, Connecticut formally banned racial profiling in honor of Martin Luther King, Jr. Day.

### **III. Methods of Data Collection**

In order for data collection programs to be effective, enough categories of data must be collected for a sufficient period of time, or better yet, permanently.

According to John Crew, Coordinator of the ACLU Campaign Against Racial Profiling, more data categories are nearly always preferable to fewer. The more sophisticated efforts, such as those in Sacramento and North Carolina, collect not just race data, but up to 17 categories of information, including the driver's gender and age (adult or juvenile), the reason for the stop, the disposition of the stop, and whether a search was made.

The Federal Traffic Stops Statistics Act, introduced in 1998 and 1999 by Rep. John Conyers (D-MI), but not yet passed, would require the U.S. Attorney General to collect the following data nationwide:

1. The traffic infraction alleged to have been committed that led to the stop
2. Identifying characteristics of the driver stopped, including race, gender, ethnicity and approximate age of the driver
3. Whether immigration status was questioned, immigration documents were requested, or an inquiry was made to the Immigration and Naturalization Service with regard to any person in the vehicle
4. The number of individuals in the stopped vehicle
5. Whether a search was instituted as a result of the stop and whether consent was requested for the search
6. Any alleged criminal behavior by the driver that justified the search
7. Any items seized, including contraband or money
8. Whether any warning or citation was issued as a result of the stop
9. Whether an arrest was made as a result of either the stop or the search and the justification for the arrest
10. The duration of the stop

This act provides a good model for other data-collection programs.

As for the length of time for which data should be collected, a lesson can be learned from the San Francisco police department, which recently “concluded” that persons of color were not being disproportionately stopped after studying just a week’s worth of data (and in this case the data did not include all stops but only those at which traffic tickets were issued – a much weaker indicator). The short time frame and the limited focus of this study undermined the usefulness and credibility of the study.

John Crew of the ACLU argues that at least a two-year period of data collection is necessary. The first full year is necessary to get adequate data and to cover various seasonal enforcement and deployment patterns. The second year is necessary for comparison purposes. Crew also notes that, policy and training reforms that are enacted in response to problems identified in the first year of the study need to be assessed for impact after they are implemented.

Permanent data collection would be the best practice, particularly because ongoing data collection may itself deter racial profiling. Unless there is a strong reason not to, traffic stop data should be included in the data that law enforcement agencies regularly collect on an on-going basis.

The analysis of the data must also be adequately sophisticated, and open to refinement over time. Acknowledging that analyzing data from stops will be a complex process must not hinder immediate collection efforts, however.



Nor should the cost of implementing these data collection efforts be exaggerated, as it has been in Florida. There the state patrol estimates it would need approximately 34 new patrol officers – or the equivalent – to record stop data. This estimate anticipates that it will take each officer five minutes to capture the additional data after each stop. According to Crew, however, other agencies are taking only about 15 seconds.

Priorities must be set, and budgeting, while a legitimate consideration, must not deter local agencies from acting.

Finally, data collection must be seen as only one component of a statewide, comprehensive plan to detect and eliminate racial profiling and other forms of racial bias. Several other strategies must also be undertaken including ending stops based on pretext as a crime-fighting tactic, passing state data-collection legislation, and linking police accountability and training to the analysis of data.

As this process moves forward, it is important to remember that racial profiling is a civil rights violation. It carries with it profound economic, social, and personal consequences for all minorities of all income levels and all ages. Innocent people of color, not just offenders, are stopped and persecuted with very few actual arrests made.

To sum up:

- Enough types of data must be collected;
- Data collection must occur over an adequate period of time;
- Data must be analyzed correctly;
- Data collection must be tied to police accountability programs and other comprehensive measures.

## **A. Computerized Data Collection Efforts**

### **1. San Jose, Calif. Police Department**

San Jose began an in-depth study and analysis of the racial profiling issue, entitled the Vehicle Stop Demographics Study (VSDS), on June 1, 1999. The first analysis was reported on December 17, 1999.

Under the VSDS, when an officer makes a stop, s/he advises a department radio communications dispatcher that a stop is being made. This is done by voice or by entering the information into a mobile computer terminal in the vehicle. The event is then automatically tracked by a computer-aided dispatch system (CAD).

In the past, when the officer cleared a stop, s/he advised the dispatcher of the outcome, i.e., whether or not a traffic citation was issued, an arrest made, etc. This was done with a single-letter alpha code. CAD would then provide automated information about how many traffic citations were issued.

Under the new program, three additional alpha codes are used by officers clearing a traffic stop: the reason for the stop, the race of the driver, and whether the driver was an adult or a juvenile. The race codes are based on those used by the state and federal governments to indicate race/ethnicity.

This new data is communicated via radio or computer. No written report is needed and the information is fully automated. No additional personnel are needed to enter the data and it is always up-to-date.

As a matter of course, the Department generates statistics electronically. The Crime Analysis Unit collects the statistics, translates them into real numbers and prepares a semi-annual written report.

## **2. Sacramento**

Our best model will likely be Sacramento. Beginning July 1, 2000, the Sacramento police will voluntarily collect 17 categories of data for one year. After each stop, officers will fill out a standardized form answering 17 questions about the stop. The forms will be given to an independent research facility – probably USC – for analysis. The research facility will also consider census data (Sacramento recently did its own census, so they have current data), and information from the officers' personnel records. A status report will be issued after six months of data collection, and a final report after one year. There will also be a telephone survey of 2-4% of the people stopped, to confirm that the information about the stops is correctly recorded on the forms. The list of categories of data to be collected in Sacramento is the end result of a process that included public hearings at which community members could suggest types of information to be gathered. The 17 categories of information on the Sacramento form are:

1. Time of stop
2. Date of stop
3. Reason for stop
4. Race and gender of driver
5. Driver's year of birth
6. Driver's license number
7. Was driver asked to exit the car?
8. Number of passengers
9. Was a search done of the driver, passenger, or vehicle?
10. Authority for the search
11. What was discovered or seized as a result of the search?

12. Did the stop result in an arrest, citation, report, "advise," or "PC"?
13. Stop location
14. Vehicle license plate number
15. Duration of stop in total minutes
16. Officer's badge number
17. Was the police vehicle equipped with a camera?

The Sacramento police will use their computer-assisted dispatch (CADS) system to capture the data and feed it all into their early warning system called RAMS (produced by Police Foundation). They will use an add-on to RAMS called QSI (quality of service indicator) to analyze the data for possible problems. Tying traffic stop data collection into early warning systems makes sense practically and may be easier to "sell" if it is understood as one part of a comprehensive management oversight and monitoring system. There is already a strong trend towards establishing early warning systems.

See:

[http://www.apbnews.com/cjprofessionals/behindthebadge/2000/04/05/earlywarning0405\\_01.html](http://www.apbnews.com/cjprofessionals/behindthebadge/2000/04/05/earlywarning0405_01.html) and

[http://www.apbnews.com/cjprofessionals/behindthebadge/2000/04/05/earlywarning0405\\_02.html](http://www.apbnews.com/cjprofessionals/behindthebadge/2000/04/05/earlywarning0405_02.html).

### **3. Florida Highway Patrol**

Beginning January 1, 2000, the Florida Highway Patrol began collecting data on stops. Manual recording of data will occur until either one of the following two options can be implemented:

- a. Modification of the computer aided dispatch system (CAD) at an estimated \$1.1 million (including the hiring of 34 additional duty officers).
- b. Equipping of each patrol car with a mobile data terminal at an estimated cost of \$4.75 million.

### **B. Written Data Collection Efforts**

#### **1. Michigan State Police Data Collection**

Beginning this year, Michigan state police began collecting more detailed traffic enforcement information. Their UD-2 form is redesigned to provide a section to collect data based on the driver's race and sex, enforcement actions taken, and whether a search of the vehicle was conducted.

Officers are to rely on their independent discretion when making a determination regarding race or ethnicity. Under no circumstances is an officer to discuss or question a driver regarding their race or ethnic origin for purposes of data collection.

The following codes are used:

<u>Race/Sex Code</u>	<u>Search Code</u>
W/M = White Male	C = Search
W/F = White Female	PC = Probable Cause search including
B/M = Black Male	incident-to-arrest or plain-view situations
B/F = Black Female	
L/M = Latino or Hispanic Male	
L/F = Latino or Hispanic Female	
O/M = Asian, American Indian, Native Alaskan, Hawaiian or Multiracial Male	
O/F = Asian, American Indian, Native Alaskan, Hawaiian or Multiracial Female	

## 2. Washington State Patrol

The Washington State Patrol now requires a written record of gender, age, race and ethnicity of persons stopped, on the back of their revised Time and Activity Report (TAR) form. The officer records the drivers' the race/ethnicity as s/he perceives it, and does not ask drivers to identify their race.

The following numerical codes are used:

### Field 1 Sex

- 1 = Male
- 2 = Female

### Field 2 Age

Numerical age

### Field 3 Race

- 1 = White
- 2 = African American
- 3 = American Indian
- 4 = Asian
- 5 = Pacific Islander
- 6 = East Indian
- 7 = Other

#### Field 4 Origin

- 1 = Hispanic
- 2 = Non-Hispanic

### **3. California Highway Patrol**

Beginning October 1, 1999 the California Highway Patrol began collecting data on additional fields. It now includes race, gender, age, whether the vehicle was searched, and the result of the stop. The data is collected on a second CHP 415 Daily Field Record reworked to include these new fields.

A separate MIS Menu Screen has been developed to collect this contact data. Data entry is required, however.

The following codes are used:

#### Race

- B = Black/African American
- W = White/Caucasian
- H = Hispanic
- A = Asian
- O = Other

#### Result

- 1 = In-custody Arrest
- 2 = Notice to Appear
- 3 = Notice to Correct Violation
- 4 = Verbal Warning
- 5 = Public/Motorist Service

#### Search

- Y = Searched
- N = Not Searched (including a vehicle inventory, search incidental to lawful arrest, and search pursuant to lawful search warrant)

### **C. Providing Racial Background on Driver's Licenses**

Although federal funding may be available to assist states wishing to modify their driver's license and databases for this purpose, only one state is considering such a modification. It is completely unnecessary however, to use data on a license when collecting stop data. The officer's perception of the race of the driver is what matters.

## **IV. Analysis of the Data**

## A. San Jose Police Department

Three months' worth of stop data were examined.

The following data was broken down:

- Number of Stops
- Reason for Stops
- Driver's Racial Background
- Disposition of Stops
- Driver's Age (adult or minor)
- Driver's Gender

The racial demographics of San Jose were estimated using census data and data from the California Department of Finance.

The analysis was conducted:

- The race/ethnicity of drivers stopped during the three-month period was compared to the racial/ethnic makeup of the city's residents.
- At first glance, it appeared that some minorities were over-represented in the number of stops made.
- However, two other factors were considered:
  - People in areas with higher concentrations of minorities were making more calls for police assistance, resulting in greater police presence, and thus more police stops, in those neighborhoods
  - These same districts with higher minority concentrations and higher calls have socioeconomic factors such as higher rates of unemployment and poverty, making vehicle stops on improperly maintained vehicles more likely.
- This analysis, however, is being refined with the assistance of the ACLU. It is acknowledged, for example, that the increased number of service calls in an area are not made for vehicular violations and therefore should not be used to justify increased stops.

The possibility that not all of the racial disparity in traffic stops is due to racial profiling or bias must be acknowledged as part of an objective analysis of the data. But at the same time, facile explanations for disparities must be closely examined, and not accepted at face value. Some researchers de-emphasize bias because of higher rates of offending among minorities. Yet, the disproportionate rates of offending still leave about 20-25 percent of the black incarceration rate unaccounted for. Moreover, the premise upon which racial profiling is largely based – that most drug offenses are committed by minorities – is untrue.

As Katheryn Russell, author of the book, *The Color of Crime*, points out, racial disparity and racial bias are often considered antithetical when, in fact, they coexist. Therefore,

both bias and disparate offending rates must be examined further. Indeed, even disparate offense rates are cause for alarm and require our attention.

## **V. Need for a Comprehensive Strategy for Eliminating Racial Profiling**

### **A. Proposed Comprehensive Strategy**

Data collection and analysis alone are not enough. A comprehensive strategy to eliminate racial profiling must include:

**Passing remedial legislation in Minnesota and in every state.**

Significant resources must be devoted to advocating legislation requiring ongoing statewide data collection regarding traffic enforcement practices.

**Eliminating other conscious and unconscious racist police practices.**

**Initiating new police training programs to change the culture of law enforcement.**

**Fostering community-training programs for those community members and organizations that wish to help eliminate racially biased police practices.**

The capacity of grassroots and civil rights organizations to eliminate racially biased police practices and to develop police accountability programs must be increased through training and organizing.

**Expanding public discussion and education on the problem of racial profiling.**

**Eradicating pretextual stops as a crime-fighting tactic.**

Banning pretextual stops does not mean banning enforcement of petty offenses. It means an end to the use of minor traffic violations for non-traffic safety purposes (i.e., "fishing expeditions" for contraband or just as a way to apply "heat"). The primary motivation for the stop must always be enforcement of the violation that forms the basis of the stop.

This is not always easy to enforce. However, it starts with a policy statement. Deployment, supervision, and training issues can then follow.

Specialized highway drug interdiction units whose only tool is the traffic stop would be disbanded (as they have been in the Washington State Patrol). Evaluation of officers based on quantity of stops – rather than quality – would become less likely and less

meaningful. The “stop and think” effect on officers might also take hold. In other words, if officers were taught to ask themselves, “why am I really stopping this guy for this petty violation?” it might help stem the unconscious racism and stereotyping underlying the “hunch” style of racial profiling stops.

**Banning racial profiling in all federally funded drug interdiction programs as well as all other state and local drug interdiction programs that rely on pretext stops as methodology.**

Through litigation, lobbying, and grassroots organizing, drug interdiction programs that rely on pretext stops as methodology must be eliminated.

Federal funding for Operation Pipeline and other highway drug interdiction programs must be restricted to local, state and federal agencies that (1) agree to collect and report comprehensive race data on stops and searches; and (2) agree to implement preventative measures such as written “consent to search” forms that inform drivers of their right to refuse a search, and early warning systems that track officers’ behavior and identify officers engaged in discriminatory practices

#### **Passing the federal Traffic Stops Statistics Study Act.**

The Traffic Stops Statistics Study Act passed the House of Representatives in March of 1998 by a unanimous vote. However, it died in the Senate Judiciary Committee without any hearings. In April 1999, Rep. Conyers reintroduced the Act (HR 1443) and Senators Frank Lautenberg (D-NJ) and Russell Feingood (D-WI) sponsored it in the Senate (S.821). The bill has been referred to the full House of Representatives, but has not yet come up for a vote.

The Act does not regulate traffic stops nor require particular policies. It does, however, require the gathering of solid, comprehensive information so that the discussion can move beyond whether the question of whether racial profiling is going on, and on to issues of prevention.

#### **B. An Example of a Somewhat Comprehensive Approach (albeit under a consent decree): New Jersey State Troopers**

In 1999, the United States entered into a consent decree with the State of New Jersey, the State Police, and the Department of Law and Public Safety after alleging that the State Police troopers improperly used race to target minority drivers and passengers.

The most relevant components of that decree are:



*Policy Requirements:* State troopers may not rely on race or ethnic origin of motorists in selecting vehicles for traffic stops and in deciding upon post-stop actions, except where looking for a specific suspect.

*Traffic Stop Documentation:* State troopers will document the race, ethnic origin, and gender of all drivers stopped, the reason for each stop and any post-stop action taken. The troopers must accurately record this information in written reports, logs, radio communications, radio recordings and/or video recordings.

The Communication Center's Computer Aided Dispatch system will record the bulk of the information. An initial call shall be made prior to the stop unless unsafe or impractical. Other forms for searches must also be completed.

The State shall develop and implement a computerized system for maintaining and retrieving the information necessary to supervise this process (the "Management Awareness Program" or MAP).

MAP shall include:

all information collected for all motor vehicle stops;  
information on civilian complaints, investigations of police misconduct; reports on use of force; civil suits and criminal charges, etc.  
interventions and training programs implemented.

MAP shall have the capability to:

search and retrieve numerical counts and percentages for any combination of the above-referenced information and run reports for specified time periods, and for individual troopers, squads, and stations.

*Supervisory Review of Individual Traffic Stops:* Supervisors will regularly review trooper reports and may require counseling or additional training for officers whose records reveal cause for concern.

*Supervision of Patterns of Conduct:* The state will implement an early warning system that uses computerized information to assist supervisors to identify potentially problematic behavior.

*Misconduct Allegations:* The State Police will make complaint forms available at a variety of locations, institute a telephone hotline and publicize the toll-free number at all rest stops on limited access highways. Allegations of discriminatory traffic stops, etc., will be investigated by the Professional Standards Bureau or by the State Attorney General's Office.

*Training:* The State Police will continue measures to improve training.

*Auditing by the New Jersey Attorney General's Office:* The State Attorney General's Office will ensure implementation of this decree.

*State Police Public Reports:* The State Police will issue semiannual public reports containing aggregate statistics on certain law enforcement activities including traffic stop statistics.

*Independent Monitor:* An Independent Monitor will monitor and report on the state's implementation of the Decree.

## **V. How We Currently Collect Data in Minnesota**

**A. State Patrol:** The state patrol does not collect data on the race of drivers stopped. For arrest data, the state patrol uses written reports, although CAD is being tested for the metropolitan area.

**B. Minneapolis Police Department:** CAD and mobile computers. Types of stop data collected:

1. Race of driver
2. Driver's license information
3. Current insurance information
4. Reason for the stop

**C. St. Paul Police Department:** Types of stop data collected:

1. Race of driver
2. Gender of driver
3. Whether driver and/or passenger(s) were searched
4. Whether weapons were found in search of persons
5. Whether vehicle was searched
6. Whether contraband was found in search of vehicle

## **APPENDIX D**

Workgroup subcommittee  
*Draft proposal of six initiatives*

## DRAFT COPY ONLY

In response to issues raised during the June 27<sup>th</sup>, July 20<sup>th</sup> and August 9<sup>th</sup> meetings of the Racial Profiling Workgroup, the following initiatives are proposed as a means to address the allegations of racially profiled traffic stops by peace officers. The initiatives reflect a cooperative agreement reached by representatives of the Minnesota Police and Peace Officers Association, the Minnesota Chiefs of Police Association, and the Minnesota Sheriffs Association.

Minnesota's law enforcement community believes there is anecdotal evidence to find merit and substance to the recent allegations of racially profiled traffic stops and further believes the solution to the problem lies in a multifaceted response involving education, training and policy considerations. To that end, the following initiatives are proposed:

1. A statewide conference on "Racially Profiled Traffic Stops" (Fall 2001)

Funded through a grant to the Minnesota Board of Peace Officer Standards and Training (POST) the conference, similar to the bias-motivated crimes conference in the late 1980s, would serve as a kick-off event that would garner public attention, raise awareness in the law enforcement community, and serve as the basis for continued citizen and law enforcement dialogue.

The conference would feature recognized speakers on issues germane to racial profiling and breakout sessions on topics necessary to ensure a multi-cultural, multi-disciplinary response, including law enforcement, prosecutors, public defenders, judges, higher education, councils of color and community groups.

The purpose of the conference would be to not only generate interest, but would also generate solutions.

2. Regional seminars on "Racially Profiled Traffic Stops" (Winter 2002)

Regional seminars will serve to highlight the issues unique to that region and promote a more community-oriented response. The seminars would provide information and procedural guidelines to increase awareness of issues surrounding racially profiled traffic stops, and would incorporate an understanding of the model policy language and intent.

3. Model Policy (by 8-1-01)

Based on information gathered through the statewide conference and regional seminars, an ad hoc committee of the POST Board would draft language for a "Model Policy Regarding Racially Profiled Traffic Stops." The ad hoc committee would include representatives of the groups present at the Racial Profiling Workgroup.

The model policy would be sent to every CLEO on August 1, 2001, and the agency would be required to have a same or similar policy in place on January 1, 2002, e.g. "The agency shall adopt..."

The new model policy would become part of the POST Board's annual "Policy and Training Compliance Review Form" and, as is the case for other mandated polices, be subject to inspection based on complaint or random selection for compliance review.

The model policy would include the following components:

- Policy statement
- Purpose
- Scope
- Definitions
- Policy language, including state statute and POST Board rule citations
- Policy revision schedule

4. Pre-service Learning Objectives (Summer, 2001)

An ad hoc committee of the POST Board would prepare learning objectives on racially profiled traffic stops for inclusion in the curriculum of the nineteen (soon to be twenty) Professional Peace Officer Education Programs.

The colleges require a minimum of one full semester to make changes to the PPOE curriculum. The changes would not be effective until Spring Semester, 2002; therefore, beginning May 2002, every student graduating from a PPOE program would have completed the required learning objectives.

5. In-service Education for Licensed Peace Officers and Part-time Peace Officers (Fall, 2001)

An ad hoc committee of the POST Board (see item #4 above) would prepare learning objectives on racially profiled traffic stops for inclusion in continuing education courses approved for POST credit. POST would monitor and evaluate the courses to ensure the courses fulfill the prescribed learning objectives.

6. Data Collection

Voluntary data collection efforts have already begun in Minneapolis and St. Paul. The experience gained through these efforts could inform further evaluations. Local data collection should be voluntary and should be supported by incentive funds. When a community decides to collect information about racial profiling, it would be advantageous to use a single form agreed to by the principle participants. Records based upon specific aggregate elements could be submitted to a designated state agency. In summary, if data collection is pursued, it should:

- be voluntary and under control of the individual community,
- be encouraged with incentive funds to defray costs,
- be based upon standard guidelines, and
- result in aggregate reports to the appropriate state agency.

End 8-30-00

## APPENDIX E

*Essential elements of successful  
data collection and analysis efforts*

## ESSENTIAL ELEMENTS OF SUCCESSFUL DATA COLLECTION AND ANALYSIS EFFORTS

1. Work with an outside consultant in the design of the study and use existing technology to the particular agency's advantage in this design.
2. Collect enough categories of data on ALL STOPS to allow for meaningful analysis of the data:
  - Date and time of stop
  - Reason for stop
  - Location of stop
  - Race and gender of driver
  - Driver's year of birth
  - Driver's license number
  - Year and make of car
  - Vehicle license plate number
  - Number of passengers in the car
  - Whether driver was asked to exit the car
  - Whether a search was conducted of the driver, passenger(s) or vehicle
  - Authority for the search
  - Contraband or weapons discovered and/or seized as a result of the search
  - Duration of stop
  - Result of the stop, i.e., arrest, citation, warning, release
  - Officer's badge number
3. Collect data indefinitely with periodic reports, rather than for six months as planned. The shorter the period of data collection, the less reliable the results, especially given the natural fall off of racial profiling that will occur when data is first collected.
4. Devise an auditing system of periodic, unannounced spot checks, etc...to ensure that its officers are collecting the data with integrity.
5. Collaborate with an independent research facility (or perhaps your commission) in analysis of the data, rather than compiling and analyzing it in-house. Because we currently have only a handful of completed analyses from across the nation, and because some of these have reached faulty conclusions in accounting for disparities, this step is crucial.
6. In this analysis of data, set effective benchmarks. The raw population data is not enough. Rather, the driving population on relevant roads must be determined.
7. Link data collection efforts to police accountability measures.



8. Collaborate with impacted communities.
  9. Communicate to all interested parties exactly what data is being collected, how it is being recorded, and what is going to be done with the accumulated data.
-

## **APPENDIX F**

### *Cost considerations for racial profiling studies*

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# Cost Considerations for Racial Profiling Studies

September 6, 2000

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## A. Possible Expenditure Categories

- **Planning**

for data collection design; data processing; regular reporting; and periodic statistical analysis

- **Forms**

Design new forms or redesign existing ones; periodic printing and distribution (for up to 1 to 2 million stops annually, state and local)

Possibly formless, if the process is designed to be totally computerized.

- **Training for data collection**

For officers and relevant staff

Additional training, as needed

- **Data collection by officers**

Time expenditure per stop is reportedly negligible if the agency is already collecting extensive data on each stop

Time expenditure is higher when data collection is being extended to other types of stops than previously done

- **Data transmission**

Options:

- 1) Paper Form - completed by officer; reviewed and submitted at end of shift; requires subsequent data entry;
- 2) Mobile Data Terminal / Radio - officer transmits information after each stop; dispatcher immediately records the info electronically, or codes it onto a paper form which requires subsequent data entry; or
- 3) Laptop Computer - officer electronically enters the data following each stop; uploads to a master file at end of shift.

- **Data entry and data checking**

More time consuming under options 1 and 2 above (possibly an additional 3-4 full time clerks per 1 million forms annually).

However, even option 3 above requires data checking and file manipulation,

- **Data collection compliance checking / audit function**

Expenditure depends on the scope of the checking, possibly requiring up to 1-2 full time staff

- **Information systems management**

Possibly requiring 1 full-time IS staff person for the MSP alone.

- **Statistical analysis**  
Using agency staff and/or outside consultants (this need is likely to be periodic and ongoing).
  - **Development of baseline measures for comparison (possibly a separate study)**  
Using existing information (e.g., census tract data); and/or  
Requiring additional data collection, such as by observing traffic flows for a sample of roadways over selected time periods (likely to require the equivalent of 2-4 additional staff persons for roadside observation and data collection, data entry; file management; and analysis).
  - **Involvement of academic partners or independent research facility**  
Possibly for: data collection design; development of baseline measures for comparison; statistical analysis and report writing; and so on.
-

## B. Some Examples of State and Local Studies Highlighting Costs

### Missouri

SB 1053, enacted 2000

Applies to all state and local law enforcement agencies

Estimated additional costs:

Attorney General - approximately \$40,000 annually

- for 1 FTE paralegal, plus related expense for analysis and reporting

Missouri Highway Patrol

- will absorb \$120,000 estimated costs for 3 technical staff persons to redesign agency software
- will absorb trooper training costs and all other personnel costs
- estimate an additional \$5,000 printing cost

Dept. of Natural Resources

- will absorb costs for forms redesign and printing, and for officer training; cannot estimate

Local Governments

- assumes there will be costs, but amounts unknown for this fiscal note

### Washington

Began voluntary data collection in 1999

Legislation was enacted soonafter (also in 1999) mandating ongoing data collection for the Washington State Patrol (WSP)

The WSP has about 1,000 troopers, and makes 1.3 million citizen contacts per year (over 1,600 per patrolman per year)

- 718,000 violation stops, including warnings
- 412,000 assists

Troopers record all stops on back of their daily work report

WSP already collects full UCR data;

- for the study, have added: gender, race/ethnicity, age, and reason for the stop

Costs:

- As enacted, costs for the study by the State Patrol were ultimately estimated at about \$10,000, and they are being absorbed by that agency. No funding has been provided for inclusion of an outside consultant.
- However, far larger estimates were made for an early version of the bill (not enacted in that form), which would have mandated data collection by the WSP and all local law enforcement agencies (i.e., from \$500,000 to \$840,000 per year for the WSP itself, and approximately \$8 million annually for local agencies).

## Seattle PD

- Voluntary study of all police traffic stops (about 88,000 per year)
- Race-data collection began in 1999 in Seattle
  
- PDs in Washington were already collecting extensive information on traffic stops; thus it has not been difficult to extend the data forms to collect other data needed for the racial profiling study
- Seattle uses MDTs (Mobile Data Terminals) to transmit information
  
- \$25,000 = the estimated cost for upgrading the PD's data systems - absorbed by the PD
  
- Additional costs that were absorbed include:
  - any additional data entry work
  - the costs for extensive statistical analysis by an outside consultant;
  - extensive additional statistical analysis and geo-mapping by department's own staff
  - efforts to develop reasonable benchmarks for comparison (e.g., through ongoing analysis of census data, traffic accident information, etc.)

## North Carolina

Was the first state to mandate data collection by its Highway Patrol (NCHP) and other state law enforcement agencies- SB76 was enacted April, 1999, with data collection required to begin January, 2000. Prior to this mandate, the NCHP began voluntarily collecting data on its traffic stops. It has partnered with NC State U for the analysis.

The mandate applies to all routine traffic stops by the NCHP, excluding stops during sobriety checkpoints and other roadblocks, except when resulting in a warning, citation, arrest, search, seizure or injuries.

Apparently no funding was appropriated for the study; thus the NCHP is absorbing the costs.

## Connecticut

This was the second state to mandate statewide data collection for racial profiling studies, and the first to apply the mandate to both all state and local law enforcement agencies (enacted June, 1999; the mandate Sunsets Dec. 31, 2001).

Connecticut has 1,052 state police officers, and 6,585 municipal police officers, making over 1 million stops per year.

Estimated Costs:

- officer time - assumed negligible
- printing new forms - \$25,000 per year
- data entry - not mentioned in the fiscal note
- design report format/analysis - \$50,000 to \$100,000 per year for a statistical consultant

- \$300,000 to \$385,000 annually for 6 additional investigators in the Office of the State's Attorney to investigate citizen complaints involving traffic stops (if legislative intent requires a thorough review)

## **San Diego PD**

Voluntarily began data collection January, 2000

San Diego PD has about 2,300 sworn officers

Data collection on all vehicle stops initiated by an officer (about 200,000 per year)

Excludes responses to accidents, 911 calls (excludes citizen-initiated contacts, even those resulting in warnings, citations, arrests, and/or searches)

Previously data was being collected only for violation stops;

Thus, data is now being collected on more stops than previously, but not on all citizen contacts

### Data collection method

A paper-card system is used for recording stop data

The card is completed by the officer and turned in at end of shift; then the data are key-entered by department clerks

For technical reasons, the department is unable to use its mobile data terminals (MDTs) to handle the data for the study

The department is now going to laptop computers, but will continue with paper-cards for the profiling study

### Costs:

To date, the San Diego PD has absorbed all the costs of their racial profiling study

\$50-70,000 was paid to an outside consultant for design and analysis work (even though The expected federal grant was not awarded to cover this expense)

The SD-PD has also absorbed the costs for the forms and for data entry (clerical overtime may soon become an issue, given the growing backlog of stop forms)

The department is hoping to obtain a \$75,000 grant from the state upon submitting its data to the CHP at year-end

## California

Legislation mandating data collection by both the California Highway Patrol (CHP) and all local law enforcement agencies was twice passed and vetoed – first in 1998 (SB vetoed by Gov. Pete Wilson), and again in 1999 (SB78, vetoed by Gov. Davis). Gov. Davis agreed to sign a third bill introduced in 2000 (SB66) that would have outlawed racial profiling; however, it was withdrawn in August, 2000 under fire for failing to mandate any data collection, whether by state or local agencies.

Upon vetoing the second bill, Gov. Davis, by executive order, required the CHP to begin data collection on all its traffic stops. In addition, some 70 California cities have voluntarily begun racial profiling studies.

### Costs:

A fiscal note prepared for SB78 in 1999 (the second vetoed bill) estimated the cost for mandatory state and local data collection to be in excess of \$8 million annually (including over \$5 million for the CHP, and the remainder for local governments).

Included in the fiscal note was an estimate for an annual cost of \$2.8 million to process and report the data from 3.6 million traffic stops by the CHP.

## California – State Grants to Cities

According to the San Diego PD (not yet verified), the following state grants are available to local PDs that collect and submit their (racial profiling study) traffic stop data to the California Highway Patrol. The maximum grant amounts are scaled to department size (i.e., the number of sworn officers), as follows:

<u>Number of Officers in the Department</u>	<u>Grant Amount</u>
500 or more	\$75,000
250-500	\$50,000
100-249	\$25,000
25-100	\$10,000
1-24	\$5,000