

ROAD WORK AHEAD



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Data collection: a tool to ameliorate
racially biased policing.



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DATA COLLECTION: A TOOL TO AMELIORATE RACIALLY BIASED POLICING.

Executive Summary

Anyone who has ever been stopped by police officers on a state road can attest that it can be an unnerving experience. The unsettling nature of a stop can be exacerbated if the driver believes that the officer's biases played a role in the officer's decision-making process. Racial biases, conscious or unconscious, can be the most damaging because they create a perception that people are treated differently in the eyes of the law in violation of their civil rights.

The term "racially biased policing" was coined to cover overt discriminatory treatment of minorities, as well as subconscious biases that may affect police decision-making. In 1999, North Carolina was at the forefront of recording data to prove or disprove whether minorities are stopped and searched at disproportionate rates by enacting a law requiring police to record demographic information about detained drivers. Other states also adopted data collection as a tool to diagnose whether racially biased policing is a problem in their communities. However, in North Carolina, recent analysis of the data collected as a result of the law gives cause for concern.

Data collection has benefits recognized by the law enforcement community, including the Police Executive Research Forum. First, data collection can provide significant information about a department's traffic stops and their results, which can improve a department's efficiency. It can help departments discern whether racial disparities are rooted in the department's culture or in a small number of officers who may need additional training. Most importantly, data collection can help guide dialogue within communities about racially biased policing and show affected community

members a police department's willingness to work with them in addressing the issue.

However, efforts to adopt a national standard for traffic stop data collection met recalcitrance from some law enforcement circles. Police officers fear that the data collected, and the analysis thereof, may harm the agency and damage morale within the department. In North Carolina, the law has been in effect for more than a decade, and its requirements have not substantially changed officers' duties.

Consequently, there are specific ways in which the North Carolina law could be improved to benefit both the public and law enforcement. This report focuses on recommending three ways in which policy-makers at the legislative or administrative level could strengthen the data collection law to improve transparency and community engagement. The three recommendations are:

1. Require law enforcement to record and provide with specificity the location of each traffic stop.
2. Develop a standardized system so that every officer in North Carolina has a unique and anonymous individual officer identification number.
3. Train officers on the importance and benefits of data collection, as well as how to fill out the required forms, as part of the standard law enforcement training programs.

These recommendations should be part of a larger strategy to combat racial disparities in traffic stops. Strengthening the current laws with simple, common-sense changes is the first step to a better road ahead.

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The Traffic Stop – An Unnerving Experience

May 8, 2012, was not an average Friday for Kevin Scott. At around noon, Scott, who is African-American and in his late thirties, was heading northbound in his Volkswagen on Interstate 85 in Granville County, North Carolina. In the area between Creedmoor and Oxford, he saw a police patrol car waiting perpendicular to the highway. The patrol car was plainly visible to drivers, and the officer sitting in the police car had a great visual of the passing travelers. Anyone who has ever driven a car knows that this sight is not uncommon. It is what happened to Scott next that often surprises and frightens drivers.

The patrol car pulled out of the median and followed Scott on the highway for about one and a half miles. The police car turned on its blue lights and pulled Scott over onto the highway's shoulder. The officer told Scott that the reason he stopped him was because he was following the vehicle in front of him too closely. Scott, however, says that there were no other vehicles in front of him for quite some distance. The officer then asked Scott to provide his license and car registration, and requested that Scott step out of his vehicle and wait inside the patrol car's passenger seat while the officer checked Scott's documentation. The patrol car had a drug-sniffing dog in the back seat, which got a whiff of Scott as the officer finished locating Scott's records.

It is not unusual for officers to request that a driver wait in the patrol car while the officer writes a citation. Law enforcement training materials state that one of the places where a citation can be written is with the officer sitting on the driver seat of the police cruiser, while the violator waits in the passenger seat of the patrol vehicle.¹ One of the benefits of this particular technique is the officer's ability to question the violator if additional information is needed without having to re-approach the violator's car.² But the manual also states that this technique has several drawbacks, one of them being the officer's inability to focus on completing paperwork because he or she must continually view the individual sitting in the passenger seat.³

It is the application of this technique that can become unnerving for a common driver like Scott. After all, you are sitting next to a man or a woman who is carrying a deadly weapon and can curtail your freedom by taking you to jail. Furthermore, the officer, as stated in the training manual, can question the driver to obtain additional information. In Scott's case, the officer began questioning whether he had drugs or weapons in the car, which Scott did not. The officer then let Scott go without a citation and let him off with a warning.

In an October 7, 2013 column in the *Raleigh News & Observer*, columnist Barry Saunders explained a similar encounter with law enforcement after officers stopped him on Interstate 85 in Spartanburg, South Carolina.

¹ Basic Law Enforcement Training, Techniques of Traffic Law Enforcement (last revised January 2010) pg. 30.

² *Id.* at pg. 31.

³ *Id.*

Saunders explains, “I knew I wasn’t speeding...The [officer] who stopped me claimed I’d swerved.”⁴ The officers asked Saunders to step out of the vehicle and had a dog sniff around the Ford Edge he had rented for this trip to Atlanta. When the dog leaped into the car through the open car window, he writes:

“That’s when I began worrying about the dog drooling on the crackers spread out on the front seat for easy access, as well as silently praying that whoever had rented the car prior to me had not left any narcotics in the ashtray or anywhere else.”⁵

Neither Scott nor Saunders carried any contraband or weapons. Both were stopped by police officers for minor traffic violations that would be almost impossible to dispute. In other words, the officers are the only ones who could confirm seeing the violation. Both were sniffed by trained police dogs. Both are African Americans.

Which begs the question, would the techniques and questioning used on Scott or Saunders have differed if either of them was a woman? Or elderly? Or white?

Racial Profiling: A brief history and a working definition

Operations executed by the U.S. Drug Enforcement Administration (“DEA”) during the 1980’s shaped what we currently know as racial profiling. The term “racial profiling” is derived from the “profile” of drug couriers developed by the DEA during the mid-1980s to interdict drug trafficking.⁶ Others suggest the genesis is found in the dealings of a law enforcement officer by the name of Bob Vogel.⁷ Vogel, while working as a Florida state trooper, discovered that drug couriers shared similar traits that would set off alarm bells in his head.⁸ Some of these traits included cars with air fresheners, fast-food wrappers, maps with circled cities, tools on the floor, a single key in the ignition, or the amount of luggage.⁹ Physical or behavioral traits included avoiding eye contact, tight steering wheel grip, tattoos, and other adornments such as earrings, nose rings or eyelid rings, among others.¹⁰

The observation of these accumulated factors led to numerous constitutionally dubious stops in which Officer Vogel had no other basis for the stop aside from the hunch that these factors were indicative of a drug courier.¹¹ However, in a 1986 decision by the U.S. Court of Appeals for the Eleventh Circuit, the court held that even though Trooper Vogel’s “hunch” proved correct in the particular case, it was not sufficient to justify a seizure that was not objectively reasonable at its inception.¹² Undeterred by this judicial rebuke of his tactics, Trooper Vogel changed his approach and found that hundreds of possible traffic violations, such as driving with a defective license plate light, defective headlights, obscured tags, etc., would provide him with reasons to pull over the “shifty-looking”

⁴ Barry Saunders, *My unexpected SC stop, thanks to a police drug operation*, News and Observer, October 7, 2013 available at www.newsobserver.com/2013/10/07/3263215/saunders-my-unexpected-stop-in.html.

⁵ *Id.*

⁶ Institute on Race and Justice, Northeastern University. *Promoting Cooperative Strategies to Reduce Racial Profiling*. COPS Evaluation Brief No. 1 Washington, D.C.” Office of Community Oriented Policing Services, U.S. Dept. of Justice, 2008 at 2.

⁷ Gary Webb, *Driving While Black, Tracking unspoken law-enforcement racism*, Esquire, April 1, 1999 available at www.esquire.com/features/driving-while-black-0499.

⁸ *Supra* n. 7

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *U.S. v. Smith*, 799 F.2d 704, 708 (11th Cir. 1986).

ones.¹³ Vogel eventually became sheriff of Volusia County, and by 1987, the DEA had formally adopted his highway drug interdiction system and had begun funding a training program to preach Vogel's gospel around the country.¹⁴

In 1996, the U.S. Supreme Court weighed in on whether Vogel's tactics were constitutional. In *Whren v. U.S.*, the court said that as long as officers have probable cause to believe a driver violated a *traffic* law, the stop is rendered reasonable under the Fourth Amendment to the U.S. Constitution.¹⁵ In *Whren*, for example, Officer Ephraim Soto stopped a truck waiting at a stop sign because the truck waited at the intersection for more than 20 seconds, an unusually long time.¹⁶ The court's decision in *Whren* helped legitimize Vogel's practices, which were, by that point, already spreading across the country like a virus.

The practice did not sit very well with communities of color, who were regularly stopped by officers throughout the nation for minor traffic infractions and asked for permission to have their vehicles searched. In Maryland, statistics gathered after a civil rights lawsuit was filed against the Maryland State Police showed that out of the 732 people who were detained and searched during 1995 and 1996, seventy-five percent were black and five percent were Hispanic.¹⁷ In New Jersey, an expert study by Dr. John Lamberth in the case of *State of New Jersey v. Soto* revealed that severe disparities existed in the rates of how often blacks were stopped on the New Jersey Turnpike.¹⁸ In a 1999 article published in *Esquire*, Gary Webb described his experience while attending the California Highway Patrol's pipeline training: "No one instructed me to look for Mexicans...But we were also taught that it is the Colombians and the Mexicans whose cartels are bringing most of the dope in."¹⁹ In April 2005, the Bureau of Justice Statistics released results from a survey of 80,000 people that indicated that minority drivers were three times more likely to have their vehicles searched following traffic stops than white drivers.²⁰

Today, this type of selective enforcement takes on two definitions. The U.S. Department of Justice defines "racial profiling" as the practice of targeting or stopping a person based primarily on the person's race, rather than on any individualized suspicion.²¹ However, the Police Executive Research Forum found that it is best to call the problem "racially biased policing."²² PERF explains that racially biased policing encompasses activities wherein officers make decisions based on more than just race, but rather supplement race with other factors such as neighborhood, the type of car being driven, or gender.²³ Furthermore, few police officers would deny that some officers are influenced by personal bias in performing their duties.²⁴ The term "racially biased policing," therefore, more accurately reflects the concerns expressed by citizens and law enforcement's views on the topic.

¹³ *Supra* n. 7.

¹⁴ *Id.*

¹⁵ *Whren v. U.S.*, 517 U.S. 806, 819 (1996).

¹⁶ *Id.* at 808.

¹⁷ *Supra* n. 7.

¹⁸ *State of New Jersey v. Soto*, 324 N.J. Super. 66, 70-71 (1996) (Dr. Lamberth's report found that 46.2% of the race-identified stops between exits 1 and 3 were blacks constituting an absolute disparity of 32.7%. Between exits 1 and 7A, 35.6% of drivers stopped were blacks constituting an absolute disparity of 22.1%).

¹⁹ *Supra* n. 7.

²⁰ See Melissa Whitney, THE STATISTICAL EVIDENCE OF RACIAL PROFILING IN TRAFFIC STOPS AND SEARCHES: RETHINKING THE USE OF STATISTICS TO PROVE DISCRIMINATORY INTENT, 49 B.C. L. REV. 263, JANUARY, 2008.

²¹ *Supra* n. 6.

²² Police Executive Research Forum, *Racially Biased Policing: A Principled Response 2* (2001).

²³ *Supra* n. 21 at 3.

²⁴ *Id.*

Additionally, research suggests that racial bias can rear its head in a subconscious manner, still affecting the way in which individuals make decisions. Researcher Lori Fridell writes, “Even ‘good,’ well-meaning individuals in our society have racial biases that lurk beneath our consciousness and impact our perceptions and behaviors.”²⁵ Police officers acknowledge the presence of implicit biases. Capt. Tracey Grove writes, “Police officers are human and, as the theory contends, may be affected by implicit biases just as any other individual. In other words, well-intentioned officers who err may do so not as a result of intentional discrimination, but because they have what has been proffered as widespread human biases.”²⁶ In North Carolina, Greensboro Police Chief Ken Miller talked about implementing additional training to address racial bias because, as he put it, “Sometimes we’re simply not aware of it. It’s that whole role of implicit bias in our work.”²⁷ As Webb’s article indicates, race may often play an explicit role in how police officers decide how and where to enforce the law, but the research suggests that subconscious stereotypes can also play a role in one’s decision-making process. And officers are not immune to this human condition.

“Our guys make a lot of stops. You’ve got to kiss a lot of frogs before you find a prince.”

- California Highway Patrol Sergeant

Accordingly, we will use the term “racially biased policing” to refer to the issue in this report in order to encompass both the overt discriminatory treatment of minorities and the subconscious biases that may affect police decision-making. Regardless of the source, recent studies suggest that disparities exist in the rates of stops among minority drivers compared to white drivers in North Carolina.²⁸ The analysis should at least provide notice that some law enforcement agencies may need to closely monitor how officers’ decisions are affected by their personal biases, whether conscious or unconscious, in order to ensure the law is enforced equally and efficiently.

Experts agree that the problem with using race as the primary reason to stop an individual rather than any individualized suspicion is that it does not work. Prof. David Cole and Dr. John Lamberth write, “Those who defend the police argue that racial and ethnic disparities reflect not discrimination but higher rates of offenses among minorities...But the racial profiling studies uniformly show that this widely shared assumption is false.”²⁹ Cole and Lamberth’s article goes on to show that in New Jersey, where police have admitted to racial profiling, consent searches yielded contraband on 25 percent of whites, 13 percent of blacks and only 5 percent of Latinos.³⁰ In his article, Webb alludes to this problem when he quotes a veteran California Highway Patrol sergeant explaining the operating principle behind the campaign to remove contraband from highway travelers: “It’s sheer volume,” the officer said.³¹ “Our guys make a lot of stops. You’ve got to kiss a lot of frogs before you find a prince,” the sergeant

²⁵ Lori A. Fridell, *Racially Biased Policing: The Law Enforcement Response to the Implicit Black-Crime Association*, in *Racial Divide, Racial and Ethnic Bias in the Criminal Justice System* 39, 41 (Michael J. Lynch, et. al ed. 2008).

²⁶ Capt. Tracey G. Grove, *Implicit Bias and Law Enforcement*, *The Police Chief*, Feb. 2012.

²⁷ Joe Gamm, Q & A with Greensboro Police Chief Ken Miller, *News & Record*, Nov. 17, 2013, available at http://www.news-record.com/news/article_c94260f0-4f46-11e3-8102-0019bb30f31a.html.

²⁸ Frank Baumgartner and Derek Epp, *North Carolina Traffic Stops Statistics Analysis*, Feb. 1, 2012, available at https://www.ncaj.com/temp/ts_4375DB23-FEB3-99EB-932C9C5AF4F5FFEF4375DB33-0B68-C72E-199C523AFB7F58A1/Baumgartner-Traffic-Stops-Statistics-1-Feb-2012.pdf.

²⁹ David Cole and John Lamberth, *The Fallacy of Racial Profiling*, *The New York Times*, May 13, 2001.

³⁰ *Id.*

³¹ *Supra* n. 7.

asserted.³² A 1997 study of the North Carolina Highway Patrol found that while black drivers were four times more likely than white drivers to be subjected to a search, they were 33 percent less likely to be found with contraband compared to white drivers.³³ Thus, the simple conclusion is that this type of enforcement is costly and counterproductive.

An added dimension to the controversy, and of specific concern for the Latino community, is the intersection between local law enforcement and immigration enforcement. Prof. Kevin Johnson poses the problem of over-inclusiveness in this particular realm by stating that there is a stereotype that all Latinos are “foreigners” of suspicious immigration status, which influences immigration enforcement law.³⁴ Prof. Johnson asserts that “the injuries suffered by Latino U.S. citizens and lawful immigrants are not palpably different from those sustained by innocent African Americans whom police stop on account of their race.”³⁵

However, an important distinction between the experience of African Americans and Latinos is that, as Anthony Mucchetti explains, Latinos bear a “double-burden.”³⁶ While Latinos have been victims of law enforcement policies that criminalize members of certain races, they also face the unique challenge of having their citizenship questioned.³⁷ In describing the interaction between a Mexican-American woman and law enforcement during a 1997 operation conducted by Border Patrol and a local law enforcement agency in Arizona, Mary Romero and Marwah Serag write that the woman felt that the immigration stops operate to demean and belittle Mexican Americans and convey messages of their vulnerability and lack of protected rights.³⁸ And before the accounts of this 1997 raid are dismissed as ancient history, consider the recent operations of Immigration and Customs Enforcement officers and the Jefferson Parish Sheriff’s Office in Louisiana, where citizens and non-citizens have complained about harassment by these law enforcement agencies in the course of asking people to identify themselves and provide fingerprints so that they can be checked in ICE’s mobile identification technology.³⁹ In welcoming new legislation that would require police to report traffic stop data so that it can be analyzed by the state, Connecticut’s Office of Policy and Management’s head of criminal justice, Michael P. Lawlor, explicitly connected the advantages of the new law with keeping tabs on the impact of the Secure Communities⁴⁰ program, which relies on partnerships between U.S. Immigration and Customs Enforcement and local law enforcement agencies to deport undocumented immigrants.⁴¹ This intersection is clearly evident in North Carolina, where an analysis of traffic stops prepared by Dr. Lamberth as part of a U.S. Department of Justice lawsuit against Alamance

³² *Id.*

³³ Donald Tomaskovic-Devey and Patricia Warren, American Sociological Association, *Explaining and Eliminating Racial Profiling*, Contexts, Spring 2009, available at <http://contexts.org/articles/spring-2009/explaining-and-eliminating-racial-profiling/>

³⁴ Kevin R. Johnson, *The Case Against Race Profiling in Immigration Enforcement*, 78 Wash. U. L.Q. 675, 709, Fall 2000.

³⁵ *Id.* at 713.

³⁶ Anthony E. Mucchetti, *Driving While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities*, 8 Harv. Latino L. Rev. 1, 20, Spring 2005.

³⁷ *Id.*

³⁸ Mary Romero and Marwah Serag, *Violation of Latino Civil Rights Resulting from INS and Local Police’s Use of Race, Culture and Class Profiling: The Case of the Chandler Roundup in Arizona*, 52 Clev. St. L. Rev. 75, 92, 2005.

³⁹ Hannah Rappleye and Lisa Riordan Seville, *Does High-Tech Dagnet to Deport Immigrants Go Too Far?*, NBC News, February 28, 2014, available at <http://www.nbcnews.com/news/investigations/does-high-tech-dagnet-deport-immigrants-go-too-far-n40306>.

⁴⁰ U.S. Immigration and Customs Enforcement, *Secure Communities* (Secured Communities uses an already-existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI) that helps to identify criminal aliens.)

⁴¹ Hugh McQuaid, *Racial Profiling Bill and Secure Communities Intersect*, CT News Junkie, May 17, 2012 available at http://www.ctnewsjunkie.com/archives/entry/racial_profiling_bill_and_secure_communities_intersect.

County Sheriff Terry Johnson showed that Latinos in Alamance County are cited at a rate more than six times higher than white drivers, one of the highest disparities Dr. Lamberth has observed in the United States.⁴²

The Fix – The Importance of Data Collection

One of the many affirmative steps that experts suggest can help ameliorate racially biased policing is for law enforcement agencies to collect demographic data about people detained during police interactions. In 2001, there was a national push to collect data from traffic stops. Rep. John Conyers, Jr. introduced the Traffic Stops Statistics Act, which would have required law enforcement agencies to collect data on the reason for the stop, the race of the driver, whether a search was conducted and on what basis, and whether the search uncovered contraband.⁴³ Notably, the bill would have withheld federal funding from law enforcement agencies that did not comply with the proposed law.⁴⁴ However, the efforts to enact this legislation were met with stark opposition from police groups even though the bill passed with support of the Republican-controlled U.S. House Judiciary Committee and then passed the House of Representatives without any opposition in 1998.⁴⁵

Prof. David Harris highlights the irony that the bill received opposition from law enforcement. “Policing has long been, in many respects, a data-driven endeavor. For years, police departments have allocated resources and assets—officers, patrol cars, and the like—to different sectors of their cities based upon data concerning the numbers of calls for service,” writes Harris.⁴⁶ Prof. Harris discusses some of the reasons why law enforcement opposed such a measure. For example, law enforcement stated that there was no pressing need or justification for any action.⁴⁷ Opponents also said that officers would “resent” having to take steps to fix a nonexistent problem.⁴⁸ Due to this opposition, Congress failed to enact the bill into law.

In a 2001 report, the Police Executive Research Forum lauded data collection efforts as a way to promote accountability and openness but cautioned that data collection should not be the be-all, end-all to address issues of racially biased policing.⁴⁹ Moreover, data collection shows citizens that an agency is willing to address community concerns.⁵⁰ In his article, Mucchetti poses that nothing short of a nationwide data collection effort will help cure the disease of racial profiling, especially given that the Latino community is particularly vulnerable and has settled throughout the country.⁵¹ Mucchetti also highlights local efforts to collect traffic stop data in jurisdictions like Connecticut, Missouri, North Carolina and Texas in lieu of comprehensive federal legislation addressing the issue.⁵²

While Mucchetti is correct in calling for a federal requirement for law enforcement to collect data, the experience in North Carolina shows how simple improvements to the implementation of data collection laws can help both

⁴² Michael Biesecker, DOJ: Stats show Alamance deputies profile Latinos, WNCN, Dec. 19, 2013, available at <http://www.wncn.com/story/24146912/doj-stats-show-alamance-deputies-profile-latinos>.

⁴³ David A. Harris, *The Reality of Racial Disparity in Criminal Justice: The Significance of Data Collection*, 66 *Law & Contemp. Probs.* 71, 77, Summer 2003.

⁴⁴ Whitney, *supra* n. 20 at 275.

⁴⁵ *Supra* n. 40 at 77.

⁴⁶ *Id.* at 76.

⁴⁷ *Id.* at 77.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

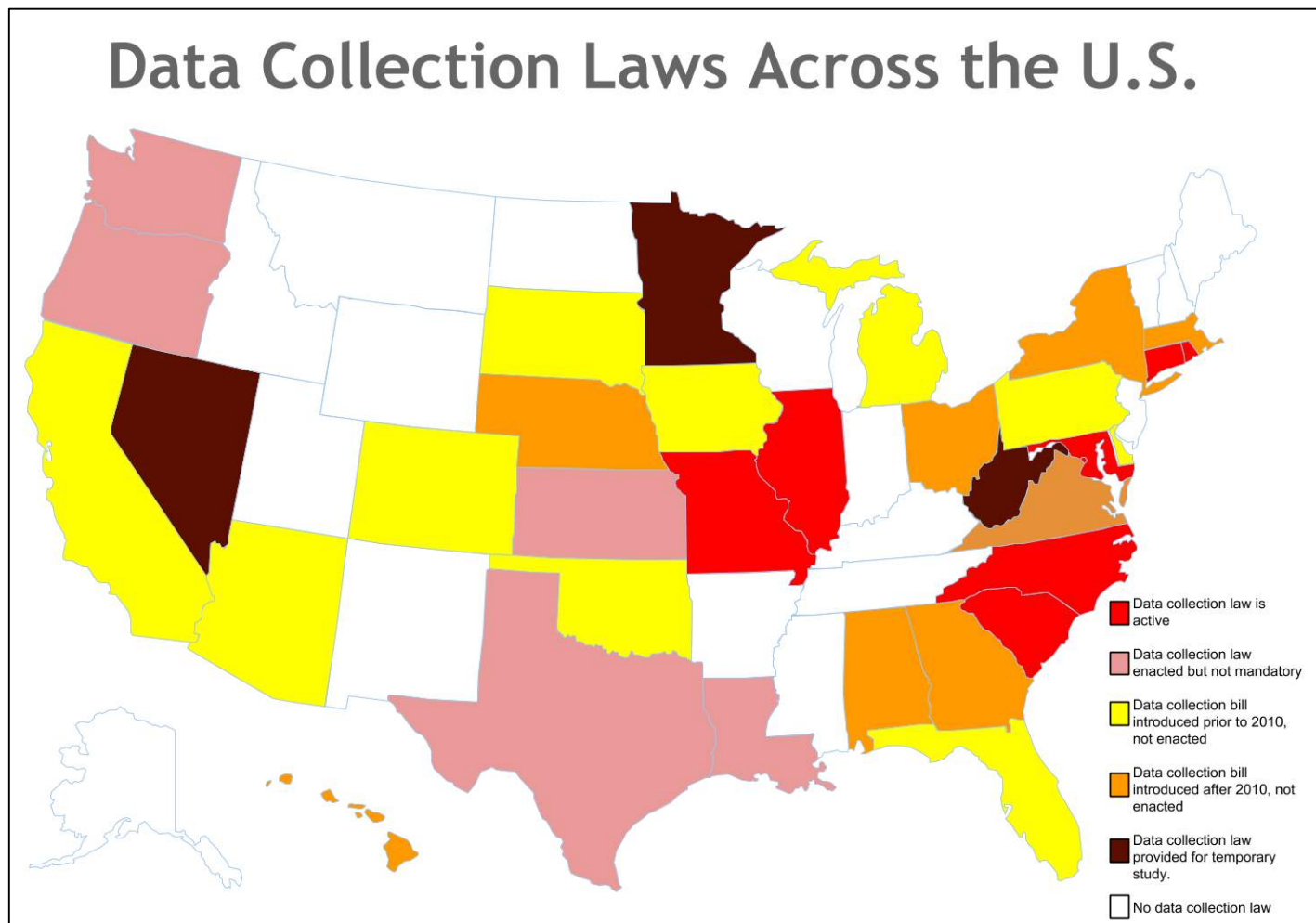
⁵¹ Mucchetti, *supra* n. 33 at 6.

⁵² *Id.* at 31.

community and law enforcement. Data collection comes with its drawbacks and therefore should not be regarded as the only cure for this malady.

A Learning Experience – Other States Enact Data Collection Laws

In the wake of Congress's inaction regarding the Traffic Stops Statistics Act, several states were determined to be proactive about the issue of racially biased policing and enacted laws that required law enforcement officers to record demographic information about drivers detained during a traffic stop. The following map shows all the states that have enacted, and considered enacting, data collection laws. Many followed the principles laid out in



the law proposed by Rep. Conyers. Namely, the states' proposals included a data collection element to ascertain whether minorities are stopped with more frequency than white drivers and a range of accountability measures.

Beginning with one of the more lenient models, in 2001, Louisiana adopted LA R.S. § 32:398.10, which requires law enforcement officers to record and retain information on the characteristics of race, gender, age, and state of residence of drivers detained during a traffic stop.⁵³ Additionally, officers are to record whether a search was conducted, as well as the legal basis for the search.⁵⁴ However, the law is inapplicable to state law enforcement agencies that adopt a written policy against racial profiling.⁵⁵ While almost all law enforcement agencies in the state adopted a written policy against racial profiling, many of these policies were not enforced. In a 2008 report,

⁵³ LA R.S. § 32:398.10(A)(2).

⁵⁴ LA R.S. § 32:398.10(A)(5).

⁵⁵ LA R.S. § 32:398.10(E).

the American Civil Liberties Union of Louisiana stated that community complaints continued to emerge as people felt that they were harassed by the police.⁵⁶ PERF states that reliance solely on a written policy that merely restates the law to ameliorate the problem is not enough and that policies must provide sufficient guidance on the use of race in making law enforcement decisions to adequately address racially biased policing.⁵⁷

Texas also mandates the collection of data from law enforcement agencies. The Texas law requires that after a traffic stop, an officer must report to his or her law enforcement agency the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability.⁵⁸ Much like Louisiana, Texas also requires the officer to record whether the officer conducted a search and whether contraband was found as a result of the search.⁵⁹ However, the Texas law also provides a loophole as big as the state itself. If a law enforcement agency's patrol vehicles are equipped with video cameras and transmitter-activated equipment, the agency need not comply with the requirements of the aforementioned law.⁶⁰ A law enforcement agency that requested funding for cameras but has not been able to receive these funds from the state's Department of Public Safety is also exempt from the law.⁶¹ Thus, law enforcement agencies can avoid the data collection requirements if they have implemented or even merely *requested* recording devices, but the measure does not address the issue of why a driver was stopped in the first place.⁶²

The most common model is the law adopted by Connecticut, Missouri, North Carolina, and South Carolina. This particular model requires that law enforcement officers in these states record demographic information about drivers detained during traffic stops. Connecticut's law requires police officers to keep track of race, color, ethnicity, age and gender of the driver who is stopped, based on the observations of the police officer.⁶³ Furthermore, the law created a Racial Profiling Prohibition Advisory Board tasked with developing a standard method to gather this data.⁶⁴

The accountability and transparency measures adopted by these four states are quite similar. All four of these states' laws make the availability of government funds for law enforcement agencies contingent upon data collection. For example, South Carolina's law states that the General Assembly shall have the authority to withhold any state funds or federal pass-through funds from any state or local law enforcement agency that fails to comply with the requirements of the data collection law.⁶⁵ Missouri's law also states that if a law enforcement agency fails to comply with the requirements of the data collection law, the governor may withhold any state

⁵⁶ ACLU of Louisiana, *Unequal under the Law, Racial Profiling in Louisiana, Aug. 6, 2008, available at* http://www.laclu.org/PDF_documents/unequal_under_law_web.pdf.

⁵⁷ PERF, *supra* n. 22 at 50-51.

⁵⁸ TEX. Code Crim. Proc. Ann. Art. 2.133(b)(1)(B).

⁵⁹ TEX. Code Crim. Proc. Ann. Art. §§ 2.133(b)(3) & (4).

⁶⁰ TEX. Code Crim. Proc. Ann. Art. 2.135(a)(1).

⁶¹ TEX. Code Crim. Proc. Ann. Art. 2.135(a)(2).

⁶² *But see*, TEX. Code Crim. Proc. Ann. Art. 2.132 (Requiring Texas law enforcement agencies to adopt written policies against racial profiling and collect drivers' demographic information when a citation is issued or an arrest made. This reporting requirement is not exempted by § 2.135).

⁶³ C.G.S. § 54-1m(b)(1)

⁶⁴ C.G.S. § 51-1m(b)

⁶⁵ S.C. Code Ann. § 56-5-6560(C)

funds appropriated to the noncompliant law enforcement agency.⁶⁶ Connecticut's law, however, added one more level of transparency by requiring that police officers provide drivers with information about how to file a complaint with the appropriate law enforcement agency if a driver feels that they have been discriminated against.⁶⁷ This provides community members with a sense of security because at the very least, they will be able to make a complaint with the appropriate agency in case of a problem.

Finally, Rhode Island adopted one of the strictest methods of ensuring that police adhere to the data collection requirements in its state laws. The Rhode Island legislature ordered the state's attorney general to conduct a study of routine traffic stops by the Rhode Island State Police and each municipal police department.⁶⁸ The information collected includes the race or ethnicity, gender, and approximate age of the driver stopped based on the observation and perception of the police officer making the stop.⁶⁹ The uniqueness of the Rhode Island law lies in its tough enforcement mechanism, which creates an explicit cause of action against law enforcement agencies that fail to report the data.

An organization chartered for the purpose of combating discrimination, racism, or of safeguarding civil liberties, or of promoting full, free, or equal employment opportunities, may seek appropriate relief in a civil action against any police department for failing to collect or transmit the data as required in this chapter, and may be awarded its costs, including attorneys' fees, for bringing such an action. As a condition precedent to the filing of a civil action by an organization under this section, the organization shall send a notice to the attorney general and the committee identifying the police department which is failing to collect or transmit the data and the organization shall then allow fifteen (15) days to elapse to allow the police department to come into compliance or to allow the attorney general to commence a civil action to enforce compliance with this chapter.⁷⁰

Accordingly, if a Rhode Island law enforcement agency fails to comply after receiving the required notification, it could be brought to court and held liable for attorney's fees and court costs. This provides a strong incentive for law enforcement agencies to comply with the law.

Other states chose to enact temporary data collection requirements in order to ascertain whether racially biased policing was in fact a problem. For example, a 2004 law in West Virginia required law enforcement to collect information about the driver's race, ethnicity or national origin, gender and age for a five-year period.⁷¹ The 2009 report completed with the data gathered from 2004 to 2009 showed that black and Hispanic drivers were respectively 2.45 and 2.37 times more likely than a white driver to be searched after a police officer stopped their vehicle.⁷² Despite such findings, the data collection law did not become permanent as a tool for combating these disparities.

⁶⁶ V.A.M.S. § 590.650

⁶⁷ *Supra* n. 62.

⁶⁸ R.I. Gen. Law § 31-21.1-4 (a)

⁶⁹ R.I. Gen. Law § 31-21.1-4 (a)(2)

⁷⁰ R.I. Gen. Law § 31-21.1-7

⁷¹ W.Va. Code § 17G-1-2(a)

⁷² Criminal Justice Statistical Analysis Center, Division of Criminal Justice Service, West Virginia Traffic Stop Study, Final Report, Feb. 2009, available at

http://www.djcs.wv.gov/SAC/Documents/WVSAC_Traffic_NEWOverviewofStatewideFindings2009.pdf.

In 2001, Minnesota enacted a law that sought the voluntary participation of state law enforcement agencies in collecting traffic stop data for the period of one year.⁷³ As an incentive for cooperation, the state partially compensated participating law enforcement agencies and awarded additional state money for the purchase and installation of video cameras in their police vehicles.⁷⁴ Accordingly, 65 jurisdictions chose to participate in the Minnesota study.⁷⁵ The Minnesota analysis of the data collected by these 65 agencies showed that law enforcement officers stopped black, Latino, and American Indian drivers at greater rates than whites.⁷⁶ Additionally, the data revealed that law enforcement searched African Americans, Latinos, and American Indians at greater rates yet found contraband in searches of white drivers at greater rates than drivers of color.⁷⁷ The authors of the Minnesota report made several recommendations to address the issue, one of which included the strengthening of data collection protocols.⁷⁸ The authors suggest making data collection forms scannable in order to eliminate the potential for data entry error and save resources spent on data entry and auditing.⁷⁹ Unfortunately, the state has not yet adopted a statewide data collection law.

The North Carolina Experience

In 1999, North Carolina adopted its own version of a data collection requirement. Section 114-10.01 of the North Carolina law requires the Division of Criminal Information of the North Carolina Department of Justice to collect demographic data regarding traffic stops. The law requires law enforcement officers to collect data on the race or ethnicity, the approximate age, and the sex of the driver.⁸⁰ In addition to such data, officers must record the alleged traffic violation that led to the stop, whether officers conducted a search as a result of the stop, and whether officers found contraband as a result of the search.⁸¹ Furthermore, the North Carolina law requires the officer to record the geographic location of a stop, i.e. the city or county where the stop took place, or in the case of officers of the North Carolina State Highway Patrol, the Highway Patrol District in which the stop was executed.⁸² Hence, the data collected in North Carolina is relatively similar to the information collected in other states.

However, the law does not apply to every law enforcement agency in North Carolina. When the law was first adopted in 1999, the data collection requirements applied only to state law enforcement officers.⁸³ Through the State Budget Act of 2001, the legislature expanded the law's reach to include county sheriffs' officers or county police departments, law enforcement officers employed by police departments in municipalities with a population of 10,000 or more persons, and law enforcement officers employed by police departments in municipalities

⁷³ Institute on Race and Poverty, *Minnesota Statewide Racial Profiling Report: All Participating Jurisdictions*, Sept. 22, 2003 pg. 4, available at <http://www.prisonpolicy.org/scans/ccj/Racial%20Profiling%20Study.pdf>.

⁷⁴ *Id.*

⁷⁵ *Id.* at 5.

⁷⁶ *Id.* at 1.

⁷⁷ *Id.*

⁷⁸ *Id.* at 26.

⁷⁹ *Id.*

⁸⁰ N.C.G.S. § 114-10.01(a)(2).

⁸¹ N.C.G.S. § 114-10.01(a).

⁸² N.C.G.S. § 114-10.01(a)(15).

⁸³ N.C. Sess. Laws 1999-26.

employing five or more full-time sworn officers for every 1,000 in population.⁸⁴ Accordingly, not all law enforcement agencies in North Carolina are required to report.⁸⁵

Another weakness in the North Carolina model is that prior to a 2009 change in the law, there was no way to make sure that law enforcement agencies complied with the law. During the 2009 legislative session, the legislature amended the law to include an enforcement mechanism similar to the one proposed by Rep. Conyers approximately eight years earlier at the federal level. Now, if an agency does not submit the information as required by the law, the agency is ineligible to receive any law enforcement grants available through the state.⁸⁶

In order to ease the process of data collection, the North Carolina Dept. of Justice promulgated the use of a form to be filled out by officers of law enforcement agencies required to comply with the data collection law. Form SBI-122, shown in Appendix A, is a comprehensive report that tracks the information required to be collected by the law. The form also requires the officers to input an anonymous identification number, another requirement of the law, which allows analysts to discern if disparities may be attributed to any one particular officer without having to reveal an officer's identifying information.⁸⁷ The form also asks officers to report the reason for the stop, whether the officer executed a search and the basis for such search, demographic information about passengers, and whether contraband was found in the vehicle.⁸⁸ Notably, North Carolina had already adopted several of the measures promoted by the authors of the study in Minnesota relating to the strengthening of data collection.

The compilation of data allowed researchers to take a look at how law enforcement agencies conducted traffic stops in North Carolina, and the results were cause for concern. Cameron Lippard and Amy Dellinger Page studied the available data from 32 randomly selected law enforcement agencies containing 18 sheriffs' departments and 14 police departments across the state, as well as the North Carolina State Highway Patrol.⁸⁹ The Lippard and Dellinger Page analysis showed that minorities had higher stop rates than whites in more than 50% of the sampled agencies.⁹⁰ Much like the findings in the studies conducted in Minnesota and West Virginia, the researchers found disproportionate rates of searches, citations and arrests for every racial and ethnic minority compared to whites and non-Hispanics.⁹¹ The authors concluded that while the study did not find significant evidence of racial profiling by North Carolina law enforcement, it did find a "persistent trend of racial and ethnic disparity in traffic data."⁹² Lippard and Dellinger Page reinforce and localize the theory posed by Muchetti calling for close attention to disparities in the Latino community because the "recent social and political climate may be pushing law enforcement agencies to target Hispanics, regardless of their native- or foreign-born status, to find undocumented immigrants."⁹³

⁸⁴ N.C. Sess. Laws 2001-424.

⁸⁵ The complete list of agencies required to report traffic stops is available at <http://www.ncdoj.gov/AgenciesRequiredList.aspx>.

⁸⁶ N.C.G.S. § 114-10.01(d1).

⁸⁷ N.C.G.S. § 114-10.01(d).

⁸⁸ *Supra* n. 86.

⁸⁹ Cameron D. Lippard & Amy Dellinger Page, *Driving While Non-White: Exploring Traffic Stops and Post-Stop Activities in North Carolina, 2005-2009*, 9 *Sociation Today* (Fall/Winter 2011), available at <http://www.ncsociology.org/sociationtoday/v92/drive.htm>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

In what may be the most comprehensive study of the available data in North Carolina thus far, Frank Baumgartner and Derek Epp reviewed traffic stop data available through the North Carolina Dept. of Justice from the inception of the traffic stop reporting requirement, and their findings aligned with the result of Lippard and Dellinger Page. Baumgartner and Epp found that black drivers are 77 percent more likely to be searched after a routine traffic stop than white drivers, and Hispanic drivers are 96 percent more likely to be searched than white motorists.⁹⁴ Another key finding of the statistical analysis showed that even though Hispanics are more likely to be searched, they are less likely to be found with drugs than whites.⁹⁵ This figure is a vivid reminder that, as noted by the California Highway Patrol Sergeant in Webb's article, you have to kiss a lot of frogs before you find your prince.

Given these startling figures, this report focuses on the existing protections in the data collection law and recommends simple improvements to the manner in which data is collected in North Carolina. The disparities shown by the different analyses, at the very least, should signal that there may be a problem in how law enforcement officers execute traffic stops. The community's response to the publication of these figures indicates that there is a growing concern among community members that requires law enforcement to delve deeper into these data in order to provide answers and solutions. Accordingly, our focus is less on the disparities and more on highlighting policies adopted in other jurisdictions, both nationally and in the state, which would allow law enforcement agencies to take greater advantage of the data collection statute and address community concerns. As stated above, however, data collection is merely one of the many steps that law enforcement agencies may take to address concerns of racially biased policing.

The benefits of accurate data collection

The literature is in agreement that there are significant benefits for law enforcement agencies to maintain demographic data of police stops. PERF says that collecting information on police bias shows "solid management practices, serving as a department-level assessment of a critical national problem."⁹⁶ The report by the Institute of Race and Justice lists several potential benefits of a strong data collection program. First, it can help provide important information about the characteristics of different types of stops and their results.⁹⁷ Second, data on traffic stops could allow law enforcement agencies to be able to address questions about the effectiveness of their traffic stops.⁹⁸ This is an often overlooked but important benefit of data collection, given the aforementioned evidence suggesting that officers need to complete an exorbitant number of stops to find contraband. One of the clearest advantages of accurate data collection for law enforcement is that it can help guide the dialogue about racially biased policing beyond the anecdotal stories and provide objective, empirical proof of whether racially biased traffic stops are indeed a problem within a department.⁹⁹

Recently, the U.S. Department of Justice also highlighted the importance of data collection to combat racially biased policing. Attorney General Eric Holder said, "To be successful in reducing both the experience and the perception of bias, we must have verifiable data about the problem."¹⁰⁰ The Dept. of Justice launched a program

⁹⁴ Baumgartner & Epp, *supra* n. 28 at 5.

⁹⁵ *Id.* at 11.

⁹⁶ PERF, *supra* n. 22 at 116.

⁹⁷ Institute on Race and Justice, *supra* n. 6 at 42.

⁹⁸ *Id.*

⁹⁹ PERF, *supra* n. 22 at 116.

¹⁰⁰ Press Release, Dept. of Justice, Attorney General Holder: Justice Dept. to Collect Data on Stops, Arrests as Part of Effort to Curb Racial Bias in Criminal Justice System (April 28, 2014) available at <http://www.justice.gov/opa/pr/2014/April/14-ag-445.html>.

whereby grants are awarded to local law enforcement agencies to collect stop, search and arrest data with the goal of reducing the role of bias and building confidence in the justice system among young people of color.¹⁰¹

Data collection does have its drawbacks, and there is skepticism among law enforcement as to its benefits. As we discussed earlier, Rep. Conyers' national data collection bill was met with recalcitrance from police groups who said there was no pressing need or justification for any action to be taken on the problem because there was no real problem.¹⁰² The report by the Institute on Race and Justice states that there is a fear that data collection will burden officers in the course of their normal activities.¹⁰³ Another concern posed by PERF is that officers will suffer from lower morale due to concerns over the results of data analysis and decrease the amount of enforcement activity.¹⁰⁴ PERF also notes that law enforcement agencies fear that the data may be used to harm the agency or personnel.¹⁰⁵

While police concerns are certainly reasonable, they are now less applicable to law enforcement agencies in North Carolina. The law has been in effect for more than 14 years and the completion of the forms is already part of officers' duties when executing a traffic stop. The recommended policies in this report do not require officers to change any of their procedures following a traffic stop. Rather, the suggested changes ask for more specificity in reporting, which may help better track traffic stops to ascertain whether the stories of racially biased policing are suggestive of a wider departmental or cultural problem.

One of the most important obstacles to keeping accurate data is that individual officers must be able to appreciate the advantages of this tool. Officer buy-in, as described in the Institute on Race and Justice's report, is crucial because when officers do not acknowledge the perception that racial profiling is occurring, none of the strategies to address it will work.¹⁰⁶ Therefore, one of the suggested ways to attain officer buy-in is to obtain the support of command staff, who should express to rank-and-file officers the benefits of addressing racial profiling to increase trust and cooperation between the agency and the public.¹⁰⁷ Doing so can lead to greater officer safety during traffic stops and increased cooperation from community members.¹⁰⁸

The Institute on Race and Justice highlights the case study of the Charlotte-Mecklenburg Police Department's data collection program as a success story. One of the significant advantages held by Charlotte-Mecklenburg officers is that they could input the data into their laptops located in their patrol cruisers, and the department was able to utilize their existing computer systems, a cost-effective way to implement this new policy.¹⁰⁹ However, Charlotte-Mecklenburg officers on motorcycles, bicycles, and foot patrols had to use the paper-based forms, so a lack of computer software should not serve as a deterrent for agencies that do not have these capabilities.¹¹⁰ Additionally, Charlotte-Mecklenburg utilized an extensive training program that consisted of teaching commanding officers the legal ramifications associated with racial profiling, as well as detailed instructions on how to complete both the electronic and paper forms.¹¹¹ The report also praised Charlotte-Mecklenburg for

¹⁰¹ *Id.*

¹⁰² Harris, *supra* n. 40 at 77.

¹⁰³ Institute on Race and Justice, *supra* n. 6 at 42.

¹⁰⁴ PERF, *supra* n. 22 at 119.

¹⁰⁵ PERF, *supra* n. 22 at 118.

¹⁰⁶ Institute on Race and Justice, *supra* n. 6 at 54.

¹⁰⁷ *Id.* at 55.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 43.

¹¹⁰ *Id.*

¹¹¹ *Id.*

involving officers from the start of the process of implementing this system and making modifications based on their comments and concerns.¹¹²

Our Recommendations

Keeping in perspective the information above, there are ways in which policymakers can improve the data currently being collected in accordance with North Carolina law. These measures utilize the current system of recording so as not to overburden officers with additional duties and can provide useful information to ascertain whether a problem exists and the pervasiveness thereof. In the general sense, these recommendations are modifications in the way the data is collected and in the training received by officers, to improve officer buy-in.

The geography problem

The North Carolina statute requires officers from the complying agencies to record the geographic location of the stop.¹¹³ The law goes on to specify that members of the State Highway Patrol will note the highway patrol district where the stop is made, while other law enforcement officers must note the city or county where the driver was stopped.¹¹⁴ Accordingly, the first section of form SBI-122 asks the officer to fill in the county and city of the stop without any greater level of specificity. This lack of specificity makes it virtually impossible to obtain the specific location where a stop occurred.

Obtaining the specific location of a stop is vital to some of the justifications posed by law enforcement personnel

Latitude and longitude coordinates would be the preferred format for reporting location information. However, for departments that may not have the technology available to report location in this format, we recommend the implementation of at least a system that reports the street address which can be easily transferred to a map.

in response to concerns of racially biased policing. For example, a 2010 review of traffic stops conducted by the City of Fayetteville Police Department revealed that officers of that department searched 1,610 black drivers, while only searching 510 white drivers.¹¹⁵ Fayetteville Police Chief Tom Bergamine responded that his officers followed reports of crime in certain parts of the city, particularly drug crimes that lead to more stops and searches of black drivers.¹¹⁶ “When you look at the calls for service where crimes occur, we are kind of proactive. We work neighborhoods where crimes happen,” he said.¹¹⁷

Another example of this justification was provided by the Durham Police Department’s Executive Command Staff. In the department’s response to complaints of racial profiling by community groups, the department stated,

¹¹² *Id.* at 48.

¹¹³ N.C.G.S. § 114-10.01(a)(15).

¹¹⁴ *Id.*

¹¹⁵ Adam Owens, Fayetteville residents accuse police of racial profiling, WRAL News, March 12, 2011, available at <http://www.wral.com/news/local/story/9253691/>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

The Department spends considerable resources in crime suppression activities in challenged communities. A large component of these efforts is increased traffic enforcement in and around such communities. Unfortunately, these communities are often, but not always, predominantly black.¹¹⁸

These two examples demonstrate that analyzing traffic stops should adhere to the old real estate adage: location, location, location. Currently, the data collected under the statute does not allow the public to see the specific location of these stops. As currently formatted, the SBI-122 form requires the officer to fill in only the city and county where the stop occurred. The executive staff of both the Fayetteville Police Department and the Durham Police Department would have a much easier time corroborating such justification if the data provided included more specificity in the location of the stop. Additionally, because the more specific location would be added to the already existing form requiring officers to record whether a search was performed and whether contraband was found, this data could help determine whether the “considerable resources in crime suppression activities” are being efficiently allocated. Allowing the public to access this information adds transparency and accountability to this process.

One of the states already recording specific traffic stop location data is Texas. The Texas law requires law enforcement officers stopping a driver to record “the street address or approximate location of the stop.”¹¹⁹ Arguing in favor of the collection of date, time, and location of the stop, PERF states that driving behavior can vary greatly across these variables, and thus it is good to maintain specific location of the stops because drivers can be expected at specific areas on specific days. In North Carolina, the software used by the Charlotte-Mecklenburg police officers required them to fill out the block number of the stop in addition to the street address providing for specific information about where an officer executed a particular stop.¹²⁰ It is clear that the more specific the location reported, the easier it is to track where a stop occurred. Thus, latitude and longitude coordinates would be the preferred format for reporting location information. However, for departments that may not have the technology available to report location in this format, we recommend the implementation of at least a system that reports the street address which can be easily transferred to a map.

The identity problem

As stated above, one of the drawbacks of data collection is that officers fear that individualized data could be used to discipline and stigmatize them based on misleading or incorrect interpretations of the numbers.¹²¹ Accordingly, the North Carolina law addressed this concern by requiring law enforcement agencies to assign an anonymous identification number to each officer in order to protect officers’ identities. However, the link between data and individual officers could be extremely beneficial to police departments looking to address racially biased policing because it can help discern whether a small number of officers may be responsible for a large share of the actions that community members perceive as racially biased.¹²² PERF’s research among members of the law enforcement community also poses this theory as a possible root of the problem. The report explains, “Practitioners expressed the belief that to the extent racially biased policing occurs, it can be attributed to a small number of rogue officers.”¹²³ Accordingly, having a system whereby the police department can identify individual officers who may

¹¹⁸ The Executive Command Staff of the Durham Police Dept., Durham Police Department Response to Allegations of Racial Profiling and Bias-based Policing, February 17, 2014, at 12, available at <http://durhamnc.gov/ich/op/DPD/Documents/Racial%20Profiling%20Response.pdf>.

¹¹⁹ TEX. Code Crim. Proc. Ann. Art. 2.133(b)(7).

¹²⁰ Charlotte-Mecklenburg Police Department, Arbitrary Profiling Policy and Data Collection Protocol 13, Nov. 12, 2001 (on file with author).

¹²¹ PERF, *Supra* n. 22 at 133.

¹²² Institute on Race and Justice, *supra* n. 6 at 7.

¹²³ PERF, *supra* n. 22 at 15

need additional training can help increase the department's accountability to the community and improve the department's perception among minority stakeholders.

Officers used identification numbers such as “babyface,” “chatterbox,” “checkmate,” “strongman,” “DADDYJOE,” “ODDBALL,” “OCEAN,” and “batman.”

- Frank Baumgartner and Derek Epp

However, the data collection efforts in North Carolina encountered two problems. First, the law requires that the employing law enforcement agency issue the identification number. Baumgartner and Epp's analysis found the possibility that two law enforcement agencies could unwittingly be using a common identifier for two different officers.¹²⁴ They found that out of the 54,000 distinct identifiers that appear in the database, 21 of these are linked to more than 10,000 individual stops.¹²⁵ This particular issue makes it much more difficult to get a clear picture of which officers are responsible for individual stops and therefore may need additional training or discipline, while also making it harder to identify officers who are complying with the law and should therefore be commended for their efforts. The Institute on Race and Justice report states that an early intervention system to address racially biased policing must include identification of officers whose performance indicators exceed an agreeable threshold for departmental concerns.¹²⁶ Thus, clearly identifying individual officers within the particular police departments is important not only to maintain the integrity of the data so that efficient action can be taken to address the issue, but it can be useful to commend those officers who are exceeding departmental goals.

The second problem is with officer buy-in. Baumgartner and Epp's analysis also showed that 19,950 officer identifiers were used only once.¹²⁷ Among those, officers used identification numbers such as “babyface,” “chatterbox,” “checkmate,” “strongman,” “DADDYJOE,” “ODDBALL,” “OCEAN,” and “batman.”¹²⁸ Officers should take the data collection requirement seriously because it is the law in North Carolina. But in addition, officers' training should promote the benefits of data collection. In order to comply with the North Carolina law and minimize errors in the reporting forms, the Charlotte-Mecklenburg Police Department's computer system automatically inserts the officer's code number.¹²⁹ However, the system replaces the number with an anonymous identification number when the traffic stop data is reported to the state.¹³⁰ Accordingly, Charlotte-Mecklenburg police officers are not required to use two different numbers when issuing a citation and completing the SBI-122 report. The other advantage to this system is that it eliminates the opportunity for an officer to commit a reporting error or typo by having the system input the officer's identification number, rather than giving such responsibility to the officer.

Notably, Connecticut's law requires officers to enter their name and badge number into the traffic stop report, choosing to prioritize accountability as a deterrent over PERF's concerns about linking data to individual officers.¹³¹

¹²⁴ Frank Baumgartner & Derek Epp, *Racial Disparities in Police Traffic Stops in North Carolina, 2000 – 2011 2* (May 5, 2013) (unpublished report, on file with author).

¹²⁵ *Id.*

¹²⁶ Institute on Race and Justice, *supra* n. 6 at 7.

¹²⁷ Baumgartner, *supra* n. 125 at 2.

¹²⁸ *Id.*

¹²⁹ CMPD, *supra* n. 118 at 9.

¹³⁰ *Id.*

¹³¹ C.G.S. § 54-1m(b)(1)(C).

Adoption of a similar system in North Carolina would require a legislative change, but the North Carolina Dept. of Justice could implement a system whereby individual law enforcement agencies are provided with a particular code that could help separate law enforcement agencies, which should help differentiate two officers from different departments with the same anonymous identifying number. Furthermore, this could help the Division of Criminal Information to better detect law enforcement agencies that may not be complying with the law.

Additional Training

Officer training and education is crucial in obtaining officer buy-in and reducing the possibility of errors in the reporting of the traffic stop data. A review of the law enforcement training's chapter on "Techniques of Traffic Law Enforcement" reveals that there is currently no section or time devoted to completing the SBI-122 report. The Institute on Race and Justice praised the Charlotte-Mecklenburg Police Department training because it "included a supporting message from the chief [and] taught commanding officers the legal ramifications associated with racial profiling. A detailed manual provided information on how to complete both the electronic and paper stop-data form."¹³² In contrast, the Dothan Police Department in Alabama sought to address racially biased policing by collecting data on police-citizen interaction but noted that one of the issues that affected its outcomes was minimal training efforts.¹³³ Departments that use automated systems to input the required data should train officers on how to navigate through the software. However, since not all police departments have the software capability to electronically submit their forms, training must be adopted so that officers are provided with information on how to fill out the paper form.

Other states embraced and encouraged officer training in completing the forms and reporting the required information. The Connecticut law, for example, requires the newly formed Racial Profiling Prohibition Project Advisory Board to consult with the Office of Policy and Management in implementing guidelines to be used by law enforcement agencies to train police officers in the completion of the form.¹³⁴ Much like Charlotte-Mecklenburg, the Kansas City Police Department provided hands-on training to representatives from each division on the software and the implementation of the data collection law.¹³⁵ In order for the department to ensure continuity and standardization, the department took a systematic approach so that all officers had the same information.¹³⁶ In North Carolina, this standardized training could be implemented and disseminated through the police training academies and the training materials to ensure that officers of different law enforcement agencies comply with the North Carolina law in a standardized way.

Conclusion

North Carolina was at the forefront of states that sought to address the issue of racially biased policing by adopting one of the first data collection laws in the country. Recent analysis of said data reveals cause for concern. Policymakers in the state at both the legislative and administrative levels should be aware of recent findings and work on strengthening the current law to deter racially biased policing and to get a clearer picture of the root causes for the disparities and the areas where law enforcement may need further training.

¹³² Institute on Race and Justice, *supra* n. 6 at 43.

¹³³ *Id.* at 44.

¹³⁴ C.G.S. § 54-1m(c).

¹³⁵ Institute on Race and Justice, *supra* n. 6 at 46.

¹³⁶ *Id.*

Three simple improvements could help accomplish these goals:

1. Require law enforcement to record and provide with specificity the location of each traffic stop.
2. The state should develop a standardized system so that every officer in North Carolina has a unique and anonymous individual officer identification number.
3. Law enforcement training programs should devote time to train officers on the importance and benefits of data collection, as well as how to fill out the required forms.

These measures should not end efforts to investigate and address racial disparities in traffic stops. Law enforcement agencies should engage with the community if the data shows disparities in the stopping patterns of minorities. This includes the Latino community in North Carolina that may bear a double burden of proving that they are not undocumented. Data collection is merely the starting point. It is the stethoscope by which the community, policymakers, and civil rights organizations can diagnose the problem. Active communication and transparency by all of these factions can lead to a better road ahead.

Appendix A



TRAFFIC STOP REPORT

Agency Name _____	Date (Month/Day/Year) _____	Time _____
County of Stop _____	Officer ID Number _____	
City of Stop _____		

Part I

Initial Purpose of Traffic Stop (check only one)

- | | | |
|---|--|---|
| <input type="checkbox"/> Checkpoint | <input type="checkbox"/> Other Motor Vehicle Violation | <input type="checkbox"/> Stop Light / Sign Violation |
| <input type="checkbox"/> Driving While Impaired | <input type="checkbox"/> Safe Movement Violation | <input type="checkbox"/> Vehicle Equipment Violation |
| <input type="checkbox"/> Investigation | <input type="checkbox"/> Seat Belt Violation | <input type="checkbox"/> Vehicle Regulatory Violation |
| | <input type="checkbox"/> Speed Limit Violation | |

Vehicle Driver Information

- Driver's Age _____ Driver's Race White Black Native American Asian Other
- Driver's Sex Male Female
- Driver's Ethnicity Non-Hispanic Hispanic (Person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish Culture)

Enforcement Action Taken as a Result of the Traffic Stop (check only one)

- | | | |
|--|--|---------------------------------------|
| <input type="checkbox"/> Citation Issued | <input type="checkbox"/> On-View Arrest | → If arrest made, who was arrested? |
| <input type="checkbox"/> No Action Taken | <input type="checkbox"/> Verbal Warning | <input type="checkbox"/> Driver |
| | <input type="checkbox"/> Written Warning | <input type="checkbox"/> Passenger(s) |

Physical Resistance Encountered

- | | | |
|---|------------------------------|-----------------------------|
| Did Officer(s) encounter any physical resistance from Driver and/or Passenger(s)? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Did Officer(s) engage in the use of force against the Driver and/or Passenger(s)? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Did injuries occur to the Officer(s) as a result of the stop? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Did injuries occur to the Driver as a result of the stop? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Did injuries occur to the Passenger(s) as a result of the stop? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Vehicle/Driver/Passenger(s) Search

- Was a search initiated subsequent to the traffic stop? Yes* No

*If search was initiated, complete Part II

