

REPORT TO THE STATE OF MARYLAND ON LAW ELIGIBLE TRAFFIC STOPS

MARYLAND JUSTICE ANALYSIS CENTER
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Law Enforcement Traffic Stops in Maryland: A Report on the First Year of Operation
Under TR 25-113

INTRODUCTION

In response to growing concerns about the role that race may play in traffic stops in the state of Maryland the General Assembly passed legislation in 2001 mandating that data be collected on all law eligible traffic stops¹ beginning with calendar year 2002. The statute required the Maryland Police Training Commission in consultation with the Maryland Justice Analysis Center to develop 1) a model format for the recording of data required in the act, 2) guidelines that each law enforcement agency may use as a management tool to evaluate data collected by its officers, 3) a standardized format that each agency shall use in reporting data to the Maryland Justice Analysis Center, and 4) a model policy on race based traffic stops that law enforcement agencies could adopt.

Working with the Police Training Commission, the Maryland Justice Analysis Center developed a model format for data recording (see Appendix A) and for data submission². These model formats were developed after careful consultation with numerous law enforcement agencies across the state including all of those who were required to submit data for the 2002 calendar year. The format for data collection and submission have proven to be useful for large and medium size departments and have been adapted to a variety of forms for data collection and submission. The model reporting format for the submission of data was also developed in consultation with law

¹ The term law eligible traffic stops is used in this report to refer to traffic stops that were not the result of a checkpoint or roadblock stop, a stop of multiple vehicles due to a traffic accident or emergency situation, or a stop based on the use of radar, laser, or vascar technology.

² The Maryland Police Training Commission developed and approved a model policy on traffic stops as required by the statute (see Appendix B).

enforcement agencies. It allows for multiple ways of submitting data so as to minimize the impact on law enforcement agencies that collect and submit these data without increased funding from the state³.

Finally, a model policy was developed working with an ad hoc committee of the Police Training Commission. This policy was approved by the Commission and promulgated to all law enforcement agencies in the state (see Appendix B for a copy of this policy).

The statute set forth the types of traffic stops that were to be included in this report. Excluded from the definition of traffic stop in the statute is a check point or road block stop, a stop of multiple vehicles due to traffic accident or emergency situation, or a stop based on the use of radar, laser or vascar technology. These kinds of stops were excluded on the notion that officer discretion was not involved in a significant way in these stops and therefore it would be highly unlikely that race could play a role in the decision to stop or search in these instances.

In this report we provide aggregate data on law eligible stops for the agencies in the state with fifty (50) or more police officers. The information is based solely upon the data reported by these police agencies. These data have not been audited or tested except for internal consistency purposes and therefore no judgment can be made as to the completeness of data submitted⁴. Our strong impression, however, based on our working

³ Although the statute provides that the Governor shall provide funding for the data collection and the analysis of the data, law enforcement agencies have not been provided any appropriation to cover the costs of their efforts. Similarly the Maryland Justice Analysis Center has not received funding for its mandated activities.

⁴ In 2002 one of the agencies reported over 130,000 stops. In 2003 that same agency reported approximately 85,000 stops. When questioned about this decrease the agency investigated and found problems in the 2002 submission. Such problems may exist elsewhere but without audits of data they cannot be detected. This combined with the changes in the 2002 and 2003 samples make comparisons between the data from these first two years extremely problematic.

with the agencies who have submitted data, is that all agencies made good faith efforts to provide information on all eligible stops and have provided as complete and accurate data as they can given the time and resource constraints that the agencies operated under in the collection and submission of these data.

The concerns that lead to the passage of this statute are frequently described under the concept of “racial profiling” -- the notion that law enforcement officers will use race as a factor in making a decision to exercise their discretion to stop and/or search a driver. In the area of traffic, this involves two primary activities, 1) the decision to stop a vehicle and 2) the actions taken by the officer after the stop, including the issuing of citations, or the requesting and conducting of searches. The statute provided for the collection of information on the stop and the action taken after the stop with special focus on searches on individuals and vehicles. In passing this legislation, the General Assembly sought to have better information about the role of race in traffic stops before they considered whether any other steps would be necessary to address the issue of possible racial profiling.

As in other states one of the major problems facing the analysis of traffic stop data is to what to compare data on stops. Specifically, one would like to know if people with similar driving behavior, but of different races, were differentially stopped. Are speeders who are speeding on similar roads at the same rate of excess of the posted limit more likely to be stopped if they are black than if they are white? Or if a driver is stopped and the driver is black is that person more likely to be searched than a white driver? The former questions are difficult if not impossible to provide precise answers to because there are no statewide comprehensive measures of driving behavior for different

racial and ethnic groups. We have the results of the stops but little knowledge about the variations in driving behavior that might provide the context in which to evaluate these stops. In the literature on traffic stops and racial profiling this is sometimes referred to as the denominator problem. That is, in calculating a rate of stops or searches what do you divide the stops or searches by? With enough resources one could collect information on variations in driving behavior by race and use those as a way to calibrate the actual stop data⁵. However, neither the police agencies or the Maryland Justice Analysis Center were provided funding to collect those kinds of data and therefore in this report we, like almost all other jurisdictions, rely upon measures of the population data to compare the stop data with. We know this introduces unknown levels of error into our findings and makes conclusions about the role of race in traffic stops difficult if not impossible.

The literature in this area suggests that one can use population data. That is to compare the number of stops of a certain race or ethnic group to the number that group represents in the population, but this clearly contains unknown problems because the rate of car ownership is not the same, the patterns of driving may not be the same, and it is expected that the patterns of deployment of law enforcement may not be the same for different racial and ethnic groups. We have decided in this report not to use population as the sole basis for the analysis of stop data. In this report we use the licensed driver population in addition to total population estimates to provide a comparison to the less accurate population based rates. We report stops relative to the Maryland population estimates and to the licensed driver population as reported to us by the Department of Motor Vehicles. While neither of these measures differences in driving behavior, having

⁵ The best example of this is in North Carolina in the work done for the highway patrol. For a brief description of this effort see, M. T. Zingraff, et. al., "North Carolina Highway and Traffic Patrol Study", The Criminologist, Vol. 25, No. 3, 2000.

two measures may give us some greater confidence in the findings. Neither approach accounts for differentials in driving behaviors or in the holding of valid licenses that may occur across sub-population. Furthermore, when we use licensed driver populations for our comparisons it means those from out of state will have to be excluded from the analysis because we do not have licensed driver population distributions for all states nor do we know the proportion of people from other states that drive through Maryland. **In short, the estimates that are provided in this and any report that we have reviewed to-date on the proportion of people stopped must be treated with great caution.** Until we have better measures of population driving behavior to compare the stop information with, it will be very difficult to draw conclusions about the role that race plays in traffic stops that meet the minimum requirements of science.

On the other hand, once a stop has occurred we are then in a better position to analyze the request for search. The basis to compare a search request and searches conducted is the population of those that are stopped; and for those we have relatively complete data in this report. Therefore, in analyzing searches we will be in a stronger position to draw conclusions about the role race plays in these decisions than we are in the area of stops. That said, we will present the data for stops and searches and try to be as careful in interpreting these data as possible. It is very important that readers and users of this report exercise caution when interpreting the results of the stop data for the reasons we have just noted.

The Police Executive Research Forum (2003) has developed the definitive guide for the analysis of traffic stop data. While many of their suggestions do not apply as significantly to the analysis of state-wide data as they do to the analysis of specific

jurisdictions within the state (e.g., the problem of commuters through jurisdictions), in subsequent years we will continue to seek to improve the analysis of stop data. But for this second report it is critical that we understand the limitations of the analysis of the stop data and the relative strength of the data concerning searches and seizures.

VARIATIONS IN STOPPING

In 2003 the agencies required to submit traffic stop data reported data on 448,409 law eligible traffic stops⁶. These cases provide the population of traffic stops that are analyzed in this report. Tables describing all the traffic eligible stops in greater detail than we review in the body of this report can be found in Appendix C. The primary issues addressed in this report drawn from these tables are the differences in stop, search and citation activities by race and ethnicity of the driver. The basic question we seek to address is what are differences in these law enforcement activities that appear to be associated with race and ethnicity? Table 1 provides information on the gender and race/ethnic status of the drivers of cars stopped in law eligible stops by the primary reason for the stop (primary reason identified by the stopping officer in reference to the various titles of statues that could be a reason for a stop)⁷. The percentages in this table suggest that the reason for stops for different gender and by race/ethnicity groups is very similar. While one can identify, usually because of relatively small numbers, some differences that appear to be substantial (e.g., the 20.4% of Asian males stopped for a title 21, subtitle 8 with much smaller percentages for other male, race and ethnic groups), **overall one sees a picture of the primary initial reason for the stop being similar for**

⁶ Ibid. note 4.

⁷ For a description of each of the titles and sections referred to in the tables see Appendix A page 3.

men and women and for different racial and ethnic groups. The one exception to this is in the category of unknown stops. While these represent a small number of the stops, in 6.1% for black males and 5.7% for black females the reason for the stop was not recorded – these percentages are considerably decreased from last year suggesting attention to this issue which was highlighted in our 2003 report. **While the reasons for stops are similar across groups, the rate of being stopped is not.** As shown in Table 1 in 111,361 of the 448,009 law eligible stops the driver was a black male, and in 50,405 of the stops the driver was a black female. Combining these two we observe that 36% of all stops were of blacks. While we noted earlier that comparing stop data to the population data is problematic, the fact that 36% of all the law eligible stops involved a black driver does raise concerns given the fact that the population in Maryland is 28% black.⁸

In Table 2 we consider the stops relative to the distribution of licensed drivers in the state. Table 2 provides information on the rate of being stopped for in-state drivers by gender and ethnicity.⁹ In this table we observe that the rate of stopping based on the Maryland licensed driver population, between whites and non-whites, differs by a factor of almost 2 for males and is 60% higher for non white females compared to white females. That is, non-whites, both male and female, are more likely to be stopped than are whites¹⁰. This is true whether the vehicle registration is in Maryland or out-of-state, recognizing that the number of incidences where the driver's residence is Maryland but

⁸ This is the statewide estimate based on the 2000 census. We use the statewide estimate, even though all agencies in the state are not reporting, because the Maryland State Police and other state agencies with statewide enforcement jurisdictions are included in the data. Recall also that these data include drivers from out of state. In 2002 blacks accounted for 40% of the stops.

⁹ In this table, categories of race and ethnicity are white and non-white, primarily because the categories of race and ethnicity required in the statute and those used by the Department of Motor Vehicles are different. Therefore, the categories used in the statute are collapsed into two broad categories, white and non-white for purposes of comparison to the licensed driver population.

¹⁰ This assumes that each stop is of a unique driver. We cannot determine if this is equally the case for all race/ethnicity groups.

the registration is out of state is relatively small. Therefore in Table 2 we observe that 19.4% of non-white males with a Maryland driver's license and Maryland vehicle registration are likely to be stopped in any one year as compared to 10.96% of white males. Similarly, for non-white females the probability of being stopped is 8.1 as compared to 5.0% for white females. These results, based on the licensed driver population in the State of Maryland, more strongly suggest differential stopping of Maryland drivers by race/ethnicity and gender than did the population based data. However, both of these comparisons suggest but cannot conclusively demonstrate that non-whites are differentially stopped for law eligible traffic offenses in the State of Maryland.

VARIATIONS IN SEARCHES

In Table 3 we report the data on the percent of stops that resulted in a search. These data show that searches occur in a very small percentage of all stops. For males, the chance of a search is higher than for females in all race/ethnicity categories. The highest rate of searches was for Hispanic males (9.9%) followed by black males (7.5%), white males (5.6%), Asian males (3.1%), white females (3.1), black females (2.5%), and Hispanic females (2.4). Searches were usually of both person and property in all gender and all race/ethnicity categories. Searches for blacks were unknown in 1.59% of the stops.

Table 4 summarizes the data on the reasons for the search for the gender and race/ethnicity categories. In all categories the primary reason for the search was incident to an arrest (this is most likely because in all arrests searches are conducted. Data collection procedures may have to be modified to address this issue). The next most frequent reasons for the search (ignoring the unknown reasons) were consent of the person searched, probable cause, or exigent circumstances. The reason for a search is not reported in from 0 to 9% across categories of race/ethnicity and gender. This is a significant improvement in reporting compared to 2002.

In Table 5 we consider the outcome of searches. Here we report the data on what if anything is seized after a search by type of search. It is very clear that in the vast majority of searches nothing is reported as being seized. In searches of Asians nothing is seized in 87% of the searches; nothing is seized in 84% of the searches of blacks; in searches of Hispanics nothing is seized in 89% of the searches; and nothing is seized in 83% of the searches of whites. Where seizures do occur, there do not appear to be substantial differences across race/ethnicity groups. The large percentage of searches in the unknown category for blacks cannot be explained but will need to be addressed in subsequent reports.

In summary, the vast majority of stops do not result in a search and the vast majority of searches do not result in a seizure. Reasons for a search are similar across race/ethnic groups. Although the differences are quite small, the proportion of stops that result in a search is slightly higher for Hispanic and black males than it is for whites and other categories.

VARIATIONS IN OUTCOMES

Table 6 contains the data on the outcomes for the law eligible stops. For both gender categories and all race/ethnicity categories the most frequent outcome was the issuance of a citation. The range in this outcome was from 44% for black females to 55% for Hispanic males. Women were more likely to be given a safety repair order than males and were more likely to be given written warnings. Verbal warnings were used in from 8 to 17% of each groups stops, but more frequently to black males and females than any other identifiable category.

Data on arrests are contained in Table 7. Arrests were reported for 17654 of the stops or approximately 4% all stops. Blacks who make up 40% of the stops account for 39.2% of the arrests and whites account for 54% of the arrests and 57% of the stops. There do not appear to be meaningful differences in arrests subsequent to stops for blacks and whites. Very few of the arrests are based on a search. The primary reason for the arrest is the same reason as that which prompted the stop (56% to 82% of the arrests across the categories). The number of arrests where the reason was not reported has decreased considerably since the 2002 report. The very high percentage of black females who are arrested with a reason of “other” needs to be further explored. The outcomes for stops are very similar for various gender and race/ethnicity categories. The proportions of stops that result in an arrest are similar for blacks and whites. Formal responses (citations, SERO’s and written warnings) are used similarly across the categories. There do not appear to be substantial variations in outcomes associated with race/ethnicity.

CONCLUSIONS AND RECOMMENDATIONS

The data summarized in this report and presented in detail in Appendix C cannot definitively tell us if race is a factor in law eligible traffic stops in Maryland. They do suggest that blacks are disproportionately stopped relative to their proportion of the population and of licensed drivers. However, for reasons discussed earlier, this can only be a suggestion not a conclusion. Until there are better data on the impact on these estimates of possible driving and deployment differences that are associated with race/ethnicity, we will not be able to determine how much of the variation in stopping is related to race/ethnicity and how much is due to other factors. Once a stop occurs the decisions to search, arrest, or issue other formal responses is less related to race/ethnicity. In these areas, while there are some differences noted in the report, the overall finding is that these decisions do not appear to be related to the drivers race/ethnicity.

Recommendations. Working with the data included in this report has identified a problem that can be easily corrected by a change in the statute. Namely, the statute requires the use of race/ethnicity codes that are not used by the census or the Department of Motor Vehicles. The statute requires the use of the following: Asian, black, white, Hispanic, and other. The standard classification is black or African American, white, Asian, native Hawaiian or other Pacific Islander, American Indian, and other. Adoption

of the standard categories would facilitate the use of census and DMV data in future reports.

Another issue, but not one easily remedied, is determining the completeness of data submitted by each agency. The current statute does not require agencies to supply evidence that they have reported on all eligible stops nor does it allow the Maryland Justice Analysis Center to audit the data submitted. Data reported in 2003 for one agency clearly demonstrates that major mistakes can be made and that auditing data collection and reporting procedures would be helpful. The General Assembly should consider additional language that will allow us to have greater confidence in the completeness of data reporting.

In addition, if we are to determine the true extent to which race or ethnicity is involved in traffic stops in Maryland, we must be able to consider the impact of differences in driving behavior and police deployment. The General Assembly should consider requesting that the Maryland Justice Analysis Center develop a plan to do this and, after approval by the Police Training Commission, implement the plan for the next reporting period.

Major improvements were observed in the 2003 reporting, especially in the decreases in missing data, the use of verbal warnings, and the use of “unknown” as the explanation for stops and searches. These suggest efforts to improve data collection and reporting and efforts to eliminate actions that can be construed as unwarranted stops and searches.

