



Legislative Fiscal Bureau

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June 23, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Department of Administration, Office of Justice Assistance: Approval of 2009 Act 28 Section 9101(12x) Report on Traffic Stop Data Collection; and s. 16.505/515 Position and Expenditure Authority to Implement Traffic Stop Data Collection and Analysis -- Agenda Item XI

REQUEST

On May 17, 2010, the Department of Administration (DOA) submitted to the Joint Committee on Finance for approval under 14-day passive review, the report required pursuant to 2009 Wisconsin Act 28, Section 9101(12x). Under Act 28, development of an information technology system to implement traffic stop data collection may not commence until the report is approved by the Committee. On May 20, 2010, an objection to the report was raised. As a result, the report is before the Committee for approval under the s. 13.10 review process.

On May 17, 2010, DOA also submitted a request pursuant to s. 16.515/16.505(2), Stats., on behalf of DOA's Office of Justice Assistance (OJA) to create 0.60 full-time equivalent (FTE) PR permanent positions and provide \$50,600 PR in expenditure authority in 2009-10, as well as an additional 3.14 FTE PR permanent positions and \$757,000 PR in 2010-11, to provide resources to the Office to develop and implement the traffic stop data collection initiative. The funding and positions would be provided to OJA's traffic stop data collection; state PR appropriation (s. 20.505(6)(kg)) which is funded with revenue from the justice information system surcharge. An objection was filed to this request. As a result, the request is before the Committee for approval under the s. 13.10 review process.

On May 21, 2010, OJA submitted administrative rules to the Legislature to implement the traffic stop data collection initiative. On May 25, 2010, the rules were referred to the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing. On June

1, 2010, the rule was also referred to the Assembly Committee on Criminal Justice. A copy of these proposed administrative rules is attached to this memorandum.

BACKGROUND

Current Law and Proposed Administrative Rules. Under state statute, for each motor vehicle stop made on or after January 1, 2011, a *law enforcement officer* will be required to obtain all information relating to the traffic stop that is required to be collected under administrative rules developed by OJA and approved by the Legislature. *Law enforcement agencies* statewide (both state and local law enforcement agencies) will be required to submit this information to OJA using the process and in the format prescribed by OJA under administrative rule.

Under administrative rules submitted to the Legislature, a "law enforcement officer" required to collect this information would be either: (a) a person employed by the state or any political subdivision of the state for the purpose of detecting and preventing crime and enforcing laws or ordinances, and who is authorized to make arrests for violations of the laws or ordinances the person is employed to enforce; or (b) a tribal law enforcement officer who is empowered to exercise state law enforcement powers. A "law enforcement agency" required to submit this information to OJA would mean either: (a) a governmental agency of one or more persons comprising at least one full-time equivalent position, employed by this state or a political subdivision of this state, for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority; or (b) a tribal law enforcement agency as defined under s. 165.83(1)(e), Stats. Under this statutory section, a tribal law enforcement agency is defined as either: (a) an agency of a tribe that is established for the purpose of preventing and detecting crime on the reservation or trust lands of the tribe and enforcing the tribe's laws or ordinances, that employs full-time one or more persons who are granted law enforcement and arrest powers; or (b) the Great Lakes Indian Fish and Wildlife Commission.

Law enforcement officers would be required to collect four types of data, when applicable, regarding each traffic stop: (a) operator data; (b) occupant data; (c) event data; and (d) search data. With respect to the motor vehicle operator, the officer would be required to record: (a) the operator's residential zip code, age and gender; and (b) the race or ethnicity of the motor vehicle operator. The race or ethnicity of the operator would be the race or ethnicity identified on records of the Department of Transportation (DOT). If no DOT records were available, the operator's race or ethnicity would be determined by the perception of the law enforcement officer responsible for reporting the traffic stop. The officer would be prohibited from requiring the person stopped to provide race or ethnicity information. Under the proposed administrative rules, officers would not be directed to record for each traffic stop the name of the detained motor vehicle operator.

The officer would be required to record the following information with regard to motor vehicle occupants: (a) the number of occupants; and (b) the race or ethnicity of vehicle occupants. The officer would be prohibited from requiring any vehicle occupant to provide race or ethnicity

information. Under the proposed administrative rules, officers would not be directed to record for each traffic stop the name of the occupants of the detained vehicle.

With respect to the traffic stop, the officer would be required to record all of the following event data: (a) date, time and location of the traffic stop; (b) name of the law enforcement agency and officer number of the officer making the traffic stop; (c) location of the stop using global positioning system coordinates, DOT standards for identifying the location of traffic accidents, or any other method that identifies the location with a reasonable degree of accuracy; (d) make and model of vehicle, type of vehicle, state of vehicle registration, and vehicle license plate number; (e) reason for the stop; (f) outcome of the stop; and (g) duration of the stop.

For each traffic stop for which a search was conducted, whether of the vehicle operator, a vehicle occupant, or of the vehicle itself, the officer would be required to record: (a) if a consent to search was requested; (b) whether the consent to search was granted or denied; (c) the basis for the search; (d) the type of contraband located, if any; and (e) the race or ethnicity of each person searched. The race or ethnicity of the person searched would be determined in the same way that race or ethnicity is determined for a motor vehicle operator.

Currently, the information collected for a traffic stop depends on the outcome of the particular traffic stop. According to OJA: "Generally, with any traffic stop the officer will ask to see a driver's license but may not record any information from it. Currently, in stops that result either in "no action" or a verbal warning, very little, if any, information may be collected/recorded. In those circumstances, the individual agency's policy on what is included in the daily log will determine which details are documented. Those details are not generally aggregated within the individual agency and are not collected at all on a statewide basis. So, for traffic stops resulting in "no action" or a verbal warning, this recording and reporting requirement is new." For state or municipal citations, and for written warnings most vehicle operator information is already collected. The new rules, however, will require law enforcement agencies to collect and report information regarding written warnings and municipal citations to the state.

Under the traffic stop data collection rules, law enforcement agencies will newly be required to: (a) record the number of passengers in a stopped vehicle and whether any of those passengers are racial or ethnic minorities; (b) collect and report certain information related to any search of a vehicle or the occupants of the vehicle; (c) record the length of the traffic stop; and (d) collect and report traffic stop information for traffic stops not initiated based on a traffic offense (for example, a burglary suspect apprehended driving away from a burglarized residence).

Act 28 requires OJA to analyze the information submitted by law enforcement agencies to determine whether the number of motor vehicle stops and searches involving motor vehicles operated or occupied by members of a racial minority is disproportionate to the number of motor vehicle stops and searches involving motor vehicles operated or occupied solely by persons who are not members of a racial minority. Act 28 further directs the Office to promulgate administrative rules relating to: (a) the types of analyses that the Office will perform in fulfilling its statutory

analysis obligation; and (b) requirements for making reports to the Legislature, the Governor, and the Director of State Courts.

Under proposed administrative rules, OJA would be required to analyze the traffic stop data to determine: (a) whether the number of traffic stops involving motor vehicles operated or occupied by members of a racial minority is disproportionate to the number of traffic stops involving motor vehicles operated or occupied solely by persons who are not members of a racial minority; and (b) whether the number of searches involving motor vehicles operated or occupied by members of a racial minority is disproportionate to the number of searches involving motor vehicles operated or occupied solely by persons who are not members of a racial minority. The Office would be required to identify benchmarks used in preparing its reports. The proposed administrative rules do not define what constitutes "disproportionate."

As part of its analysis, OJA would be specifically permitted to analyze traffic stop data to determine the extent to which a correlation exists between the race and ethnicity of vehicle occupants and traffic stop event data such as the reason, duration, or outcome of the stop and search requests. Office staff would also be specifically permitted to note whether the existence of other factors, such as specific law enforcement strategies, may contribute to a disproportionate number of traffic stops involving motor vehicles operated or occupied by members of a racial minority compared with traffic stops involving motor vehicles operated or occupied solely by persons who are not members of a racial minority.

Under proposed administrative rules, OJA would be required to release traffic stop data reports to the public no less frequently than once each year. The first report would have to be filed no later than July 1, 2012. Traffic stop data reports would have to include analyses statewide in scope, and data sufficiently specific to permit analysis of traffic stop activity in a local jurisdiction by law enforcement agencies and the public. Law enforcement agencies would be required to have access to the results of their data submissions at least 30 days prior to the release of a statewide report that includes the data. Finally, OJA traffic stop data reports would have to be submitted to the Governor, the Director of State Courts, and to the President of the Senate and Speaker of the Assembly.

Report to the Joint Committee on Finance under 2009 Wisconsin Act 28. Under Act 28, the Secretary of DOA must submit a report to the Joint Committee on Finance addressing all of the following: (a) the feasibility of developing an information technology system to implement the traffic stop data collection initiative; (b) the estimated initial development costs for the system and how the cost estimates were derived; (c) the estimated ongoing costs for the system and how the cost estimates were derived; (d) timelines for development of the system; (e) the estimated costs to each participating state and local law enforcement agency, on a one-time and on an ongoing basis, to acquire any necessary system hardware and software, for any necessary communication lines, and for program costs; (f) the estimated costs to OJA, on a one-time and on an ongoing basis, to acquire any necessary system hardware and software, for system maintenance, for any necessary communication lines, for staffing to compile and analyze the traffic stop information and produce

any required reports, for staffing to administer the Office's other program responsibilities, and for any other program costs; and (g) funding sources for the system and program costs sufficient to cover estimated system and program costs.

Under Act 28, if the Co-Chairs of the Joint Committee on Finance do not notify the Secretary of DOA that the Committee has scheduled a meeting for the purpose of reviewing the report within 14 working days after the date that the report is submitted, the report is approved. If, within 14 working days after the date that the report is submitted, the Co-Chairs of the Joint Committee on Finance notify the Secretary that the Committee has scheduled a meeting for the purpose of reviewing the report, the report is not approved. System development may not begin prior to the approval of the report, as originally submitted, or as modified by the Joint Committee on Finance.

Funding. Under Act 28, the justice information system surcharge was increased from \$12 to \$21.50. A PR annual, data gathering and analysis appropriation was created under OJA to receive revenue associated with \$1.50 from each assessed surcharge. This appropriation authorizes OJA to expend appropriated amounts to gather and analyze statistics on the justice system, including racial disparity, uniform crime reporting, and incident-based reporting. This appropriation was provided no funding or expenditure authority under Act 28.

Under Act 28, justice information system surcharge revenues received by the OJA data gathering and analysis appropriation may be transferred to two new PR traffic stop data collection appropriations under OJA. The PR annual "traffic stop data collection; state" appropriation authorizes OJA to fund state information technology and administrative costs associated with traffic stop data collection. The PR annual "traffic stop data collection; local" appropriation authorizes OJA to fund local information technology and administrative costs associated with traffic stop data collection. Neither traffic stop data collection appropriation received funding or expenditure authority under Act 28.

Under Act 28, it was estimated that increasing the justice information system surcharge by \$1.50 would generate additional revenue of \$765,000 PR in 2009-10, and \$1,020,000 PR in 2010-11.

ANALYSIS

In calendar year 2008 (the last year for which data is available), there were 281,976 civil traffic judgments in municipal court. In calendar year 2009, there were 421,957 civil traffic judgments and 45,700 criminal traffic convictions in circuit court. While a single traffic stop may generate multiple citations and subsequent convictions, other citations are dropped before trial or the defendant is found not guilty. In addition, many traffic stops conclude with no action or with a warning and no citation. In the memorandum to the Committee associated with the report, it is estimated that as many as five million traffic stops a year could be subject to the new reporting provisions.

Under state statute, beginning January 1, 2011, law enforcement agencies statewide must submit the required traffic stop data to OJA using the process and in the format prescribed by OJA under administrative rule. Under the proposed administrative rules, a law enforcement officer who made a traffic stop could submit the traffic stop data directly to OJA if the officer had suitable electronic equipment to make the submittal in accordance with accepted DOT standards and procedures.

Otherwise, a law enforcement officer would be required to record the traffic stop data at the site of the stop either electronically or on a paper form approved by OJA. The chief officer of the law enforcement agency would be required to submit this collected data to OJA electronically under procedures identified in a memorandum of understanding between OJA and DOT. Paper submission of traffic stop data to OJA could only be made after approval from the Office.

The Department of Transportation began implementation of the Badger Traffic and Criminal Software (TraCS) program in 2005. The TraCS software program is loaded onto mobile data computers in squad cars and is a data collection tool utilized by the State Patrol and approximately 200 local law enforcement agencies to collect and transfer traffic citation and crash data. The system permits existing driver and vehicle data to be imported from the Department of Justice's Transaction Information for Management of Enforcement (TIME) system to eliminate the need for this data to have to be rekeyed by the officer. In addition, data stored in vehicle, identification card or driver's license bar codes may be loaded directly from a scan into the system. The TraCS program also provides data fields with check boxes and drop down lists to ease data entry for a given traffic event. If the mobile data computer has a linked printer in the vehicle, the TraCS program permits the officer to print out a traffic citation or written warning. Traffic data entered during a shift may be transferred by the Internet or by CD or other electronic storage device. Whether it is transferred in real time from the squad car via the Internet, or later from another computer workstation, traffic citation data may be transferred through the eCitation Web Service administered by the Wisconsin Justice Information Sharing (WIJIS) program at OJA to the courts, prosecutors, local municipal court systems, and DOT.

Of the approximately 600 law enforcement agencies statewide, as of May, 2010: (a) 301 agencies have been trained on the TraCS program; (b) 224 agencies are using the program to submit traffic citations to DOT; and (c) 210 agencies are using the program to submit crash data to DOT. Department of Transportation staff estimates that statewide approximately 50% of traffic citation and crash data submitted to DOT is submitted via the TraCS program.

The Department of Administration proposes adapting the TraCS program at DOT to permit law enforcement officers to submit the required traffic stop data electronically to OJA. The cost of equipping a single squad car with the TraCS program ranges from \$5,000 to \$8,000. The single most expensive item in installing TraCS in a squad car is the \$3,700 cost of the mobile data computer. Optional items included in the higher end \$8,000 estimate include items such as a printer, fingerprint reader, additional memory, and extended warranties.

Based on a survey completed by DOT, it is estimated that the approximately 400 law enforcement agencies not on TraCS have approximately 2,000 vehicles. At \$5,000 per vehicle, it could cost \$10 million to convert all of these squad cars to the TraCS program. In addition, some local law enforcement agencies have only partially converted to the TraCS program. It is currently unknown how many squad cars in these agencies have not been converted to TraCS. Finally, it is unknown how many squad cars have already been converted to the TraCS program and when the current mobile data computer and associated equipment may need to be replaced.

In order to implement the traffic stop data collection initiative, DOT has not requested additional resources. It indicates that "relatively routine software modification" will permit the TraCS program to be utilized for the traffic stop data collection initiative beginning January 1, 2011. However, "Expansion of the use of TraCS to encompass the approximately 400 law enforcement agencies not currently using TraCS plus expansion of TraCS to equip all law enforcement vehicles in agencies that currently only equip a portion of their fleet will not be possible to complete prior to January 1, 2011, the statutorily mandated implementation date." Department of Transportation staff indicates that a realistic timeline to fully convert law enforcement agencies to the TraCS program would be January 1, 2015.

The Department of Administration recommends that the eCitation Web Service at OJA be modified to permit traffic stop data collected through the TraCS program to be transferred to an electronic data extractor. "Essentially, the data extractor will ensure that the data sent will meet the collection requirements and then route the documents to the specified database in the OJA Statistical Analysis Center (SAC)."

Initially, the data associated with as many as half of all traffic stops will have to be provided to OJA through a means other than the TraCS program. The Department of Administration has recommended utilizing the WIJIS Justice Gateway to serve as an alternative mechanism to provide the required traffic stop data to OJA. The Justice Gateway is a web-based tool which provides law enforcement personnel with a single, secure point of read-only access to information stored in separate justice-related state, local, and tribal databases from communities across Wisconsin. The Gateway permits authorized users to do a name search of law enforcement, contact, arrest, and investigation records. The Department of Administration recommends modifying the Justice Gateway to create a web-based data entry screen for law enforcement agencies to enter and transmit the required traffic stop data associated with each covered traffic stop. If a non-TraCS squad car has a mobile data computer with Internet access, an officer may be able to, in real-time, use the Justice Gateway to transfer traffic stop data to OJA. Otherwise, traffic stop data will likely have to be entered twice, once in the field by the officer (either by paper or electronically), and once when the data is being entered into the Justice Gateway for transfer to OJA. As with data from the TraCS program, traffic stop data received via the Justice Gateway would be routed to an independent data extractor and then to a database at OJA's Statistical Analysis Center.

The Office of Justice Assistance has identified a need for \$50,600 in 2009-10, and \$364,200 in 2010-11, and 0.60 FTE permanent positions annually under its s. 16.515/16.505(2) request in

order to: (a) modify the eCitation Web Service in conjunction with the TraCS program; and (b) modify the Justice Gateway by creating a web-based data entry screen for required data for each covered traffic stop not covered with the TraCS program. Table 1 provides a breakdown of the proposed funding, while Table 2 provides a breakdown of the requested position authority. The funding and position need is based on a subjective assessment of OJA staff as to the resources that would be required to implement these system changes. In some cases, existing OJA position authority/staff would transfer from federal funding to state PR funding to implement the traffic stop data initiative.

TABLE 1

Wisconsin Justice Information Sharing Program Funding Request

<u>Item</u>	<u>2009-10</u>	<u>2010-11</u>
Information Technology Contractors	\$41,100	\$287,900
OJA Staffing Costs	6,100	49,000
Office Space	1,900	12,900
Computer Support	800	5,000
Computer Upgrades	0	3,300
In-State Travel	0	2,000
Other Supplies & Services	<u>700</u>	<u>4,100</u>
Total	\$50,600	\$364,200

TABLE 2

Wisconsin Justice Information Sharing Program Position Request

<u>Position</u>	<u>FTE</u>
Program & Policy Analyst-Advanced	0.25
Policy Initiatives Advisor-Administrative	0.15
Grants Specialist-Advanced	0.10
Financial Program Supervisor	0.05
Executive Director	<u>0.05</u>
Total	0.60

Under the WIJIS request, OJA is budgeting for 625 hours of IT contract work in 2009-10, and 4,375 IT contract hours in 2010-11, at hourly rates ranging from \$54 per hour to \$75 per hour. Office staff indicates that this work would be contracted out as it is more one-time in nature and would not justify the creation of additional state positions.

In order to assist local law enforcement agencies to convert to the TraCS program, OJA has proposed the creation of a grant program. Details of this program have not yet been developed. However, OJA indicates that the program would not be designed to address any local law enforcement agency costs associated with Justice Gateway data entry for those agencies not participating in TraCS. The Department of Administration indicates that OJA will work on the specifics of how this grant program would operate during 2010 and will request expenditure authority for grant awards later this calendar year. In order to develop and administer this grant program OJA is requesting administrative funding of \$99,500 in 2010-11, and 1.5 positions (0.5 program and planning analyst, 0.5 grants specialist, and 0.5 community services technician). The 0.5 program and planning analyst and the 0.5 grants specialist positions would start July 1, 2010, to permit program development to proceed, while the 0.5 community services technician position would be requested to begin January 1, 2011.

Of the \$99,500 in administrative funding for the grant program in 2010-11, \$80,000 would be associated with salary and fringe benefits costs. The remaining administrative costs for this grant program in 2010-11 would be: (a) \$6,000 for office space rent; (b) \$8,600 for DOA overhead and other DOA charges; (c) \$2,500 for computer desktop support; (d) \$2,000 for office supplies; and (e) \$400 for travel expenses.

Under the proposal, current TraCS users would need to be trained on modifications to the program associated with the traffic stop data collection initiative. In addition, agencies and law enforcement personnel new to the TraCS system would also have to be trained. Finally, non-TraCS agencies and officers would have to be trained on how to utilize the modified Justice Gateway to submit the required traffic stop data to OJA. In order to meet this training need, OJA has requested \$59,000 in training funding in 2010-11. Training would be provided through a two-day conference co-hosted with DOT, as well as through 12 additional training sessions. The Department of Administration indicates that representatives from 250 to 300 law enforcement agencies are anticipated to attend the two-day conference. Each of the 12 additional training sessions could accommodate the training of 14 to 16 additional people. Training would be based on a train-the-trainer model under which individuals receiving training would subsequently train others.

Data submitted under the traffic stop data collection initiative would be analyzed by the Statistical Analysis Center (SAC) in OJA. Data from as many as five million traffic stops a year would be analyzed. Under proposed administrative rules, OJA would be required to analyze whether the number of traffic stops or searches involving motor vehicles operated or occupied by members of a racial minority was disproportionate to such stops or searches involving persons who are not members of a racial minority. The Office would be specifically permitted to analyze traffic stop data to determine the extent to which a correlation existed between the race and ethnicity of vehicle occupants and traffic stop events such as the duration or outcome of the stop, and search requests. The required reports would have to include analyses statewide in scope, and data sufficiently specific to permit local law enforcement agencies to analyze enforcement activity in their local jurisdiction.

The Office of Justice Assistance has identified a need for \$230,300 and 1.64 FTE positions in 2010-11, for the SAC under its s. 16.515/16.505(2) request in order to carry out this data analysis responsibility. Table 3 provides a breakdown of the proposed funding, while Table 4 provides a breakdown of the requested position authority. The funding and position need is based on an assessment of OJA staff as to the resources that would be required to carry out this data analysis. In some cases, existing OJA position authority/staff would transfer from federal funding to state PR funding to implement the traffic stop data initiative.

TABLE 3

Statistical Analysis Center Funding Request

<u>Item</u>	<u>2010-11</u>
OJA Staffing Costs	\$117,500
Information Technology Contractors	67,600
Office Space	11,600
Information Technology Support	8,000
Database Hosting	7,000
In-State Travel	3,000
Other Supplies & Services	<u>15,600</u>
Total	\$230,300

TABLE 4

Statistical Analysis Center Position Request

<u>Position</u>	<u>FTE</u>
Program & Policy Analyst-Advanced	1.00
IS Business Automation Senior	0.50
Program and Policy Chief	0.05
Financial Program Supervisor	0.03
IS Comprehensive Services Senior	0.03
Community Services Technician	<u>0.03</u>
Total	1.64

Under the SAC request, OJA is budgeting for 1,040 hours of IT contract work in 2010-11, at the rate of \$65 per hour. Office staff indicates that this work would be contracted out as it is more one-time in nature and would not justify the creation of additional state positions.

Under proposed administrative rules submitted to the Legislature, OJA would be required to release traffic stop data reports to the public no less frequently than once each year. Based on its

experience producing crime data reports, OJA estimates that it would need \$4,000 in funding in 2010-11, to produce 300 color copies of a 100 page traffic stop data report.

Under Act 28, \$1.50 from each justice information system surcharge is potentially available to implement the traffic stop data collection initiative. Administration staff indicates that there are not any current plans to utilize this revenue for any other programmatic activity at OJA. Table 5 summarizes, for 2009-11, the revenue associated with \$1.50 from each justice information system surcharge, as well as the breakdown of the funding request from OJA currently before the Committee.

TABLE 5

2009-11 State Revenue and Budget for the Traffic Stop Data Collection Initiative

<u>Item</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance		\$686,900
Justice Information System Surcharge Revenue	<u>\$737,500</u>	<u>983,300</u>
Available Revenue	\$737,500	\$1,670,200
Wisconsin Justice Information Sharing Program	\$50,600	\$364,200
Grant Program for Local Law Enforcement Agencies	0	99,500
Training for Law Enforcement	0	59,000
Statistical Analysis Center	0	230,300
Annual Traffic Stop Publication Costs	<u>0</u>	<u>4,000</u>
Total Budgeted Expenditures	\$50,600	\$757,000
Closing Balance	\$686,900	\$913,200

Under the report filed with the Committee under Act 28, the Committee was to be apprised of the estimated costs to each participating state and local law enforcement agency, on a one-time and on an ongoing basis, to acquire any necessary system hardware and software, for any necessary communication lines, and for program costs. Based on a survey completed by DOT, it is estimated that the approximately 400 law enforcement agencies not on TraCS have approximately 2,000 vehicles. What is unknown is how many additional squad cars may still need to be converted to TraCS: (a) by local law enforcement agencies that have partially converted to TraCS; and (b) by state law enforcement agencies. Until more is understood as to how many squad cars may need to be converted to TraCS, cost estimates to convert these squad cars to TraCS will be incomplete. In collecting additional information on the possible costs of a grant program to convert squad cars to the TraCS system, the Committee could consider directing OJA and DOT to survey state and local law enforcement agencies to more accurately determine the number of squad cars that are not currently equipped with TraCS.

Particularly during the early stages of the traffic stop data collection initiative, local law

enforcement agencies participating in the TraCS program in part, or not at all, will have to manually enter the required traffic stop data into the modified Justice Gateway for transfer to OJA. For Justice Gateway agencies, they may typically have to double-enter the data, once in the field and a second time at a computer terminal with access to the Justice Gateway (this assumes no mobile data computer in the squad car with Internet access). While law enforcement agencies participating in TraCS will also have additional data entry requirements as a part of the initiative, in order to better understand the cost impact of the initiative, the Committee could consider directing OJA and DOT to survey each individual law enforcement agency not fully participating in the TraCS program as to the estimated number of hours of weekly data entry in the Justice Gateway that will be involved to comply with the initiative.

The Department of Administration has indicated that it will return to the Committee later this calendar year with a request for expenditure authority to fund a grant program for local law enforcement agencies. Given estimated revenues and initial cost estimates, it may be anticipated that potential costs under a grant program will exceed available revenues. The Department of Transportation indicates that \$700,000 FED is available to support the conversion of more law enforcement agencies to the TraCS program. This funding will be available July 1, 2010, but DOT staff indicates that it is unknown when and to what extent DOT may receive additional federal funding to support TraCS conversion. The Office of Justice Assistance indicates that \$200,000 FED in ARRA Justice Assistance Grant funding will be made available for this grant program. Finally, as much as \$913,200 PR in justice information system surcharge revenue may be available during 2009-11 for this grant program. If the Committee were to approve the s. 16.515/16.505(2), request of OJA, beginning in 2011-12, an estimated \$156,200 PR annually in justice information system surcharge revenue could be available for this grant program.

On the other hand, it is estimated that converting non-TraCS agencies to the program on a one-time basis could cost \$10 million. This cost estimate could increase depending on: (a) the cost to complete the conversion of law enforcement agencies that have only partially converted to TraCS; (b) whether Justice Gateway data entry costs are addressed under the program; and (c) whether or not the grant program is designed as an ongoing grant program. As costs under the grant program may exceed available revenues, and as the section 9101(12x) report under Act 28 directed DOA to identify funding sources sufficient to fully fund estimated program costs, the Committee could consider directing OJA to identify what process would be utilized to prioritize grant funding if the value of grant requests exceeded available funding.

While conversion to the TraCS program would appear to be an efficient mechanism to permit law enforcement agencies to comply with the traffic stop data collection initiative, it may be worth noting that the TraCS program has utility to law enforcement agencies beyond this initiative. Since 2005, DOT has been assisting local law enforcement agencies to convert to this program to improve the efficiency of law enforcement agencies in addressing traffic violations and traffic accidents and collecting the associated data. As a result, the Committee could consider directing OJA to review whether local law enforcement agencies could be required to provide a match for any grant award to convert to the TraCS program.

In administering a local grant program, there may be reasons why it would not be cost effective to convert every squad car to the TraCS program. Perhaps certain squad cars in an agency are less frequently used in a context in which they will be involved in making traffic stops. For small law enforcement agencies, perhaps the volume of traffic stops would not justify the cost of installing TraCS. The Committee could consider directing OJA to study under what circumstances law enforcement squad cars should be eligible for grant funding to convert to the TraCS program.

Finally, in developing its request for funding and position authority, OJA has requested a blend of permanent staff and contract work based on a preliminary assessment of its need for staff on a short-term and long-term basis. The Office of Justice Assistance has indicated that it lacks sufficient funding and staffing to implement this initiative with base resources. It could be argued, however, that creating the requested positions as four-year project positions would permit the Office and the Legislature to revisit the level of staffing required to administer the initiative after the Office and the state has gained more experience.

ALTERNATIVES

A. 2009 Wisconsin Act 28 Section 9101(12x) Report

1. Approve the 2009 Wisconsin Act 28 section 9101(12x) report submitted to the Joint Committee on Finance on May 17, 2010. As a result, development of an information technology system to implement traffic stop data collection may commence.

2. Direct the Department of Administration's Office of Justice Assistance (OJA) and the Department of Transportation (DOT) to survey state and local law enforcement agencies to determine the number of squad cars that are not currently equipped with the Badger Traffic and Criminal Software (TraCS) program. [*This alternative may be selected in addition to Alternative A1.*]

3. Direct OJA and DOT to survey each individual law enforcement agency not fully participating in the TraCS program as to the estimated number of hours of weekly data entry in the Justice Gateway that will be involved to comply with the traffic stop data collection initiative. [*This alternative may be selected in addition to Alternative A1.*]

4. Direct OJA to consider one or more of the following issues when developing the grant program for local law enforcement agencies:

a. Whether local law enforcement agencies should be required to provide a match for any grant award to convert to the TraCS program.

b. Under what circumstances law enforcement squad cars should be eligible for grant funding to convert to the TraCS program.

c. Whether local law enforcement agencies should be eligible for grant funding, in whole or in part, to offset costs associated with data entry in the Justice Gateway.

d. The process for prioritizing grant funding if the value of requests for grant funding exceeds the available funding.

e. Whether the grant program should be one-time in nature or an ongoing program. [*One or more of these alternatives may be selected in addition to Alternative A1.*]

5. Deny the request.

B. Section 16.515/16.505(2), Request for Position and Expenditure Authority

1. Approve the request of the Department of Administration's Office of Justice Assistance (OJA) to create 0.60 full-time equivalent (FTE) PR permanent positions and provide \$50,600 PR in 2009-10, and to create an additional 3.14 FTE PR permanent positions and provide \$757,000 PR in 2010-11, to OJA's traffic stop data collection; state PR appropriation. This appropriation is supported by revenues from the justice information system surcharge.

2. Modify Alternative B1 by creating the positions as four-year project positions. [*This alternative may be selected in addition to Alternative B1.*]

3. Deny the request.

Prepared by: Paul Onsager
Attachment

ATTACHMENT

NOTICE TO THE CHIEF CLERKS OF THE
WISCONSIN SENATE AND ASSEMBLY OF
PROPOSED RULES OF THE STATE OF WISCONSIN
OFFICE OF JUSTICE ASSISTANCE
IN FINAL DRAFT FORM
(Wis. Stat. s. 227.19)

To: Robert J. Marchant, Senate Chief Clerk
Room B20, Southeast,
P.O. Box 7882, State Capitol
Madison, Wisconsin, 53707, and

Patrick E. Fuller, Assembly Chief Clerk
Room 401
17 West Main Street
Madison, Wisconsin 53703-3960.

Please Take Notice that the Wisconsin Office of Justice Assistance has prepared proposed rules in final draft form. The attached report is submitted in accordance with the s. 227.19 (2), Stats.

The report consists of the following parts:

- Part 1 - Analysis Prepared by the Office of Justice Assistance - Page 1.
- Part 2 - Rules Text in Final Draft Form - Page 8.
- Part 3 - Analysis Prepared Under the Provisions of
s. 227.19, Stats., Including Public Hearing Information. - Page 20.

Attachments

Administrative Rules - Fiscal Estimate
Legislative Council Rules Clearinghouse Recommendations

CR 10-010
REPORT OF THE OFFICE OF JUSTICE ASSISTANCE
ON RULES IN FINAL DRAFT FORM

The Wisconsin Office of Justice Assistance proposes an order
to create ch. OJA 1, relating to the collection and analysis of
motor vehicle traffic stop information.

Analysis by the Office of Justice Assistance

Statutes Interpreted.

Sections 16.964 (16) (a) and 349.027, Stats.

Statutory Authority.

Section 16.964 (16) (b), Stats.

Explanation of agency authority.

Section 9101 (11y), of 2009 Wisconsin Act 28, a nonstatutory provision, directs that,

*(11y) RULE-MAKING RELATED TO TRAFFIC STOP INFORMATION
COLLECTION AND ANALYSIS. The office of justice assistance in the
department of administration shall submit in proposed form the rules required
under section 16.964 (16) (b) of the statutes, as created by this act, to the
legislative council staff under section 227.15 (1) of the statutes no later than
February 1, 2010.*

Under the provisions of s. 16.964 (16) (b), Stats. as created by 2009 Wisconsin Act 28,
“(t)he office shall promulgate rules relating to . . .” (traffic stop data collection,
submittal, analyses and reports). “Office” is defined to mean “the office of justice
assistance.” s. 16.964 (1) (g), Stats.

The Office of Justice Assistance (OJA) is attached to the Department of Administration
under s. 15.03, Stats. as a “distinct unit” that “. . . shall exercise its powers, duties and
functions prescribed by law, including rule making, . . . within the area of program
responsibility of the division, . . . , independently of the head of the department. . . .”
Under s. 15.01 (6), Stats., the Office of Justice Assistance is considered as a “division” of
the Department of Administration.

Related statute or rule.

Under s. 349.027, Stats., the person in charge of a law enforcement agency shall "cause to be obtained" information required by OJA rules relating to each traffic stop made on or after January 1, 2011. The person in charge of a law enforcement agency is also required to submit the information to the OJA using the process and format prescribed by OJA rules.

Plain language analysis.

These rules fulfill a statutory mandate that the Office of Justice Assistance adopt rules relating to the collection of information on traffic stops by law enforcement agencies (agencies) and analysis of the collected information by OJA. By statute, the rules are to relate to:

- The types of information that agencies must collect and the circumstances under which it must be collected;
- The process and format that agencies must use to submit the collected information to the OJA;
- The types of analyses that OJA will perform; and,
- Requirements for making reports to the legislature.

Proposed ch. OJA 1, in s. OJA 1.03, includes definitions of terms used in the statute and rule, including "law enforcement agency," "law enforcement officer," "person in charge of a law enforcement agency employing the law enforcement officer" "race or ethnicity" and "traffic stop."

No later than June 30, 2010, the Department of Transportation and the OJA are to enter into a memorandum of understanding covering traffic stop data collection procedures, forms, schedules, data tables and training. Among other things, the terms of the agreement are to minimize impact on the time and expense of law enforcement agencies. Section OJA 1.04.

In section OJA 1.05, the rules describe the type of information that police officers must collect relating to traffic stops, categorized as operator, occupant, event and search data. The process that law enforcement agencies must use to submit traffic stop data to the Office of Justice Assistance is set out in s. OJA 1.06.

The types of data analysis that the Office of Justice Assistance will perform is described in s. OJA 1.07. The analysis will be completed by the Statistical Analysis Center in OJA. The Center will analyze the traffic stop data under the tests identified in s. 16.964 (16) (a), Stats., specifically, to determine:

(a) Whether the number of traffic stops involving motor vehicles operated or occupied by members of a racial minority is disproportionate to the number of

traffic stops involving motor vehicles operated or occupied solely by persons who are not members of a racial minority.

(b) Whether the number of searches involving motor vehicles operated or occupied by members of a racial minority is disproportionate to the number of searches involving motor vehicles operated or occupied solely by persons who are not members of a racial minority.

Under the rule, the analysis may also evaluate correlations between the race and ethnicity of vehicle occupants and traffic stop events such as search requests and stop duration. OJA may also note whether other factors, such as specific law enforcement strategies, may contribute to identified disproportionalities. OJA is required to identify benchmarks and other analytical tools used in preparing its reports. Section OJA 1.08.

All of the OJA traffic stop reports will be published on the agency's website. Section OJA 1.09.

Under section OJA 1.10, a law enforcement agency that does not collect or submit traffic stop data will be identified in OJA reports.

Summary of, and comparison with, existing or proposed federal regulations.

There is no known federal law requiring the collection and analysis of data about the racial or ethnic characteristics of individuals involved in traffic stops. However, the Federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) 23 USC s. 1906 provides guidance on local legislation. Section 1906 provides incentive funding for states to enact a law that prohibits the use of racial profiling in highway law enforcement and to allow public inspection of statistical information for each motor vehicle stop regarding the race and ethnicity of the driver and passengers.

Comparison with rules in adjacent states.

Minnesota. In 2001, Minn. Stats. § 626.951, provided for a statewide racial profiling study with voluntary participation by law enforcement agencies. Sixty-five jurisdictions participated, reporting 194,189 total stops. The 2003 report from this study analyzed one year of data collected from the sixty-five jurisdictions. The complete report is available at <http://archive.leg.state.mn.us/docs/2004/mandated/040200.pdf>. According to the Minnesota study,

Law enforcement officers stopped Black, Latino, and American Indian drivers at greater rates than White drivers, searched Blacks, Latinos, and American Indians at greater rates than White drivers, and found contraband as a result of searches

of Blacks, Latinos, and American Indians at lower rates than in searches of White drivers. . . . (2001 Report, p. 1)

The report includes the conclusion that the patterns of disparate treatment “. . . suggest a strong likelihood that racial/ethnic bias plays a role in traffic stop policies and practices in Minnesota.”

Minnesota does not currently have a statewide law requiring law enforcement officers to collect data and prepare reports on the race of persons who are stopped or searched in a traffic stop. However, Minnesota does have a law that defines “racial profiling” and requires the chief law enforcement officer of every state and local law enforcement agency to enforce a written anti-racial profiling policy governing the conduct of officers engaged in stops of citizens. Minn. Stat. § 626.8471.

Iowa. Iowa does not currently have a law requiring the police to collect traffic stop data that includes the race or ethnicity of vehicle operators or passengers. Between October 1, 2000 and March 3, 2002, the Iowa State Patrol collected traffic stop data from over 260,000 traffic stops. A report was prepared in April 2003, by the Iowa state Patrol and the Iowa Division of Criminal and Juvenile Justice Planning.

The 2003 Report, available at http://publications.iowa.gov/7228/1/Stop_Data.pdf concluded, among other things, that,

Can we say whether or not ISP troopers are stopping, ticketing, searching or arresting people differently because of their race? The data in this report do not conclusively answer this question. They do give us an indication that Iowans are not more or less likely to be stopped by ISP troopers because of their race. . . .

The data in this report also do not definitively answer the question of whether or not the ISP troopers are influenced by a person's race or ethnicity when deciding whether to conduct a search or issue a warning vs. a formal sanction. The data do seem to indicate that race or ethnicity may have sometimes influenced decisions in these areas. However, such observations are only indications because a substantial number of cases had missing data and because the impact of numerous other variables that should affect such decisions is unknown (e.g. existence of outstanding warrants, severity of alleged traffic violations, visible contraband, incriminating driver or passenger behavior). (2003 Report p. 8)

Illinois. Illinois began collecting traffic stop data and issuing annual reports on January 1, 2004. The Illinois law was substantially amended in 2008. A Racial Profiling Prevention and Data Oversight Board (Board) was created to oversee plans and strategies to eliminate racial profiling in Illinois.

The recent 2008 Illinois report based on data reported from 2,518,825 traffic stops, sought to answer two questions.

- (1) To what extent, if any, does race influence an officer's decision to stop a vehicle?
- (2) To what extent, if any, does race influence the disposition of the stop? Was a citation issued? Was the vehicle subject to a consent search?

The 2008 Illinois Report, available at <http://www.dot.state.il.us/trafficstop/meeting.html>, concluded:

The ratio of minority drivers stopped to the minority driving population has improved each year. That is, the percentage of minority drivers stopped by the police is getting closer to the estimated driving population.

Law enforcement agencies continue to pay careful attention to this issue and many have introduced policies and procedures to correct deficiencies.

Our newest measures of post-stop performance -- duration of stop -- suggests that traffic stops of minority drivers consume about the same time as those for Caucasian drivers.

The number of consent searches in Illinois continues to decline, but minority drivers are still more likely to be consent searched than Caucasian drivers. Differential refusal rates do not appear to contribute to this difference.

Police officers conducting consent searches are far more likely to find contraband in a vehicle driven by a Caucasian driver than by a minority driver. While there has been a significant amount of attention devoted to this issue, there is little evidence at this point of substantial improvement. (2008 Report, p. 13)

The Illinois Act sunsets on July 1, 2010. The Illinois Board must recommend whether to continue the Illinois racial profiling study beyond July 1, 2010.

Michigan. Michigan does not have a statewide law currently in effect requiring traffic stop data collection and analysis, although some local studies have been conducted in Michigan.

Summary of factual data and analytical methodologies.

OJA utilized an advisory committee and public listening sessions in developing proposed ch. OJA 1.

OJA appointed a 17-member Traffic Stop Data collection Advisory Committee to advise the agency with respect to this rulemaking. The committee included representatives of law enforcement (police chiefs, county sheriff, and state patrol), a police association, legislators, community representatives, the Department of Transportation, the Department of Natural Resources, the Office of the Public Defender and a civil liberties organization. The advisory committee met on September 28, 2009, October 14, 2009,

November 18, 2009, December 17, 2009 and January 14, 2010. Presentations made to the committee include:

- The Illinois Traffic Stop Study: Alexander Weiss, Ph.D. University of Illinois at Chicago Center for Research in Law and Justice.
- Data Elements – Jerry Jansen, Criminal Justice Consultant, OJA.
- Technology – Erin Egan, Citations & Withdrawals Section, Badger TraCS Program Manager, DOT, Division of Motor Vehicles.
- Funding – Kathy Cushman, Citations and Withdrawals Section, DOT Division of Motor Vehicles.
- Milwaukee Police Department Traffic Enforcement Policy and Data Analysis – Milwaukee Chief of Police Ed Flynn.
- Fundamental Questions and Benchmarks and a Draft Data Analysis Report Outline - Kristi Waits, Program Director, OJA Strategic Analysis Center.
- Monitoring Stops for Biased Policing in Washington State – John R. Batiste, Chief of the Washington State Patrol.
- Data Collection and Community Partnerships – Noble Wray, Chief of Police, Madison Police Department.
- Local Law Enforcement Data Assessment (LLEDA), UW Report to BOTS - Joni Graves, Program Director, UW-Madison Transportation Information Center.
- Analysis Software for Local Analysis – Greg Ridgeway, Ph.D. Director, RAND Corporation.
- Benchmarks - Lorie Fridell, Ph.D., University of South Florida, Department of Criminology.

Listening Sessions were held by the Advisory Committee and OJA from 4 to 7 PM on November 11, 2009 (La Crosse), November 12, 2009 (Green Bay), November 18 (Milwaukee), December 1, 2009 (Rice Lake, Superior, Crandon and Keshena), and December 12, 2009 (Kenosha/Racine). At the sessions the committee and OJA heard from citizens who commented about the issue of racial profiling and traffic stops and about the traffic stop data collection project mandated by 2009 Wisconsin Act 28.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.

These rules do not have a significant effect on small business.

Effect on small business.

These rules do not have a significant effect on small business.

Agency contact person (including e-mail and telephone). Dennis Schuh, Program Director, Office of Justice Assistance, 1 S. Pinckney Street, Suite 615 Madison, WI 53703, Phone: (608) 266-7682. Email: Dennis.Schuh@wisconsin.gov.

Place where comments could be submitted and deadline for submission.

The Office of Justice Assistance held a public hearings on April 26 and 28, 2010. The agency contact person, Dennis Schuh, received public comments by email and mail until April 30, 2010.

1 **PART 2--RULE TEXT IN FINAL DRAFT FORM.**

2

3 SECTION 1. Chapter OJA 1 is created to read:

4

CHAPTER OJA 1

5

TRAFFIC STOP DATA COLLECTION AND ANALYSIS

6

OJA 1.01 Purpose. The purpose of this chapter is to establish rules

7

describing the types of information that law enforcement agencies must collect at

8

traffic stops, including the circumstances under which this information must be

9

collected, the process and format that law enforcement agencies must use to submit

10

the collected information to OJA, the types of analyses that OJA will perform, and

11

requirements for OJA-authored reports.

12

OJA 1.02 Authority. This chapter is promulgated under the authority of

13

ss. 16.964 (16) (b) and 349.027, Stats.

14

OJA 1.03 Definitions. As used in this chapter:

15

(1) "Department of transportation" or "DOT" means the Wisconsin

16

department of transportation.

17

(2) "Law enforcement agency" means either of the following:

18

(a) A governmental agency of one or more persons comprising at least one

19

full-time equivalent position, employed by this state or a political subdivision of this

20

state, for the purpose of preventing and detecting crime and enforcing state laws or

1 local ordinances, employees of which unit are authorized to make arrests for crimes
2 while acting within the scope of their authority.

3 (b) A "tribal law enforcement agency" as defined in s. 165.83 (1) (e), Stats.

4 (3) "Law enforcement officer" or "officer" means either of the following:

5 (a) A person employed by the state or any political subdivision of the state
6 for the purpose of detecting and preventing crime and enforcing laws or ordinances,
7 and who is authorized to make arrests for violations of the laws or ordinances the
8 person is employed to enforce.

9 (b) A tribal law enforcement officer who is empowered to exercise state
10 law enforcement powers under s. 165.92, Stats.

11 (4) "MOU" means the memorandum of understanding between DOT and
12 OJA described in s. OJA 1.04.

13 (5) "Office of justice assistance" or "OJA" means the Wisconsin office of
14 justice assistance.

15 (6) "Officer number" means a unique number assigned by a law
16 enforcement agency to identify a law enforcement officer authorized to act for the
17 law enforcement agency.

18 (7) "Operator" means a person who drives or is in actual physical control
19 of a motor vehicle.

1 (8) "Person in charge of a law enforcement agency employing the law
2 enforcement officer" as used in s. 349.027, Stats., or "chief officer of the agency"
3 means either of the following:

4 (a) The chief officer of the law enforcement agency who has the authority
5 to direct and supervise the law enforcement officers in the agency.

6 (b) The person who exercises daily supervision and control over law
7 enforcement officers participating in a cooperative county-tribal law enforcement
8 program as described in s. 165.90 (2) (e), Stats.

9 (9) "Race or ethnicity" means the following race and ethnic categories
10 utilized by the U.S. Census Bureau and the department of transportation division of
11 motor vehicles in operator license applications: "american indian or alaskan native,"
12 "asian/pacific islander," "black," "hispanic origin" and "white."

13 (10) "Statistical analysis center" means the unit of OJA required by
14 s. 16.964 (1m) (f), Stats. to serve as a clearinghouse of justice system data and
15 information and conduct justice system research and data analysis.

16 (11) "Traffic stop" or "motor vehicle stop" as used in ss. 16.964 and 349.027,
17 Stats., means any contact by an officer with a motor vehicle operator on a public
18 street or highway, initiated by the officer, resulting in the detention of a motor
19 vehicle.

20

1 Note: see Appendix for examples of a traffic stop.

2

3 (12) "Traffic stop data" means the categories of data collected under
4 s. 349.027, Stats. and s. OJA 1.05.

5 (13) "Motor vehicle" means a vehicle, including a combination of 2 or more
6 vehicles or an articulated vehicle, which is self-propelled, except a vehicle operated
7 exclusively on a rail. "Motor vehicle" includes, without limitation, a commercial
8 motor vehicle or a vehicle which is propelled by electric power obtained from
9 overhead trolley wires but not operated on rails. Snowmobiles and all-terrain
10 vehicles shall not be considered motor vehicles for purposes of this chapter.

11 **OJA 1.04 Memorandum of understanding.** (1) DOT and OJA shall enter
12 into a MOU no later than June 30, 2010, which shall set forth the agreement between
13 the two departments with respect to all of the following:

14 (a) Establishing traffic stop data collection procedures that meet the
15 requirements of the law while minimizing impact on the time and expense of law
16 enforcement agencies.

17 (b) Emphasizing the use of data systems that use mobile data terminals
18 and minimize use of written reports and forms.

19 (c) Modifying existing forms, data tables and data fields for use in
20 collecting traffic stop data.

1 (d) Specifying the procedures, schedules and forms that will be used to
2 collect traffic stop data.

3 (e) Training that DOT and OJA will provide to law enforcement agencies
4 through the Internet and at classes and conferences.

5 (2) The MOU may be amended by agreement of the parties.

6 **OJA 1.05 Types of information required to be collected.** Beginning
7 January 1, 2011, for each traffic stop, the chief officer of an agency shall require the
8 officer making the traffic stop to record the following information using a computer
9 or a paper form:

10 (1) **OPERATOR DATA.** With respect to the motor vehicle operator, the
11 officer shall record all of the following:

12 (a) The operator's residential zip code, age and gender.

13 (b) The race or ethnicity of the motor vehicle operator. The race or
14 ethnicity recorded for the operator shall be the race or ethnicity identified on records
15 of the DOT. If the operator's race or ethnicity is not available to the officer from the
16 DOT, the operator's race or ethnicity shall be determined by the perception of the law
17 enforcement officer responsible for reporting the traffic stop. The officer shall not
18 require the person stopped to provide race or ethnicity information.

19 (2) **OCCUPANT DATA.** With respect to the motor vehicle occupants, the
20 officer shall record all of the following:

- 1 (a) The number of occupants.
- 2 (b) Whether any occupant other than the operator is a member of a racial
3 minority or ethnicity. The officer shall not require the person stopped to provide
4 race or ethnicity information.
- 5 (3) EVENT DATA. With respect to the traffic stop, the officer shall record
6 all of the following:
- 7 (a) The date, time and location of the traffic stop, the name of the law
8 enforcement agency and officer number of the officer making the traffic stop.
- 9 (b) The location of the stop using global positioning system coordinates if
10 available, DOT standards for identifying the location of traffic accidents, or any
11 other method that identifies the location with a reasonable degree of accuracy.
- 12 (c) The make and model of the motor vehicle, type of motor vehicle, state
13 of motor vehicle registration and the motor vehicle license plate number.
- 14 (d) The reason for the stop.
- 15 (e) The outcome of the stop.
- 16 (f) The duration of the stop.
- 17 (4) SEARCH DATA. Whether the operator, any occupant, or the motor
18 vehicle was searched and if so, all of the following:
- 19 (a) Whether a consent to search was requested, and, if so, whether it was
20 granted or denied.

1 (b) The basis for the search.

2 (c) The race or ethnicity of each person searched determined according to
3 the procedure in sub. (1) (b).

4 (d) Type of contraband, if found.

5 **OJA 1.06. Process and format for submitting data.** (1) The chief officer of
6 each agency shall arrange to have all traffic stop data submitted to OJA under one of
7 the following procedures:

8 (a) A law enforcement officer who makes a traffic stop may submit the
9 traffic stop data directly to OJA if the officer has suitable electronic equipment to
10 make the submittal in accordance with accepted DOT standards and procedures.

11 (b) If a law enforcement officer who makes a traffic stop is unable to
12 submit the traffic stop data directly to OJA under par. (a), the law enforcement
13 officer shall record the traffic stop data at the site of the stop either electronically or
14 on a paper form approved by OJA. The chief officer of the agency shall arrange to
15 have traffic stop data recorded under this subsection submitted to OJA electronically
16 under the procedures identified in the MOU. The chief officer of the agency shall
17 not submit more than one set of traffic stop data for each traffic stop. Paper
18 submission of traffic stop data to OJA may be made only after approval from OJA.

19 (2) Submissions of traffic stop data shall be received at OJA no later than
20 31 days after the stop occurred.

1 **OJA 1.07. The types of data analyses that OJA will perform.** (1) The office
2 of justice assistance through its statistical analysis center shall analyze the traffic
3 stop data received to determine all of the following:

4 (a) Whether the number of traffic stops involving motor vehicles operated
5 or occupied by members of a racial minority is disproportionate to the number of
6 traffic stops involving motor vehicles operated or occupied solely by persons who
7 are not members of a racial minority.

8 (b) Whether the number of searches involving motor vehicles operated or
9 occupied by members of a racial minority is disproportionate to the number of
10 searches involving motor vehicles operated or occupied solely by persons who are
11 not members of a racial minority.

12 (2) As part of its analysis, OJA may analyze traffic stop data to determine
13 the extent to which a correlation exists between the race and ethnicity of motor
14 vehicle operators and occupants and traffic stop event data described in
15 s. OJA 1.05 (3) (d) – (f) and (4). OJA may also note whether the existence of other
16 factors, such as specific law enforcement strategies, may contribute to
17 disproportionalities in the number of traffic stops involving motor vehicles operated
18 or occupied by members of a racial minority compared with traffic stops involving
19 motor vehicles operated or occupied solely by persons who are not members of a
20 racial minority.

1 (3) The office of justice assistance shall use benchmarks and other
2 analytical tools that enable it to make the analyses and prepare the reports identified
3 in s. OJA 1.08.

4 **OJA 1.08. Reports.** (1) Reports by OJA of its analysis of traffic stop data
5 collected under this chapter shall be submitted to the governor, the director of state
6 courts, the president of the senate, and the speaker of the assembly.

7 (2) Reports by OJA under this chapter shall identify benchmarks used in
8 preparing the reports and include both:

9 (a) Analyses that are statewide in scope, and,

10 (b) Data sufficiently specific to permit analysis of traffic stop activity in a
11 local jurisdiction by law enforcement agencies and the public.

12 (3) Law enforcement agencies shall have access to the results of their data
13 submissions at least 30 days prior to the release of a statewide report that includes
14 the data.

15 (4) Reports shall be released to the public no less frequently than once
16 each year. The first report shall be filed no later than July 1, 2012.

17 **OJA 1.09. Availability of records.** The office of justice assistance shall
18 distribute information about the release of each OJA report to the news media and
19 by an announcement on its website. All reports of OJA made under this chapter
20 shall be published on the OJA website.

1

2 Note: The OJA website address is <http://oja.wi.gov>.

3

4 **OJA 1.10 Penalties.** In addition to utilizing other available remedies to
5 enforce the provisions of this chapter, OJA shall identify in its reports any law
6 enforcement agency that fails to collect or submit traffic stop data as required under
7 this chapter.

8

9 **EFFECTIVE DATE.** This rule shall take effect on the first day of the month
10 following publication in the Wisconsin administrative register as provided in
11 s. 227.22 (2) (intro.), Stats. except that section s. OJA 1.05 shall not take effect until
12 January 1, 2011.

Dated: _____

STATE OF WISCONSIN
OFFICE OF JUSTICE ASSISTANCE

David Steingraber
Executive Director

Appendix
Traffic Stop Examples

An officer who makes a traffic stop is required to record the traffic stop data identified in s. OJA 1.05. A traffic stop, by definition, has four elements: (1) contact by an officer with a motor vehicle operator, (2) on a public street or highway, (3) initiated by the officer, (4) that results in the detention of a motor vehicle. Under the definition, not every stop is a "traffic stop" that requires an officer to record traffic stop data. Some examples:

A. *An officer is dispatched to a location based on a 911 emergency call. She finds that a motor vehicle accident has occurred, talks with the operators of the vehicles involved and completes a motor vehicle accident report. This situation is not a traffic stop because the officer was ordered to the scene and did not "initiate" the contact with the operator. Further, her contact did not result in motor vehicle detention.*

B. *Officer B is stationed at a weighing station on a major highway. Nearby weigh station signage instructs truck operators to stop at the station and weigh their motor vehicles. Stops by the trucks at the way station are not traffic stops by officer B. The trucks are detained at the station, but the detention is not the result of a contact initiated by officer B. The officer is not required to record traffic stop data for these stops.*

C. *Officers C stops an automobile driven by operator C after seeing the vehicle slow, but not stop, at a marked intersection. Officer C warns the operator that he must make a full stop. No citation is issued. Officer C has made a traffic stop and is required to record traffic stop data. The stop meets the four elements of the definition: contact, on a public highway, officer initiated, resulting in motor vehicle detention.*

D. *Officer D is called to a mall by a guard who identifies a person in a parked car as a shoplifter. Officer D detains the vehicle operator and eventually issues a citation for shoplifting. This is not a traffic stop. The detention did not occur on a public street or highway.*

E. *A dispatcher notifies officer E of a citizen complaint that a driver is traveling too fast on Main Street. The dispatcher identifies the motor vehicle by make and model. Officer E finds a vehicle matching the description, follows and observes that it is traveling too fast. After stopping the vehicle, the officer issues a speeding citation. This is a traffic stop under the definition. The stop was initiated by the officer even though he was advised of the citizen complaint. However, if the officer had been ordered to stop a specific motor vehicle without using any independent judgment, such as an order based on an eyewitness report of a hit and*

run that included the license number of the automobile, a stop of the motor vehicle would not be a "traffic stop" because the stop was not initiated by the officer.

F. Operator F's motor vehicle is legally parked on the side of a highway with the vehicle's hazard lights activated. Officer F passes the vehicle, executes a U-turn, activates his police cruiser's emergency overhead lights and stops behind the vehicle, intending to offer needed assistance. Officer F approaches the operator's side window, shines a flashlight through the rear window, places his hand on his holstered gun and observes that the driver is sleeping. Officer F wakes the driver and asks if he needs any assistance. The driver says that his car had stalled and would not start. Officer F assists the driver in calling for a tow. This is not a traffic stop. Officer F was performing a community caretaker function. The officer contact did not result in a motor vehicle detention.

The examples of stops that are not "traffic stops" generally involve situations where an officer is performing a community caretaker function, policing the scene of an automobile accident, responding to a 911 or other emergency call, or ordered to stop a specific motor vehicle.

**PART 3--ANALYSIS PREPARED UNDER THE PROVISIONS OF S. 227.19,
STATS. INCLUDING PUBLIC HEARING INFORMATION.**

Basis and Purpose of the Proposed Rules and Need for the Proposed Rules

The proposed rules fulfill a legislative mandate in s. 16.964 (16) (b), Stats. and section 9101 (11y), of 2009 Wisconsin Act 28, requiring OJA to promulgate rules relating to traffic stop data collection, submittal, analyses and reports. The mandate to OJA complements a new statutory requirement that for each motor vehicle stop made on or after January 1, 2011, the law enforcement officer shall obtain all the information required by OJA rules, and the law enforcement agency employing the officer shall submit the information to OJA using the process and format prescribed by OJA rules. OJA is to analyze the information according to its rules, “. . . determine whether the number of motor vehicle stops and searches involving motor vehicles operated or occupied by members of a racial minority is disproportionate to the number of motor vehicle stops and searches involving motor vehicles operated or occupied solely by persons who are not members of a racial minority” and issue reports on its analysis.

The statute and rules are intended to develop data that may be used to evaluate correlations between the race and ethnicity of vehicle occupants and traffic stops as well as correlations between the race and ethnicity of vehicle occupants and traffic stop events such as search requests and stop duration. The program of collecting data on traffic stops, identifying the race of operators and occupants involved in stops and searches and analyzing the data by comparison with benchmarks is intended to identify the possibility of law enforcement bias and permit the public and law enforcement agencies to take appropriate action.

The proposed rules are needed to identify for law enforcement agencies and the public the specific data that officers must collect for each traffic stop and the process and format for submitting the data to OJA. The proposed rules are also needed to inform the public and law enforcement agencies of the types of analyses that OJA will conduct and the reports it will make.

Responses to Legislative Council Rules Clearinghouse Recommendations

A copy of the Legislative Council Rules Clearinghouse Recommendations is attached. The Office of Justice Assistance accepted in whole the recommendations made by the Legislative Council Rules Clearinghouse and modified the proposed rule accordingly prior to its public hearings.

Final Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

No changes were made to the fiscal estimate.

Public Hearing Summary

Public Comments Received at Website, by Mail and Email

The department invited public comments on the proposed rule via the Wisconsin Administrative Rules website and via email and mail at the Office of Justice Assistance. Public comments on the proposed rule were accepted until April 30, 2010, at 4:30 p.m.

Written comments submitted to OJA are summarized below. No comments were submitted to the Wisconsin Administrative Rules website.

Public Hearings

Public hearings were held between 4 and 7 p.m. on April 26, 2010 in Madison and on April 28, 2010, in Milwaukee. Hearing attendance and registrations are summarized in Table 1,, below

Table 1. Summary of Public Hearing Attendance, Support and Opposition.

	Attendance	Testimony In Favor	Testimony In Opposition	Testimony Neither For nor Against	Appeared for Information
Madison	15	8	0	1	6
Milwaukee	9	3	0	1	5

List of Persons Who Appeared or Registered For or Against the Proposed Rule at Agency Public Hearings

1. D. J. Danforth, De Pere
2. Jessica Yee, De Pere

3. Qi Gu, Madison
4. Alex Gillis, Madison
5. Z. Hawkness
6. Yvonne Geerts, Madison
7. Seth Tulley, Friendship
8. Tracy Benson, Madison
9. Richard Harris, Madison
10. Taqwanya Smith, Madison
11. Steven Kraus, Waukesha
12. Sen. Lena Taylor, Milwaukee
13. Peter Goldberg, Milwaukee
14. Jill Vonnahme, Milwaukee
15. Marion, Milwaukee
16. David Crowley, Milwaukee
17. Jeremy Ross, Milwaukee
18. Stephanie Pederson, Madison
19. Jane Anderson, Cedar Grove
20. Mark Samelstad, New Richmond
21. Rachel Krueger, Madison
22. Janice Baumann, Madison
23. Kathleen Baumann, Madison
24. Stacy Harbaugh

Summary of Public Comments to the Proposed Rule and the Agency's Response to the Comments.

The agency's response is in italics and follows the summary of some of the statements.

**Madison, Wisconsin hearing, April 26, 2010,
Madison Area Technical College, 3550 Anderson Street, 4-7 pm**

Persons appearing

1. D. J. Danforth, De Pere, Wisconsin

Mr. Danforth agrees with the rule provisions that allow tribal police to regulate their own people. He questions whether local non-tribal police sometimes infringe on the Oneida Nation's sovereignty. Profiling happens often. Native American tribal members are identifiable by their license plates. He cited examples of arrests for headlight violations. There is a need to bring forward the issue of Oneida sovereignty. Something needs to be done when there is infringement on tribal sovereignty.

[By references to ch. 165, Stats. in the definition section of the proposed rules. The proposed rules acknowledge that tribal law enforcement agencies and tribal law enforcement officers have the same responsibilities for collecting, reporting and analyzing traffic stop data as non-tribal agencies and officers.]

2. Jessica Yee, De Pere, Wisconsin

She is a member of the Oneida Nation of Wisconsin. The proposed law deals with urban and rural concerns. It is important to draw attention to the “invisible population” i.e. the Native American population. Wisconsin’s 11 tribes, living all over the state, make up 1.9% of the state’s population and represent over 50% of those in poverty. Native American youth are disproportionately arrested, 2.6 times more than other youth, incarcerated 3.7 times more, and experience domestic violence 7.8 times more than others.

The complexity of tribal jurisdictions contributes to traffic stop issues. Budget cuts are hindering collaboration between tribal and non-tribal police. There have been many incidents where non-tribal police have not called tribal police as required under federal law.

Tribal members are easily identifiable by their license plates and other insignia. Many tribal members think they have been unlawfully pulled over because of their tribal identity and how they are presenting.

In Brown County there is a disproportionate number of police who do not have any training in cultural sensitivity. The proposal should include provisions relating to training in Native American and American Indian reality, as well as the issue of how to respect jurisdictions, tribal sovereignty and tribal laws.

Tribal members uphold an ancient justice system. They do not want to remain an “invisible population.”

[The proposed rules utilize the U.S. Census Bureau and DOT category of “American Indian or Alaskan Native,” as “race or ethnicity” that must be utilized in recording operator and occupant data. See proposed s. OJA 1.03(9). Among other things, reports of OJA prepared under the rules will identify whether the number of traffic stops and searches involving motor vehicles operated or occupied by American Indians or Alaskan Natives is disproportionate to the number of traffic stops and searches involving motor vehicles operated or occupied solely by persons who are not members of a racial minority.]

3. Qi Gu, Madison, Wisconsin

Ms. Qi Gu questions why Wisconsin did not adopt this rule earlier. She asked about trends in racial profiling in Wisconsin. Base lines are needed for analysis.

[Reports issued by OJA will establish baselines and provide law enforcement agencies and local communities with information useful for agency management and informative for public-police discussions of traffic stop issues.]

4. Alex Gillis, Madison, Wisconsin

Mr. Gillis represents the Immigrant Workers Union, including many undocumented members. Racial profiling is increasing, mainly because immigrants do not have access to driver's licenses. In Fitchburg, Verona, and Middleton, for example, there is a perception that people are stopped because of their Mexican or Latino appearance. However, there is now no access to traffic stop data.

The Immigrant Workers Union receives complaints about traffic stops on their 800 number. These complaints come in seasonal cycles. Stops are made for driver's license and seat belt violations. The organization knows that some police are profiling immigrants. More and more, the stops seem like a trap.

Traffic stop data will be a tool for agencies to use. Data should include the stop location, time, and officer. Information should be open and accessible to the people. A breakdown of costs and expenses for presenting traffic stop data should be available on the internet in a format similar to the federal stimulus website.

[The proposed rule requires that the officer collect the stop location, time and officer number. See proposed s. OJA 1.05(3)(a).]

5. Z. Hawkness

Mr. Hawkness represents "Groundwork," an anti-racist group that supports immigrant rights. He cited an example from Strum, Wisconsin, where Latinos say that police will stop immigrants when they need to fulfill a quota.

In Madison, the Dane County Sheriff's Dept. is intertwined with U.S. Immigration and Customs Enforcement (ICE). People are being deported for minor violations. A traffic stop may have serious consequences.

Mr. Hawkness supports the rule. He cited Arizona's recent law, SB 1070, as problematic, permitting the police to arrest based on profiling.

6. Yvonne Geerts, Madison, Wisconsin

Ms. Geerts works at the Immigrant Workers Union. She appreciates that the rule does not collect immigration status. The Immigrant Workers Union would oppose collection of immigration status.

Access to the collected information is important because the community needs the traffic stop data as a tool.

[The proposed rule requires OJA reports to be released to the public no less frequently than once each year. OJA plans to publish its Traffic Stop Data Analysis reports on the Internet.]

7. Seth Tulley, Friendship, Wisconsin

Mr. Tulley represents the Adams County Sheriff's Office and welcomes the gathering of statistics under the rule. On a personal level, he does not like to choose the race of a person. Identification of race on the driver's license might be useful. Rural police might not have access to computers at the site of the traffic stop and cannot see what information is on file with DOT. Having to pick the race may offend some.

Publication of information and public education about the data collection program is important.

The duration of the stop should be in time increments, not exact time. Information should exclude the officer's number.

Financial assistance to enforcement agencies is needed.

[The rule does not specify how the stopping officer is to report the duration of the stop. See proposed s. OJA 1.05(3)(f). The suggestion of standard increments is a reasonable approach and will be considered by the OAJ and DOT in working out the final details of data collection under the Memorandum of Understanding.]

The committee and OJA deliberated extensively over whether data collected at traffic stops should include officer identification. Under the proposed rule, each local agency must assign an "officer number" to law enforcement officers authorized to act for the agency. OJA will receive the officer number as part of the data collected for each traffic stop, but not the officer's name. See proposed ss. OJA 1.03(6) and 1.05(3)(a). Local law enforcement agencies will have the capability of determining the identity of officers making the stop from the officer number included in the data. This approach was adopted because local agencies are better prepared to answer questions raised concerning a particular stop or concerning stops made by a particular officer than is OJA.]

8. Tracy Benson, Madison, Wisconsin

Ms. Benson represents Freedom Inc. and Community Justice Network for Youth. Freedom, Inc. promotes anti-violence programs in mostly Southeast Asian and African-American communities.

Ms. Benson spoke in support of the proposed rule. Racial profiling is an issue that is basic to Freedom Inc. and was one reason that the organization was formed. Freedom Inc. collected testimony from around the state. There was concern about police harassment as a cause for violence and a reason for dropping out of school.

Changes will require more information. Why do disparities exist? Solutions and change require data that will be collected under the rule. The data is important to determine what is actually happening.

She recommends that to be effective, the data should be collected on a monthly basis. Annual reporting makes interpretation difficult. More frequent reporting is important.

[Under proposed OJA 1.08(4), OJA is required to issue reports no less frequently than once each year. More frequent publication may occur if there is a public need and OJA has the resource.]

9. Richard Harris, Madison, Wisconsin

Mr. Harris is the executive director of Vision Beyond Bars, Inc. a crime prevention organization. He is a substance abuse counselor and a boy's coordinator for a local school.

Mr. Harris was a Green Bay resident for seven years. He has had more traffic stops in Madison than during his seven years in Green Bay. The stops relate to his license plate. When he asks about why he was stopped, he is told that it is because he has a license plate that stands out or he is in an area of concern. He is always asked, "Are there any drugs or weapons in the vehicle." Traffic stops turn into drug investigations. Stops become expected. Questions asked by the police are unrelated to the reason for the stop.

The proposed rule may be a way of determining what questions are asked by police and why asked.

He feels that he cannot tell the youth that he counsels that Madison treats people fairly. Confidence in the police has been eroded. The impact of traffic stops is devastating. The African-American community has no trust in law enforcement. Once information is gathered, something needs to be done.

Mr. Harris recalled his experience in Chicago where training was provided on how to act in a traffic stop. Stops may lead to incarceration or violence.

Police practice cannot be explained to young children. Bias in traffic stops is hurtful and takes a toll on young people. Parents are concerned – don't let the system get our child.

Information gathered under the rule should be used to develop real-life solutions.

Milwaukee, Wisconsin Hearing, April 28, 2010
Zelazo Center, UWM, 2419 E. Kenwood Blvd., 4-7 PM

Persons appearing

10. Steven Kraus, Waukesha, Wisconsin

Mr. Kraus appeared for the Waukesha Police Department and the Form Advisory Committee of Badger TraCS. He asked whether traffic stop data will be available at the local department or only at the Office of Justice Assistance. Concerning TraCS, he encouraged OJA to keep data to a minimum – that is, limited to the data identified in the rule.

[Traffic stop data will be available from local departments and OJA under Wisconsin's public records law. OJA's reports will be published on the Internet.]

11. Sen. Lena Taylor, Milwaukee, Wisconsin

Senator Taylor discussed composition of the Advisory committee that assisted OJA in drafting the rule. The rule comes from a budget motion that included primary seat belt enforcement along with the traffic stop data collection provision.

Data collection may be used as a tool to improve policing in Wisconsin. Most of the law enforcement testimony across the state has been supportive of the law and the rules. The rules describe the type of data to be collected. OJA will be reporting out the results of the data collection.

Reports from OJA will be open to the public and published on the Internet. The public will have input into the process. OJA will be available to assist in clarification of the reports released.

[The Statewide Advisory Committee that worked with OJA in developing the rules consisted of the following members:

- Executive Director Christopher Ahmuty, American Civil Liberties Union of WI
- Chief Jim Arts, Green Bay Police Department
- Sheriff Michael E. Brooks, Winnebago County Sheriff's Office
- State Public Defender Nicholas L. Chiarkas, Office of the State Public Defender
- Superintendent David Collins, DOT Division of State Patrol
- Chief Edward A. Flynn, Milwaukee Police Department
- State Representative Tamara Grigsby, Wisconsin State Assembly
- Mr. Jorge Islas-Martinez, Community Member
- Reverend Dr. Archie Ioy, New Hope Missionary
- Deputy Attorney General Jo Deen B. Lowe, Forest County Potawatomi Nation
- Executive Director James L. Palmer II, WI Professional Police Association
- Chief Douglas H. Pettit, Oregon Police Dept
- Director Taqwanya Smith, DOT Bureau of Driver Services
- Senator Lena Taylor, Wisconsin State Senate
- Chief Charles A. Tubbs Sr., Wisconsin Capitol Police
- Chief Noble Wray, City of Madison Police Department
- Deputy Chief Warden Karl Brooks, Department of Natural Resources (Ex-officio)

12. Peter Goldberg, Milwaukee, Wisconsin

Mr. Goldberg is an attorney speaking on his own behalf. He has defended people who have been arrested as a result of traffic stops. He noted that many traffic stops involve minor repair problems. He has had a huge number of clients who have been stopped coming from the inner city for minor repair problems. These stops escalate into more serious matters. Now people are regularly being stopped because they do not have their seat belts on. These stops also escalate into full-blown searches of the cars.

The new safe street initiative involves more motor-vehicle related investigations. People sitting in or leaning on cars are subject to being questioned.

In *Terry v. Ohio*, involving whether the police had reasonable suspicion to conduct a street interview, the court noted in a footnote that in a study of the 1968 riots, one of the top three reasons for youth anger that led to the riots was perceived harassment by the police. The police are seen as enemies.

The police are using more audio and visual recordings. Regarding the rules, the rules should include requirements that audio and video recordings of stops be preserved and submitted to OJA. The rules might also include a requirement

that the courts preserve transcripts of suppression hearings and submit them to OJA. These materials would reveal whether the reasons given for the stops are legitimate. Dispatches could also be requested.

[The rulemaking authority given OJA in s. 16.964, Stats. does not authorize OJA to regulate retention of traffic stop recordings or transcripts of court hearings. A requirement that law enforcement agencies submit copies of all audio and video recordings of traffic stops to OJA is not feasible and probably outside the scope of the statute.

Footnote 11 in *Terry v. Ohio*, 392 US 1 (1968), referenced by attorney Goldberg states, in part:

The President's Commission on Law Enforcement and Administration of Justice found that "[i]n many communities, field interrogations are a major source of friction between the police and minority groups." President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police 183 (1967). It was reported that the friction caused by "[m]isuse of field interrogations" increases "as more police departments adopt 'aggressive patrol' in which officers are encouraged routinely to stop and question persons on the street who are unknown to them, who are suspicious, or whose purpose for being abroad is not readily evident." . . .

One of the expressed purposes of traffic stop data collection laws like the Wisconsin law in sections 16.964 (16) and 349.027, Stats. is to foster and inform police-citizen dialogue with the expectation of minimizing community-police discord and advancing law enforcement agency management.

*"The most effective and productive use of racial profiling data is not its ability to determine if racial profiling exists but rather its ability to provide concrete information to ground police-community discussions about patterns of stops, searches, and arrests throughout local communities." Farrell, Amy, Jack McDevitt, and Michael E. Buerger. 2002. 'Moving Police and Community Dialogues Forward through Data Collection Task Forces.' *Police Quarterly*, 5(3): 365. Quoted in Fridell, Lorie. *By the Numbers, A Guide for Analyzing Race Data from Vehicle Stops*. (2004). http://www.cops.usdoj.gov/files/RIC/Publications/by_the_numbers.pdf. p . 43.]*

13. Jill Vonnahme, Milwaukee, Wisconsin

Ms. Vonnahme was asked to speak at the hearing by the Executive Director of Voces de la Frontera in Milwaukee. The organization receives complaints about traffic stops of Latino men and women. She gave recent examples which are described in her written statement, below. Another example involved a person who was stopped and asked for a social security number as well as a driver's license.

14. Marion, Milwaukee, Wisconsin

She had appeared at a previous hearing where she testified about an incident of police harassment of an interracial couple. Some bad traffic stop experiences are

a result of language barriers. Some drivers do not understand the officer's directions.

The rules should include provisions for keeping data on language issues in traffic stops as well as whether any passenger is a minority.

The data collected should be publicly available -- not just provided to law enforcement. The public will benefit from a dialogue regarding how race affects society.

Written Comments Received by the Agency

The following are summaries of written comments received at the agency. The agency's response follows the summary in italics.

1. Tom Ditscheit, Chief of Police, Town of Waterford Police

Chief Ditscheit recommends that officers report whether or not they knew the race or ethnicity of the person before the stop was made.

He points out that proposed OJA 1.05 (2) OCCUPANT DATA, does not require the officer to report whether or not the officer knew the race or ethnicity of the person before making a stop. In most circumstances, officers are completely unaware of the race or ethnicity of the person they are stopping. Many violators are stopped without the officer having any view of the inside of the vehicle. Officers usually initiate stops without knowing the race or ethnicity of the occupants. An officer who does not know the race or ethnicity of a person, by definition, cannot use profiling by race or ethnicity to initiate the stop.

[The rules require the use of DOT data for the operator's race if available, otherwise the officer's perception. Of the available alternatives, this approach to determining race was considered to be the most objective, reliable, efficient and the alternative least likely to provoke controversy. Asking the officer to report whether or not the officer knew the race or ethnicity of the person before the stop, was discussed by the Advisory Committee and rejected as unreliable, especially if an officer was intentionally selecting minority-operated vehicles.]

2. Officer David Havard, Fond du Lac Police Department

Officer Havard writes that the rules will create an onerous burden on law enforcement officers who conduct traffic stops. He suggests that if there are concerns that a particular law enforcement agency is participating in racial profiling as related to traffic stops, then only those agencies should be required to collect this data.

He questions whether the law requires that data be collected for all parties in the vehicle and whether the information collected will be compared against the minority population of the particular area?

Officer Havard expressed concerns about errors in interpretation and that the law will result in fewer traffic stops, resulting in streets that are not as safe as they would be otherwise.

[The statute and rules apply to all law enforcement agencies in the state. s. 349.027, Stats. The rules specifically identify the information that must be collected about vehicle operators in proposed s. OJA 1.05(1) and about vehicle occupants in proposed s. OJA 1.05(2). The reports issued by OJA will include data sufficiently specific to permit analysis of traffic stop activity in a local jurisdiction by law enforcement agencies and the public. See proposed s. OJA 1.08(2)(b)].

3. Ben Sauriol, Winneconne Police Department

Officer Sauriol is opposed to the rule. He finds the rule to be racism in reverse and will make stopping a minority a scary thing. To track a race is racist. He questions whether the law will be in effect only for a limited period of time.

[There is no sunset provision that limits the effective time of the statute. The law will be in effect until repealed or modified by legislation.]

4. Cheryl L. Stieve, Wausau Police Department

Officer Stieve raises several questions: (1) Whether the rules address the traffic stop information for verbal warnings? (2) Are the officers going to fill out the information online, or will there be a form in TraCS to complete? (3) Will everyone who is going to fill out the information online need a userid/password to access their own jurisdiction's entry area?

[(1) Stops that result in verbal warnings must be reported. See example C. in the rule appendix. (2) The rules provide that information may be reported electronically, i.e. through TraCS, or, if the officer who makes a traffic stop is unable to submit the traffic stop data electronically, then the officer is to record the data electronically or on paper and the chief officer of the agency shall arrange to have traffic stop data submitted to OJA electronically. Paper submission of traffic stop data to OJA may be made only after approval from OJA. Proposed rule s. OJA 1.06(1)(b). The intent is to make the process as efficient for law enforcement as possible. DOT is a partner in this effort. (3) The details involving the use of passwords and access will be established by OJA and DOT under the memorandum of understanding described in proposed rule s. OJA 1.04.]

5. Daniel M. Swinehart, O.I.C., Highland Police Department

Officer Swinehart's concern regarding the rule is the availability of funds to pay for the software needed to document the information requested. Currently if his department issues a citation, only limited information is logged. His department does not have a computer in the car. Everything is hand written.

[OJA is looking into the availability of resources for assisting local agencies. Proposed s. OJA 1.06(1)(b) describes the procedure for submitting data to OJA if mobile computers are not available.]

6. Jill Vonnahme, Voces de la Frontera

Her organization has been notified of several cases of racial profiling in which Latino men and women are arbitrarily pulled over or questioned by the police in instances which lead to deportation proceedings against them. She related two examples:

A Latino man was pumping gas in his car in Hartford, Wisconsin when approached by the police and asked for identification. After running his Mexican ID card, it was shown that he had an unpaid traffic ticket on his record. He was subsequently arrested and has been detained by immigration and customs enforcement for the past month while awaiting proceedings in his deportation.

A Latino man was driving through Grafton late one night when he was pulled over by local law enforcement. As he knew he had not broken any traffic laws, he asked the police what the problem was. Several times, the police officer asked him, "What are you doing around here so late?" At no point in time could the officer give reason for the traffic stop. Due to the stop, it was revealed that the individual was driving without a valid license. His car was towed at his expense. He was ticketed.

7. Peggy Hong

Ms. Hong provided an Internet link to an essay about racial profiling involving her son. See *Crows, Gates and White Privilege*, July 28, 2009 at:

<http://stillinsirasana.blogspot.com/2009/07/crows-gates-and-white-privilege.html> also available in audio at

http://www.wuwm.com/programs/lake_effect/view_le.php?articleid=791.

8. Chief T. Wheeler, Blair Police Department

Chief Wheeler wrote that he does not agree with implementing the rule. He proposes more public education and professional education of law enforcement officers as a better means of addressing issues of discrimination.

In addition, Chief Wheeler considers a possible side effect of the rule to be that the officer having to collect the information will be less likely to enforce the rules for fear of litigation. Racism should not be tolerated at all, but officers should not be afraid of doing what they are hired to do.

Changes to the Rule

No substantive changes were made to the rule draft submitted for public hearing.

Attachments

Administrative Rules - Fiscal Estimate

Legislative Council *Clearinghouse Report to Agency*

