



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #123

### **Traffic Stop Data Collection Initiative (DOA -- Justice Information System Surcharge)**

[LFB 2011-13 Budget Summary: Page 36, #1 and Page 40, #4]

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#### **CURRENT LAW**

For each motor vehicle stop made on or after January 1, 2011, a law enforcement officer must obtain all information relating to the traffic stop that is required to be collected under administrative rules developed by the Department of Administration's Office of Justice Assistance (OJA) and approved by the Legislature. Law enforcement officers are 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.

State law 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. State law 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 current law, \$1.50 for every justice information system surcharge of \$21.50 is allocated to the OJA data gathering and analysis PR appropriation. The language of this appropriation authorizes surcharge revenue received by this appropriation to be allocated to the OJA traffic stop data collection; state PR appropriation.

#### **GOVERNOR**

Delete \$764,100 PR and 3.74 PR positions annually provided to OJA's traffic stop data

collection; state PR appropriation. As a result, no funding or positions would remain in OJA to implement the traffic stop data collection initiative.

## **DISCUSSION POINTS**

1. By Executive Order No. 387, on December 27, 1999, Governor Tommy Thompson created the Governor's Task Force on Racial Profiling. In explaining the rationale for creation of the Task Force, the executive order indicated that, "to the extent that racial profiling exists in Wisconsin, it is important that those practices be prevented."

2. In response to the Task Force's final report, on March 6, 2001, Governor Scott McCallum issued Executive Order No. 1. The executive order was written to do the following:

"1. Require all law enforcement agencies in the State of Wisconsin to enact a policy prohibiting the practice of racial profiling; and

2. Require all law enforcement agencies to implement the recommendations authored by this learned Task Force without delay; and

3. Require law enforcement agencies across the state to take this opportunity to identify the means necessary to implement the recommendations in cooperation with their communities."

3. By Executive Order No. 189, on March 21, 2007, Governor Jim Doyle created the Commission on Reducing Racial Disparities in the Wisconsin Justice System. In February 2008, the Commission submitted its final report to the Governor.

4. On May 13, 2008, in response to the final report of the Commission on Reducing Racial Disparities in the Wisconsin Justice System, the Governor issued Executive Order #251. In this executive order the Governor directed "all state agencies with relevant information and capability (such as the Office of Justice Assistance, Department of Transportation, and Department of Corrections) to develop reporting mechanisms to track traffic citation, arrest, charging, sentencing and revocation patterns by jurisdiction and race using processes such as those developed through the Wisconsin Justice Information Sharing Program (WIJIS) and the District Attorney IT PROTECT system."

5. Under the 2009-11 biennial budget bill, Governor Doyle submitted recommendations to begin collecting traffic stop data 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. Under 2009 Act 28, for each motor vehicle stop made on or after January 1, 2011, a law enforcement officer must obtain all information relating to the traffic stop that is required to be collected pursuant to OJA administrative rules. Law enforcement agencies statewide (both state and local law enforcement agencies) must submit this information to OJA using the process and in the format prescribed by OJA under administrative rule.

6. Law enforcement officers must 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 must 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 will be the race or ethnicity identified on records of the Department of Transportation (DOT). If no DOT records are available, the operator's race or ethnicity will be determined by the perception of the law enforcement officer responsible for reporting the traffic stop. The officer is prohibited from requiring the person stopped to provide race or ethnicity information.

7. The officer must 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 is prohibited from requiring any vehicle occupant to provide race or ethnicity information.

8. With respect to the traffic stop, the officer must 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.

9. For each traffic stop for which a search is conducted, whether of the vehicle operator, a vehicle occupant, or of the vehicle itself, the officer must 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 will be determined in the same way that race or ethnicity is determined for a motor vehicle operator.

10. Under 2009 Act 28, 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 OJA administrative rules, a law enforcement officer who makes a traffic stop must submit the traffic stop data directly to OJA if the officer has suitable electronic equipment to make the submittal in accordance with accepted DOT standards and procedures.

11. Otherwise, a law enforcement officer must 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 must 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 may only be made after approval from the Office.

12. State law 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. State law 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.

13. By administrative rule, OJA is 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 are also 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.

14. Under administrative rule, OJA is required to release traffic stop data reports to the public no less frequently than once each year. The first report must be filed no later than July 1, 2012. Traffic stop data reports must 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 must 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 must be submitted to the Governor, the Director of State Courts, and to the President of the Senate and Speaker of the Assembly.

15. Under 2009 Act 28, the Secretary of DOA was required to submit a report to the Joint Committee on Finance addressing implementation issues, costs, and available funding to implement the traffic stop data collection initiative. On May 17, 2010, the Secretary of DOA submitted this report to the Committee. On June 23, 2010, the Joint Committee on Finance approved the report under its s. 13.10 review process. This report outlined the plan of DOA to adapt the Badger Traffic and Criminal Software (TraCS) program at DOT to permit law enforcement officers to submit the required traffic stop data electronically to OJA. 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 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. The Department of Administration recommended that the eCitation Web Service at OJA be modified to permit traffic stop data collected through the TraCS program to be transferred to OJA's Statistical Analysis Center.

16. Initially, however, data associated with many traffic stops must be provided to OJA through a means other than the TraCS program. The Department of Administration 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 recommended 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.

17. In addition to approving the report, on June 23, 2010, the Joint Committee on Finance approved providing 0.60 PR four-year project position and \$50,600 PR in 2009-10, and an additional 3.14 PR four-year project positions and \$757,000 PR in 2010-11, to OJA to provide resources to implement the traffic stop data collection initiative. It is these resources, increased by standard budget adjustments, that the Governor recommends deleting under the bill. [Under the bill, the Governor recommends deleting \$764,100 PR and 3.74 PR positions annually provided to OJA's traffic stop data collection; state PR appropriation. As a result, no funding or positions would remain in OJA to administer the traffic stop data collection initiative.]

18. On September 17, 2010, the Joint Committee on Finance under passive review also approved providing OJA \$913,000 PR in 2010-11 in justice information system surcharge revenues, for a grant program to assist county sheriffs' departments to convert to the TraCS program. The intent was to maximize the number of law enforcement agencies that would be converted to the TraCS program to ease required data submission to OJA.

19. On February 2, 2011, Senate Bill (SB) 15 was introduced which would repeal the traffic stop data collection initiative. On February 23, 2011, SB 15 was passed by the Senate on a vote of 19-0. As of this writing, SB 15 has been read for the first time and referred to the Assembly Committee on Rules. The administration indicates that, "Funding for traffic stop data collection was eliminated as the requirements undergo review by the Legislature. If the Legislature does not repeal the requirements, funding could be added back through the passive review process." [It may be worth noting, however, that the administration did not leave sufficient balances in the justice information system surcharge fund to restore base funding for this program if it were to be maintained by the Legislature, unless estimated lapses to the general fund would be reduced.]

20. Some state law enforcement officers have expressed a variety of concerns with the traffic stop data collection initiative including: (a) the data collection requirements imposed on officers; (b) their opinion that racial profiling is an uncommon occurrence; and (c) concerns that officers will second-guess themselves. As a result of these concerns and those expressed by the Senate under SB 15, the Committee could consider deleting the funding and positions for the traffic stop data collection initiative. [Alternative 1]

21. On the other hand, the last three Governors issued executive orders related to concerns over racial profiling and racial disparities in the Wisconsin justice system. In addition, as a result of 2009 Act 28, the Legislature has provided \$1,720,600 PR in expenditure authority in the current biennium to implement the traffic stop data collection initiative. As of January 1, 2011, law enforcement agencies across the state are collecting the required traffic stop data. The Committee could consider maintaining the program to permit OJA to analyze the submitted 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.

22. Under the Justice Information System Surcharge Overview Paper #120, the Committee could select Alternative 2. [This alternative would delete the recommendation in the bill to alter the allocation mechanism for justice information system surcharge revenue, reduce the surcharge from \$21.50 to \$14.50, and would again limit the functions funded from the surcharge to justice information systems at DOA and the courts, and deposit \$1 from every assessed surcharge to the general fund. The Committee could select this alternative to primarily restrict the fund to supporting justice information systems.] Nonetheless, in conjunction with this alternative, the Committee could also elect to maintain current law and continue to fund the traffic stop data collection initiative with justice information system surcharge revenue. Under this alternative: (a) an additional \$1.50 from every assessed justice information system surcharge would be allocated to OJA's data gathering and analysis PR appropriation; and (b) funding could then be transferred to the traffic stop data collection; state PR appropriation to support \$764,100 PR and 3.74 PR positions annually to continue implementation of the traffic stop data collection initiative. [Alternative 2]

23. In lieu of justice information system surcharge funding, the Committee could also consider providing GPR funding to maintain the traffic stop data collection initiative. The Committee could consider creating a GPR annual traffic stop data collection initiative appropriation under OJA and provide resources of \$764,100 GPR and 3.74 GPR positions annually to the appropriation. [Alternative 3]

24. Finally, in addition to considerations directly associated with the traffic stop data collection initiative, OJA staff has raised concerns that deletion of the traffic stop data collection initiative and the associated base resources of \$364,200 PR and 0.60 PR positions annually to WIJIS could jeopardize the WIJIS program. The WIJIS program consists of the Justice Gateway and the Workflow Engine.

25. As indicated earlier, the Justice Gateway under WIJIS 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 Gateway also permits authorized users to access: (a) prosecutor records from the PROTECT system under DA IT; and (b) court records in the Circuit Court Automation Program (CCAP).

26. The WIJIS Workflow Engine is designed to support many different types of information exchange securely over authenticated Internet connections. The intent of the Workflow Engine is to streamline the processing of criminal justice records across multiple agencies. By

providing a central hub for integration, the Workflow Engine allows agencies to implement information exchanges faster and at a lower cost than alternatives requiring multiple point-to-point exchanges. For example, the Workflow Engine product eCitations supports the secure exchange of electronic citations originated by law enforcement agencies. The Workflow Engine routes citations to the courts, prosecutors, local municipal court systems, and two tracking/reporting databases at DOT, based on business routing rules established by the users of the system. The WIJIS Workflow Engine has also been utilized in pilot projects to transmit temporary restraining orders, no contact orders, and arrest warrants from issuing courts to local law enforcement agencies for immediate action.

27. The WIJIS program has historically been supported with federal grant funding. Office staff indicates, however, that the state can no longer rely on federal funding to support WIJIS, as program costs have shifted from implementation and development costs to ongoing operational costs. The Office has identified a need for 5.3 positions annually and funding of \$786,500 in 2011-12, and \$797,300 in 2012-13 to support the WIJIS program. The Office has expressed the concern that if state funding for WIJIS is not identified that the state could lose some of its federal highway funding. Office staff indicates that, "Under federal motor carrier regulations, states are supposed to post convictions on driving records within ten days of adjudication. DOT is now complying with this federal requirement, because of Badger TraCS/e-Citations implementation." If state funding for WIJIS is not provided, the concern is whether or not funding and staff could be identified to maintain the eCitation product and other WIJIS functionality.

28. If the Committee is concerned about identifying possible state funding to maintain WIJIS, the Committee could elect to maintain current law that provides that \$1.50 from every assessed \$21.50 justice information system surcharge be allocated to the OJA data gathering and analysis PR appropriation, but provide no expenditure or position authority to the appropriation. This alternative would adopt the Governor's recommendation to delete funding and position authority for the traffic stop data collection initiative, but funding deposited to this appropriation could be utilized by the Legislature to fund WIJIS. Under this alternative, justice information system surcharge revenue could be utilized for justice information systems supported by WIJIS. It is estimated that annual surcharge revenues totaling \$1,050,000 PR would be deposited to the OJA data gathering and analysis PR appropriation under this alternative. [Alternative 4]

29. In regards to federal funding to support WIJIS, the administration indicates that, "WIJIS has never received a base amount of state funding for general operations and the Governor's budget continues this with the intent that the WIJIS continue to function with federal grants as it has over the last several years." In reliance on the administration's position that WIJIS will continue to be funded with federal grant funding, the Committee could elect to take no action. On the other hand, the Committee could elect to adopt Alternative 4. Alternative 4 would ensure that state resources would be available during 2011-13 to fund WIJIS if additional federal funding to support the program cannot be identified. As the administration has not developed a proposal or rationale to provide state funding for WIJIS, this alternative would also permit the Legislature to withhold state funding for the program until the administration would submit a developed plan to fund the program under passive review. In response to any submitted plan, the Legislature might elect to provide state funding for all WIJIS programs, for select WIJIS programs, or deny funding entirely.

**ALTERNATIVES**

1. Approve the Governor's recommendation to delete \$764,100 PR and 3.74 PR positions annually provided to the Department of Administration's Office of Justice Assistance (OJA) traffic stop data collection; state PR appropriation. As a result, no funding or positions would remain in OJA to implement the traffic stop data collection initiative.

2. Maintain current law. Under this alternative, an additional \$1.50 from every assessed justice information system surcharge would be allocated to the PR annual data gathering and analysis appropriation. [The statutory language for this appropriation permits funding from this appropriation to be transferred to the PR annual traffic stop data collection; state PR appropriation.] Provide \$764,100 PR and 3.74 PR positions annually to the PR annual traffic stop data collection; state PR appropriation to support the traffic stop data collection initiative.

ALT 2	Change to Bill		
	Revenue	Funding	Positions
PR	\$2,100,000	\$1,528,200	3.74

3. Create a GPR annual traffic stop data collection initiative appropriation under OJA and provide \$764,100 GPR and 3.74 GPR positions annually to the appropriation. [This alternative would maintain funding for the program but change the funding source of the program to GPR.]

ALT 3	Change to Bill	
	Funding	Positions
GPR	\$1,528,200	3.74

4. Maintain current law which provides that \$1.50 from every assessed justice information system surcharge is allocated to the PR annual data gathering and analysis appropriation. [This alternative would adopt the Governor's recommendation to delete funding and position authority for the traffic stop data collection initiative, but maintain the current law deposit of surcharge revenue to the PR annual data gathering and analysis appropriation. This alternative would not provide any expenditure authority or positions for the Wisconsin Justice Information Sharing (WIJIS) Program. However, these resources could be utilized by the state to support WIJIS if the administration submitted a plan under passive review during 2011-13 to utilize these resources to support WIJIS, and the Legislature approved the plan either in whole or in part.] *[This alternative may not be adopted in addition to Alternative 2. If the Committee wished to reserve surcharge funding for WIJIS and maintain the traffic stop data collection initiative, the Committee could adopt Alternatives 3 and 4 together.]*

ALT 4	Change to Bill
	Revenue
PR	\$2,100,000

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