

Traffic Stop Data Policy Recommendations Based on Discussion at MOCLA Meeting, July 26, 2023

Introduction

For more than ten years, I have been using data on traffic stops collected by Columbia Police Department officers to compute disproportions in the ways racial and ethnic groups are affected by officer actions. Initially, I focused on a few high-discretion actions, such as officers asking for consent to a search; **in 2014, CPD officers subjected Black drivers to consent searches at a rate per stop 4.39 times the rate for White drivers.** I made modest suggestions about collecting more data and modifying policies about using consent searches. CPD made modest changes. **The disproportion fell to 1.20 in 2022.**

Statewide over that period, the Black consent search disproportion disappeared. **In the last few years, White drivers have been more likely to be subjected to consent searches.** I take the decline to indicate that when officers discovered that they had been misusing consent searches they became more careful to use them only when they knew credible intelligence to justify them; racial bias was probably involved, but **officers overcame their bias once they recognized it.**

With more data and more experience, I've been able to draw more conclusions and make more detailed suggestions about policy changes. In 2021, as a member of the Chief's Traffic Stop Committee, I proposed policy recommendations: [Vehicle Stop Data Collection, Analysis and Application by Columbia Police Department](#). The advisory committee found no major problems with the proposals but objected that they would tie the Chief's hands.

Chief Jones had, however, specifically asked for advice, and welcomed previous recommendations, such as [the addition of data checkoffs](#). **The Chief told the committee he needed advice on what information to collect with data checkoffs so that he would be able to tell whether officers were acting on information free from racial stereotypes.**¹

2022 Data

My [analysis of 2022 data](#) leads to more detailed suggestions because the data now allow the sources of disproportions to be narrowed. For years, CPD had been saying that stop disproportions came from officers making investigative stops based on credible intelligence, but **after several years of instructions and training to check off investigative stops, officers are still not documenting that enough are occurring to account for the disproportions.** Other causes must be identified.

The data do indicate that **disproportions differ widely over the Beats officers patrol.** Officers in some Beats make many more consent searches than others. Their stop disproportions are much higher. Do circumstances in these Beats explain the differences? **Are officers receiving different training and supervision? Are officers acting on facts that justify their actions, or are they being distracted by racial stereotypes?** Because the data now do a better job of telling CPD where to look, the problems can be addressed.

¹ See especially the discussion of the importance of the age of vehicles on page 2.

The Situation Now

The data, rates and disproportions are just annoying preliminaries we have to work through before addressing the questions of whether any groups are being discriminated against and what to do to achieve fair policing. Not everyone has to dive into the data. CPD should be able to provide a report on situations in which a group is disproportionately affected. CPD's data analysis has improved but as of the 2022 data more progress is needed.

A disproportion doesn't prove discrimination; it just flags possible discrimination. Clearcut discrimination involves a violation of the equal protection clause of the Fourteenth Amendment; officers must both act on acceptable facts as required by the Fourth Amendment and apply the same standards to everyone.

Former Chief Geoff Jones was addressing this concern when he asked his advisory committee on traffic stops to tell him what checkoffs he needed to add to those required for the Vehicle Stops Report in order to know if officers were acting on adequate facts. He used the example of officers applying different standards because of the age of a vehicle. He had been told as a rookie that he should be more suspicious of older vehicles, but he had come to believe that that practice discriminated against individuals based on socioeconomic status and race, both categories protected by CPD's Bias-Free Policing Policy.

Suspicious versus facts remains a major issue for Columbia. Chief Jones often used "actionable facts" to describe the performance he expected from officers. CPD's Bias-Free Policing Policy uses "credible intelligence." The Fourth Amendment specifies "probable cause" evidence for a judge to issue a warrant, but it also allows stops as long as they are not unreasonable:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In the 1968 [Terry v. Ohio](#) case, the Supreme Court decided the officer could conduct a quick pat-down search of a suspect if he cites "specific and articulable facts." In the case, the officer cited men apparently scouting a business for a robbery, with bulges in their pockets consistent with weapons. Justice Douglas warned that probable cause should remain the standard:

The term "probable cause" rings a bell of certainty that is not sounded by phrases such as "reasonable suspicion." [Page 38]

But "specific and articulable facts" was already being interpreted as "reasonable suspicion," and the standard for reasonableness became very low. Judges and juries could become more skeptical of officers' suspicions but more work needs to be done by agencies to develop criteria for when information is actionable, to train the officers and to hold them accountable.

Drug dog alert searches are a good example of this situation. CPD (and most other agencies) had large disproportions against Black drivers in conducting searches based on alerts until the Supreme Court ruled in the 2015 [Rodriguez case](#) that a stop for a legal reason (such as speeding) did not provide officers with discretion to call for a drug dog. Officers had to cite "independently supported reasonable suspicion" in order to call for the dog, in the words of the decision written by Ruth Bader Ginsburg.

Disproportions against Black drivers in drug dog alert searches disappeared quickly when agencies implemented policies that required officers to have their reasonable suspicions verified by a supervisor before calling for the

dog. CPD seems to have worked out adequate criteria for specific and articulable facts sufficient to justify summoning a drug dog.

CPD's [Bias-Free Policing policy](#) was a landmark when it was adopted ten years ago, but experience suggests further clarifications would help. Bias is a factor. Officers continue to benefit from training on how biases can lead to discrimination. But more emphasis on officers acting on actionable or credible facts needs to be written into the policy. The policy calls for officers to document the facts they act on, but we now know better how to define those facts and how to make the facts easy for them to document. The law that mandates the Vehicle Stops Report, [590.650](#), requires officers to be evaluated on the basis of stopping more members of a group than that group's proportion of the jurisdiction, but the law is misguided.² Officers need to be evaluated on the adequacy of the facts they act on.

Data Utilization Priorities for the Columbia Police Department.

Based on discussion of 2022 data at a public meeting sponsored by Missouri Civil Liberties Association and the League of Women Voters in July 2023, with especially good input from members of Race Matters, Friends, I've drawn up a summary version of the data recommendations submitted to the Traffic Stop Committee. The summary is not meant to be conclusive. More public input is needed, especially from individuals who are vulnerable to discrimination. Experts in law enforcement need to figure out implementation through policies, training and supervision.

CPD must:

1. Define the concern being addressed as discrimination: the failure to apply facts equally to all groups under the Fourteenth Amendment.
 - a. When discrimination is suspected but unequal treatment is difficult to document, the concern can be addressed by documenting that officers are acting on reasonable facts under the Fourth Amendment (a warrant, probable cause evidence or at least specific and articulable facts).
 - b. Criteria for specific and articulated facts must be developed for situations in which concerns about discrimination have been raised. (See 5. Below.)
 - c. Officers must be trained in the criteria. Officers must be held accountable when their facts are not adequate to justify their actions. (See 6. Below.)
2. Develop the capacity to collect, manage and interpret traffic stop data so that relevant information is available about actions by all CPD personnel that might result in differential treatment of protected groups.
 - a. The first rule of data collection, management and interpretation is that disproportions do not prove discrimination. **Disproportions flag situations in which officers might be applying different standards to groups, but then a review of more detailed information is needed to determine whether the facts officers knew when they decided to take a specific action were free from bias and sufficient to justify the action.**
 - b. Data collected for the Vehicle Stops Report provide a good starting point but often are not enough to make it possible to tell what officers knew when they decided to perform actions. Reviews of report, videos and so on are necessary. Categories of data must be monitored to make sure they provide necessary information in a way that makes analysis easy.

² An officer who patrols an area with a low number of drivers in one group can stop every one of them with out triggering the review. More below.

- c. Data shall be organized in an incident-based format, in which each incident is a database record or a spreadsheet row.
 - d. Relevant information includes rates and disproportions for all categories of facts collected. Rates shall be appropriate for the circumstances. For stops, rate per estimated driver. For post-stop situations, rates per stop. For contraband found, rates per search.
 - e. Population data shall be the information used by the most recent Vehicle Stops Report, unless CPD documents a more accurate estimate.
 - f. Interpretation shall include screening for multiple stops of one driver, correlation between age of vehicle and other actions, and any other factors suggested by anecdotal information or multivariate correlations.
 - g. CPD should minimize the burden of checkoffs on officers as much as possible without compromising necessary information.
 - h. CPD should link to outside databases, such as a state database to determine vehicle age and Census data to determine demographic information about a driver's Census tract or block.
 - i. CPD should use advanced analysis when necessary, such as multivariate analysis.
 - j. CPD should use outside analysts when appropriate, such as city staff who are trained to interpret demographic data.
 - k. CPD shall issue an annual report on traffic stop data as soon as possible after the end of the calendar year.
 - l. The annual report shall document that all disproportions in non-White rates are no more than 1.20 times the White rates and disproportions in White rates are no more than 1.20 times the Black rate or are caused by factors clearly free from discrimination, meaning all actions involved in the stop are based on reasonable facts under the Fourth Amendment (a warrant, probable cause evidence or at least specific and articulable facts) and facts applied equally to all groups under the Fourteenth Amendment.³
 - m. If CPD cannot document that disproportions high enough to be of concern are free from discrimination, it shall take steps to improve policies, procedures and training to address the disproportions.
3. Work with the Citizen Police Review Board to monitor the effectiveness of policies, procedures, training and supervision. The CPRB shall suggest changes to policies if necessary. CPD must implement the changes or document why other polices would be more effective. City Council shall approve final versions.
 4. Implement a policy that requires patrol officers to complete traffic stop checkoffs by the end of each shift, provides for prompt addition of new information to the Incident-Based Database, and a clerical review for accuracy (for instance, that if an investigative reason for a stop is checked then a detailed reason is also checked, that if a moving violation is checked a detailed violation is also checked and so on).
 5. Develop criteria for actionable facts required for situations which are known to have a history of disproportions against a group large enough to raise concerns about discrimination.
 - a. Criteria will serve the same function as current criteria for calling for a drug dog, which by the [Rodriguez decision](#) requires officers to cite convincing facts other than the reason for the stop.
 - b. Criteria need to be clear and concise enough to capture with checkoffs in situations in which disproportions have flagged possible discrimination.

³ 1.20 is offered as an estimate of the size of a disproportion that might be the result of factors other than racial discrimination in law enforcement. For instance, if members of a group are more likely to have low incomes then they might be more likely to drive older cars with more defects leading to stops. The group vulnerable to discrimination needs to have input what level of disproportion raises concerns.

- c. Criteria will cover high-discretion situations such as investigative stops, consent, odor and reasonable suspicion-weapon searches.
 - d. Criteria will cover policies implemented by command staff, such as patrol assignments for officers so that assignments that result in increased exposure of some groups to patrols will be based on documented threats to public safety, such as accident rates, violation rates, 911 calls and so on.
 - e. Criteria shall be subject to public review conducted by the Citizens Police Review Board.
6. Implement a policy for using traffic stop checkoff data to guide officer performance.
- a. Monthly Incident-Based Data reports shall be prepared and issued to officers, supervisors, command staff and the public.
 - b. Supervisors shall review the actionable information cited by officers in the data. In situations in which the checkoffs do not document convincing facts, clearly independent of racial stereotypes, supervisors shall examine additional information such as written documents, video and audio recordings, CAD comments recorded by officers and other sources.
 - c. Since the data suggest the Black stop disproportion is high not so much because CPD conducts an unusually high number of stops of Black drivers compared to the state average but because officers conduct an unusually low number of Stops of White drivers, supervisors will look for stops of Black drivers for minor violations to be sure that in the overall circumstances of the stop a public safety threat was involved. For instance, that multiple violations were involved or officers had a public safety reason to use a minor violation as a pretext to conduct an investigative stop.
 - d. Formal annual reviews of officer performance shall continue to satisfy the requirement in 590.650, the Vehicles Stops Report law, that officers making a proportion of stops greater than the group's proportion of resident drivers in the jurisdiction be subject to review, but emphasis shall be on officers citing actionable facts.⁴
7. Draw upon current research to identify and correct problems:
- a. Academic studies, especially studies developed by MU professors.
 - b. Surveys related to police/public contact, especially surveys conducted by the city of Columbia which ask about resident experiences of the legitimacy in law enforcement.
 - c. Qualitative interviews with officers as recommended by the Missouri team.
8. Use data to address issues addressed by the Anti-Violence Task Force report; learn to cooperate with social service providers to counteract the root causes of violence, establish a network to identify repeat offenders early and provide guidance to become productive citizens, and so on.
9. Develop strategies addressing systemic discrimination flagged by data⁵:
- a. Discrimination inadvertently written into policies, procedures and training, especially in officer assignments.
 - b. Discrimination in department culture, such as:
 - i. Officers passing on the practice of suspecting older vehicles.

⁴ [590.650](#) 5.(2)(a) Determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency;

⁵ For instance, Pam Harden reported an officer stopped her and then asked all the passengers for identification. She challenged him on whether he would ask White passengers for identification. He said it was common practice. Common Practice means it's part of the culture: not policy written to protect public safety while protecting individual rights. Information on this practice can be captured with checkoffs. Policies can be written to address any problems. Officers can be trained and held accountable.

- ii. Officers adopting a them-against-us attitude, a warrior attitude instead of a protector attitude.
- iii. Officers viewing ordinary community members as suspects without credible intelligence and viewing suspects as hardened criminals without establishing probable cause evidence.

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Footnotes, minor edits 5/5/24