Utah Commission on
Criminal and Juvenile Justice

Utah Justice Research Brief

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Racial Profiling 2004: Analysis of Data Collection

Mike Haddon

During the 2002 General Session of the Utah State Legislature, House Bill 101 (HB 101), titled "Racial Profiling", was passed. In part, this legislation required specific data to be gathered statewide and for the Utah Commission on Criminal and Juvenile Justice (CCJJ) to report on this data. Specifically, the legislation requires the collection of the agency employing the officer, the name or identifying number of the officer, the race and gender of the officer, the purpose of the officer's status check (including but not limited to a traffic stop or a pedestrian stop), and the race of the individual on whom the status check is made. The reporting requirements of CCJJ include evaluating the data, evaluating the effectiveness of the data collection process, and reporting and making recommendations to the Legislature.

In Utah, individuals on whom the status check is made self-identify their race when they apply for or renew their driver license. This self-identification is voluntary on the part of the person applying for or renewing the license. The requirement for the collection of this data element sunsets on July 1, 2007. The remaining data elements are to be submitted by local law enforcement agencies and maintained by the Utah Department of Public Safety.

Due to the large number of stops made by law enforcement officers statewide, it was decided that relatively few data elements would be collected, and the process for data collection would be fairly automated. When officers conduct a status check, their race and gender are automatically entered into the system based upon either their name or their identification number. The race of the individual on whom the status check is conducted is automatically extracted from the Driver License database. Truly, the only additional step in the process the officer is required to take is to identify the purpose of the status check. The purposes of the status check are very broad and are used primarily to filter the traffic and pedestrian status checks, required in the legislation, from other types of status checks, such as investigations, bookings, or vehicle investigations.

With that background, the remainder of the report focuses on the reporting requirements included in HB 101, which include evaluating the data, evaluating the effectiveness of the data collection process, and reporting and making recommendations to the Legislature.

Evaluating the Data

Data were extracted from the racial profiling database housed at the Utah Department of Public Safety. It includes the status checks performed by law enforcement agencies in Utah between September 2003 and August 2004. The following is an evaluation of the data required under HB 101.

Requestor Race

The race of the requestor was available in 59.4% of the status checks reviewed. Collection of this data ele-

ment showed marked improvement over the past twelve months. In September 2003, the race of the requestor was available in 48.1% of the status checks. In August 2004, the race of the requestor was available in 77.4% of the status checks.

Requestor Gender

The gender of the requestor, or the person running the status check, was available in 79.3% of the cases and missing in 20.7% of the cases. Examining the collection of this data element over the past twelve months reveals continual improvement. In September 2003, the gender of the requestor was available for review in 71.3% of the status checks. By August 2004, the gender of the requestor was available for analysis in 92.9% of the status checks.

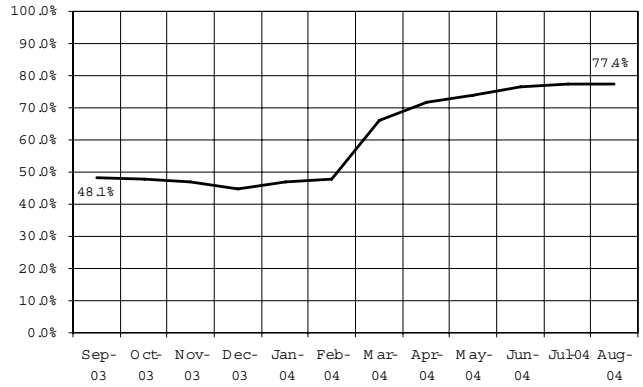
Race of the Subject

The race of the subject, or the individual whose status is being checked, is a key data element required for analysis of racial profiling. It is common sense that researchers need to know the race of the individual who is being stopped in considering whether or not the stop was racially motivated. Overall, the race of the subject was available in 47.9% of the cases. The availability of this data element improved marginally over the past year. In September 2003, the race of the subject was available for 41.2% of the status checks. By August 2004, the race of the subject was available for 54.1% of the status checks. Conducting a trend analysis, assuming a continued linear increase in subjects identifying their race on their driver licenses, the race of the subject would be available in approximately 87% of the status checks by June 2007. This linear progression assumes a point will not be reached where growth either plateaus or increases at a decreasing rate. The date June 2007 is important in that HB 101 currently sunsets the collection of this data element in July 2007.

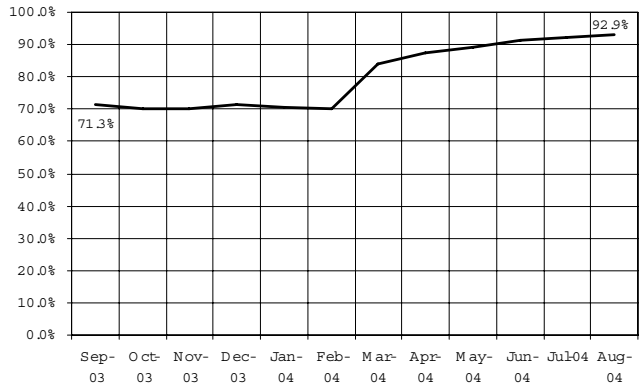
Review of Improvement in Collection of Racial Profiling Data Elements: September 2003 to August 2004

Charts reflect percent of data that was available for analysis

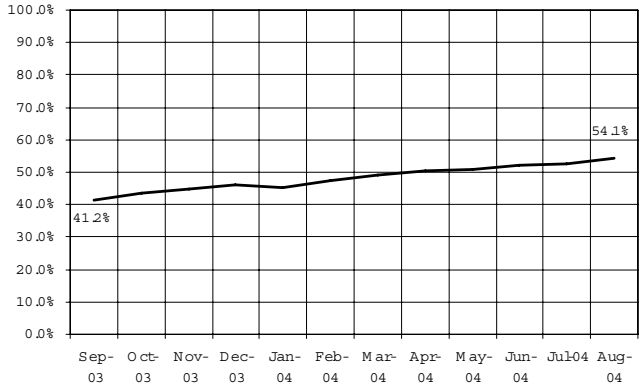
Race of Requestor



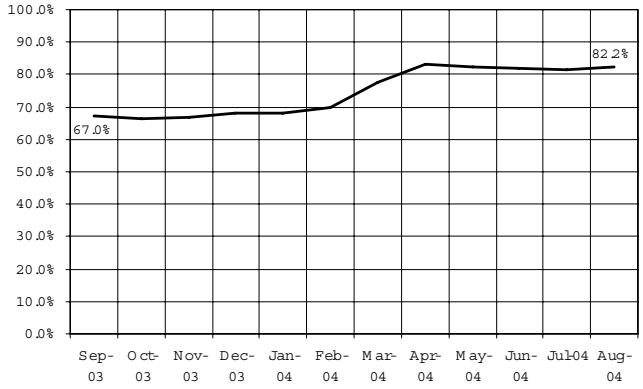
Gender of Requestor



Race of Subject



Purpose of Status Check



Purpose of Status Check

Again, it is important to understand that purpose of the status check is simply a data element that allows researchers to filter the traffic and pedestrian status checks from other types of status checks for which HB 101 does not require review. Overall, the purpose of the status check was available for use in 74.1% of the cases. This data element also had significant improvement during the prior year. In September 2003, the purpose of the status check was available in 67.0% of the cases, while in August 2004, the purpose of the status check was available in 82.2% of the cases.

Data Collection Process

The Utah Department of Public Safety (DPS) has established an effective data collection process, evidenced by the improvement in the availability of data. DPS operationalized the collection of requestor race and gender in a way that minimizes the work on behalf of the individual conducting the status check. For the law enforcement agencies that use the Utah Criminal Justice Information System (UCJIS), when individuals conducting the status checks enter their identification number, their race and gender are automatically entered into the system for that status check. This both enhances the quality of the data entered and makes the process easier for the individual conducting the status check. By August 2004, in over three-quarters of the cases, the race and gender of the requestor were available.

The purpose for the status check is the only information those running status checks routinely have to select manually. Again, DPS has assisted in the completeness and quality of data collection. For those agencies using the UCJIS system, individuals running status checks are required to select one of the status check purposes before they are allowed to proceed. Users must select a purpose from a pre-defined list of options. Together, this assists in getting the information every time and in getting accurate information.

Collection of the race of the individual on whom the status check is run is quite poor. We are two years into the data collection process and are only receiving this data element in 54.1% of the cases. Assuming a linear growth pattern in the collection of this data element, we will only have this data element in about 87% of cases by the time the provision requiring its collection sunsets in 2007. Because self-identification of race on a driver license is voluntary, it is not unreasonable to assume a certain percentage of the population will never provide their race on their license. For this reason, it is very possible the linear increase in the provision of this data may not continue up to and through June 2007.

Unfortunately, for analysis of racial profiling, no data element is as critical as the race of the driver or pedestrian. We are currently missing this information in about half of the cases. This is also the only data element that is not required. Identifying race on a driver license is completely voluntary. This makes it difficult to improve the collection of this element. Additionally, any improvement in this area will be very gradual. Identification of race will only occur when individuals apply for a new driver license or renew their old driver license. Citizens are only required to renew their license every five years.

Recommendations

Utah is not collecting enough information or the right information to examine the occurrence of racial profiling. The data elements we are collecting well, unfortunately, are not relevant in the analysis of racial profiling. The one data element we are collecting that is critical to the analysis of racial profiling is collected at an extremely low rate.

Even if we were collecting many of the addtional data elements that have been suggested by experts, social science is not exacting enough for researchers to say a particular stop or a particular officer is racially biased. In order to do identify a stop as racially biased, we would need to understand what the officer was thinking at the time the stop was made. No data elements will allow us to do that.

This is not to say racially biased policing does not occur in Utah. Nor is this a suggestion that no data collection effort would be helpful in addressing the issue

of racial profiling. When sufficient and appropriate data elements are collected and analyzed, anomalies arise that would require review or intervention at the individual department level. Anomalies pinpointed in the data analysis are a beginning point, not the ending point, for addressing the problem of racial profiling. However, the data elements required for collection under HB 101 are simply insufficient for analysis of racial profiling, even if they were being collected adequately. The sections that follow briefly review a few of the difficulties in analyzing racial profiling without the appropriate data and identify a few additional data elements recommended for studying racial profiling.

Race of the Driver

In most any analysis or research on racial profiling, the race of the driver is recorded based upon the officer's perception of race at the time of the stop. In Utah, the race of the driver is based upon that driver's self-identification on the driver license. In cases of racial profiling, it is the officer's perception that is critical, not the actual race of the driver. "To the extent that officers make stopping decisions based on race, they do so based on their perceptions of race, not on the basis of driver's license information that they have not yet seen. That these perceptions of race are likely erroneous in some unknown number of incidents does not negate the fact that the perceptions are the valid measure of race in light of the research question." ("Racially Biased Policing: A Principled Response", Police Executive Research Forum, p129.)

Simply put, of importance is what the officer thinks the driver's race is, not what the driver's race actually is. For example, if an officer makes a stop at night and cannot see the driver of the vehicle before the stop, it is not good research to put this stop into the mix of potentially racially biased stops. Alternatively, if an officer stops an individual because he thinks he is Hispanic, that would be more pertinent to the research at hand, regardless of what that person put on his driver license. In Utah, we are not only doing a poor job getting the race of the driver for stops, but we are also bucking the social scientists' recommendations that the race of the driver be collected based upon the perception of the officer making the stop.

Benchmarking

The benchmark is the measure we are comparing our findings against. Many people believe the best benchmark in the study of racial profiling is the racial characteristics of the people living in the area where the stop was made. For example, if 20% of a police agency's stops were minority, how do we know if that percentage is low or high? The benchmark is what we would compare to the 20%. Perhaps 15% of the citizens in the police agency's jurisdiction are minority. That 15% is one benchmark that many believe could be used for comparison purposes.

There are several approaches to developing benchmarks. Most social scientists would agree that using census population figures for a geographic area is not an accurate benchmark. The key is trying to discover the characteristics of the drivers in a specific geographic location. Developing benchmarks have run the extremes from adjusting census populations in order to account for the driving age population to placing observers on street corners documenting the perceived race of drivers and their rates of traffic violation. Benchmarking has become a science itself. Individuals driving the streets of a geographic area may or may not be similar to the census demographics of that area. In benchmarking, we need to compare our stop data to those who are actually driving our streets.

Regardless of the benchmarking methodology, it is important to narrow the geographic unit of analysis below the city level. This narrowing assists researchers in excluding alternative explanations for apparent discrepancies between the benchmark and the stop data. If we found that 20% of the stops in a city were minority and 15% of the drivers in the city were minority, some may jump to the conclusion that the discrepancy was due to racial profiling. If the geographic analysis was narrowed, researchers might find that police patrols were more saturated in minority areas, which also reflected a

higher level of calls for police service. This is an alternative explanation for a discrepancy which could not be discovered without the ability to do sub-city analysis. Additionally, if an alternative explanation could not be found, without the ability to do a sub-city analysis, researchers could not determine if racial profiling was occurring city-wide or only in specific areas.

Because of the limited data elements collected in Utah, benchmarking would be difficult, if not inaccurate. The only stop location data collected is at the city or county level. Researchers can tell in which city the stop occurred, but not where in the city the stop occurred. As stated above, this is problematic for a number of reasons. First, we cannot assume the distribution of minority drivers is uniform across the city, which leaves us unable to rule out alternative explanations for discrepancies. Second, even if we were able to rule out explanations for discrepancies, we would be left unable to pinpoint the source of the potential bias.

In addition to a more specific location of the stop, knowing the time of day and day of the week is also important for benchmarking purposes. The characteristics of drivers in a city fluctuate both by time of day and day of week. Cities that pull drivers in will likely have different characteristics during the daytime hours than during nighttime hours. In short, the driving population in a geographic area may be more or less "minority" depending on the time of day and day of week.

In order to compare the data collected with appropriate benchmarks, Utah needs additional stop data collected. This would include a more specific location where the stop occurs, as well as temporal data elements describing when the stop occurred.

Purpose of the Stop

HB 101 required the collection of the purpose of the status check, including but not limited to traffic and pedestrian stops. As this data element was operationalized, it became apparent that status checks are run for a variety of purposes other than traffic and pedestrian stops. For racial profiling assessment, researchers would need to exclude those status checks that were not related to traffic or pedestrian stops. As currently implemented, the purpose of the status check field can only be used to assist in filtering those status checks that were conducted on traffic and pedestrian stops from the other types of status checks that are conducted.

However, in the analysis of racial profiling, it is important to know for what type of violation the individual is being stopped. The list of possible traffic and pedestrian violations is long, but it provides valuable insight into the discretion the officer had in making the stop. Racial profiling is most likely to occur in low visibility and high discretionary situations. For example, a police officer who witnesses a vehicle speeding through a red light at an intersection has much less discretion whether to make a stop than a police officer who witnesses a driver who fails to signal when changing lanes on the highway. Analysis of racial profiling should look into how officers behave in situations where they have more discretion as opposed to situations where they have little discretion. This same rationale applies to calls for service. An officer who is responding to a call for service has very little if any discretion. The race of the individual on whom a status check is run in these situations would have little meaning in the context of racial profiling. Utah needs to collect the type of violation for which the stop was made, as well as whether the stop was proactive or reactive.

Action Taken During Stop

Another data element that is helpful in examining racial profiling is the action taken by the officer during the stop. Again, this data element addresses how officers behave in high discretionary situations. Action taken would include warnings, citations, and arrests. It is important to understand if a particular officer or agency consistently cites minorities at a higher rate than non-minorities for similar violations. In addition, if an officer is harassing minorities, researchers may find that the officer stops minorities at unusually high rates and often gives them warnings. In Utah, we are not uniformly collecting data in a way that allows us to determine what action was taken after the stop was made.

Post-stop Analysis

The last series of data elements that will be discussed focuses on officer behavior after the stop has been made. Officer post-stop action has become an area of attention in research on racial profiling. Even if an officer doesn't know the race of the driver when he makes a decision to stop the vehicle, once the officer has been face to face with the driver collecting driver license and insurance information, it is extremely likely the officer knows the race of the driver. What happens next becomes very relevant in the study of racial profiling.

Those studying post-stop behavior of police focus on several key variables, including the duration of the stop, whether the vehicle was searched, the justification for the search, and the results of the search. If these data elements were collected, researchers could examine whether or not minorities were, on average, detained for a longer duration during traffic stops. Researchers could also examine whether minorities were more or less likely to have their vehicles searched during traffic stops. Evaluating the results of the searchers could assist in discovering if minority drivers were more likely to be unnecessarily searched when compared to non-minority drivers. Some argue that post-stop research on racial profiling can be more compelling because the officer is more likely to know the race of the driver, and because officer behavior after the stop can be both highly discretionary and very intrusive.

Conclusion

The Utah Department of Public Safety has done an excellent job in collecting the data elements it is required to collect. They have done so in a manner that is effective and does not place significant data entry burdens on police officers. Alternatively, the collection of drivers' race is poor at best. This is because self-identification of race on the driver license is voluntary and because the identification of race by a driver will only occur upon license renewal or application for a new license.

The major barrier to racial profiling analysis is that we are not collecting the right information. Of the data elements required under HB 101, the race of the driver is the only element truly useful for the analysis of racial profiling. This data element is currently collected at a very low rate. It is unlikely that the race of the driver will be collected at a sufficient level before the provision requiring its collection sunsets. Additionally, social scientists are in agreement that the race of the driver should be based upon the police officer's perception rather than self-identification on the driver license.

Collection of the race of the driver is only one of many obstacles for analyzing racial profiling in Utah. Although collection and analysis of multiple data elements may never allow researchers to definitively conclude racial profiling is occurring, using many of the additional elements described in this report could pinpoint real disparities that individual agencies would be able to further investigate. These additional data elements are necessary for benchmarking, as well as for identifying those high discretionary and low visibility stops where racial profiling is most likely to occur. Statewide collection of additional data elements would create a burden on police officers and police departments statewide, in terms of information technology development costs and data entry time during stops. Utah policymakers must balance the burden on law enforcement against their desire to truly examine the issue of racial profiling.