

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

**Legislating Attitude: The Impact of
Racial Profiling Prohibition Laws**

**An Administrative Research Paper
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**By
Eddie Wilson**

**Copperas Cove Police Department
Copperas Cove, Texas
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ABSTRACT

As a result of the Racial Profiling Prohibition Act of 2001, the State of Texas passed S.B. 1074 during the 77th legislative session. National leaders may have identified the problems with law enforcement officers profiling individuals based on race, ethnicity, and national origin. On the other hand, they may have felt a need to pacify the recommendations made by special interest groups. After seven years of data collection by law enforcement in most states, no accurate facts about racial profiling have been revealed. Research on the impact of racial profiling prohibition laws is relevant to contemporary law enforcement because police officers will continue to feel the burden of data collection with no positive legislative changes in sight. The purpose of this research is to examine the effects that current laws have had towards combating and identifying racial profiling. The method of inquiry used by the researcher included a review of studies, journals, books, and a survey distributed to 26 survey participants from different Texas law enforcement agencies.

Through the course of the research, the researcher discovered that agencies collecting data within the requirements of the law are producing unreliable and irrelevant statistical reports because of flawed collection techniques and inaccurate baseline data. Data analysis resulting from the strictest scientific research will prove to be insignificant if the collection of that data is flawed. This research outlined numerous reasons as to why data collection, in its present form, is a faulty tool for measuring the existence of racial profiling and concluded with practical training and improved community relations as a more functional solution to combating this problem.

TABLE OF CONTENTS

	Page
Abstract	
Introduction.	1
Review of Literature	3
Methodology	8
Findings	10
Discussions/Conclusions	13
References	17
Appendix	

INTRODUCTION

According to Buerger (2002), some of the roots of racial profiling being used as a law enforcement tool can be tracked back to the 1980s, during the United States government's "war on drugs," when the United States Customs Service was committed to tracking down drug couriers. To assist in this process, Customs developed a drug courier profile where race was an important factor in identifying possible suspects. Also, the Florida Department of Highway Safety issued guidelines titled "The Common Characteristics of Drug Couriers," in which race was explicitly mentioned as a characteristic (Engel, Colnan, & Bernard, 2002). The typical profile of a drug courier was a "black or Latino male, aged 18-25" (Engel, Colnan & Bernard, 2002, p. 249). Over the years, the strategy of stopping someone who fit the "profile" evolved into a broader approach to law enforcement and, today, is often referred to as racial profiling.

The issue of racial profiling by law enforcement gained national attention during the early 1990s due to a number of high profile court cases and the heightened media attention of these cases (Trende, 2000). Prominent black Americans, as well as other minority leaders, brought the debate over profiling into the forefront of politics. During the Strengthening Police-Community Relationships Conference held in Washington D.C. in 1999, President Bill Clinton called racial profiling a "morally indefensible, deeply corrosive practice" and further stated that "racial profiling is in fact the opposite of good police work, where actions are based on hard facts, not stereotypes. It is wrong, it is destructive, and it must stop" (Ramirez, McDevitt & Farrell, 2000, p. 1). President George W. Bush followed suit in 2001 by stating, "It's wrong, and we will end it in

America. By stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve” (U.S. Department of Justice [USDOJ], 2003, p. 1).

Racial profiling has evolved into a politically charged issue. President Clinton acted on his statement by directing federal agencies to begin collecting data on race and ethnicity of persons stopped for future analysis. North Carolina was the first state to pass a bill mandating data collection on all traffic stops. Two years later, the federal government passed the Racial Profiling Prohibition Act of 2001, which required states to pass laws prohibiting racial profiling or otherwise suffer a 10% cut in federal funding (Johnson, 2004). The State of Texas passed S.B. 1074 during the 77th legislative session in 2001 to become compliant with the act. Along with Texas, several other states passed similar bills. Currently, there are a total 25 states that have enacted legislation mandating the collection of data.

The problem or issue to be examined considers whether or not these laws are actually making an impact towards ending or at least reducing racial profiling. The relevance to law enforcement is if these current laws are not making an impact, there may never be any changes put in place to improve how racial profiling is enforced. If the laws are shown to be unproductive and no improvements are taking place, it would make better sense to utilize the manpower and resources towards other areas, such as community policing. Presently, racial profiling laws create a great burden for law enforcement agencies in the area of manpower and financial resources.

The purpose of this research is to examine whether racial profiling laws have met the objectives of lawmakers. Some police officers believe that racial profiling is a misconception and that the majority of officers do not stop people based on their race,

ethnicity, or national origin. Instead, these stops are made on behavior, location, circumstances, and other factors not related to race (Shusta, Levine, Wong, Olson & Harris, 2008). To prove otherwise by merely collecting and reviewing data seems impossible. The research question to be examined focuses on whether or not the laws related to collecting data are making an impact towards stopping the practice. The intended method of inquiry includes a review of studies, journals, books, and a survey distributed to 26 survey participants from around the State of Texas.

The intended outcome or anticipated findings of the research should reveal that these laws were put in place too quickly and without enough forethought. Because of this, these same laws are unable to accurately seek out officers and agencies that practice racial profiling. The field of law enforcement will benefit from this research or be influenced by the conclusions because more documented findings will be in place to assist political figures, law enforcement personnel, civil rights leaders, and the public in understanding the lack of success in the current system. In turn, lawmakers can use the collection of information to recognize how the current statutes are placing a burden on law enforcement agencies with no substantial results.

REVIEW OF LITERATURE

Two officers are patrolling separate neighborhoods and both stop vehicles that are similar in size and color. Both drivers are also of the same age, gender, and race. The first officer made the stop based on the vehicle displaying a defective brake lamp and never had the opportunity to physically see the driver prior to making the stop. The second officer has always been suspicious of young black and Hispanic individuals, and in this case, the driver is a young, black male. This officer decides to follow the vehicle

to develop probable cause for a traffic stop and soon discovers that the vehicle has a defective brake lamp. Ultimately, a written warning is issued in both cases, and the data collected is identical. Simply put, this collection of data does not reveal which officer is engaging in illegal racial profiling.

The problems with data collection run much deeper than this simple scenario. Even when data is properly collected and meets all requirements of Article 2.133 of the Code of Criminal Procedures, the analysis report can be damaging to an organization although profiling is not occurring. The reason is that the public will typically take a straightforward approach to analyzing data when drawing conclusions about racial profiling practices by assuming that all things are equal. This assumption is that whites, blacks, Hispanics, Asians, and other racial groups all violate traffic laws at an equal rate. If the data on these stops are not equal with the demographics of a community, then the public can easily conclude that racial profiling is taking place. Racial disparities in traffic stops do not, in themselves, prove an agency is guilty of racial profiling. Unlike a bona fide scientific study, data collection lacks checks and balances, making it less than perfect (Holbert & Rose, 2004).

One must consider whether certain races have a greater potential for being stopped over other races, with one of these factors being safety habits. For example, federal studies have shown that only 51% of blacks wear seatbelts versus 62% of whites (Holbert & Rose, 2006). If these statistics are consistent with most communities, then whites would be 11% less likely to be stopped than blacks for not wearing seatbelts, and the stop would have nothing to do with race. Also, some ethnic groups are more likely than others to illegally equip and alter vehicles in a manner that would

attract attention from police officers. These examples are not always considered by the public when reviewing analysis reports.

Once all the data is collected, the principal challenge facing law enforcement is determining a baseline or benchmark to compare with the data. If an agency's report happens to reflect that 65% of consent searches have been conducted on individuals representing a minority group, then this percentage may not have value without some type of comparison to the demographic population of the community. A benchmark must be in place to give an analysis report value, but no benchmark standard was ever defined or established when S.B. 1074 was passed. This has forced law enforcement to come up with their own systems of establishing benchmarks.

Agencies have attempted to address this issue by comparing the demographic profiles of people with the demographic profiles of the residential population to the demographic profiles of residents with a driver's license and to the demographic profiles of residents observed on jurisdiction roads (Fridell, 2005). All of these systems have proven to be flawed, and the use of different benchmarks has resulted in departments compiling analysis reports that vary and have no consistency from agency to agency. Establishing a relationship between the races of individuals stopped by the police and the population is critical in determining whether or not racially biased policing is taking place. The literature reviewed for this research revealed significant difficulties in developing a reliable benchmark for motor vehicle stops.

Early research on racially biased policing relied on census data as a benchmark for comparisons with motor vehicle stops. It is now generally accepted that census data is a poor indicator of the population being stopped because of several shortcomings.

The census tends to undercount minorities and does not consider or take into account the differences in driving quantity, quality, or location across racial groups (Withrow, 2004). Further, census data is perishable since the demographics of a community can drastically change during the ten-year time span between census reports.

A second approach to benchmarking is the use of driver's license data of individuals living in the jurisdiction. Like the use of census data, this is an unreliable benchmark because it does not account for the migration of residents and non-residents. Researchers have also cited national surveys that indicate substantial differences between races in vehicle ownership rates, use of public transportation, miles driven, motor vehicle trip frequency, and trip duration (Engel, Colnan & Bernard, 2002). Lastly, Hispanics represent the largest ethnic group in Texas but are counted as white by the Texas Department of Public Safety. This would eliminate the Hispanic population from the benchmark.

Another method for estimating the population of drivers is to observe and count them throughout various locations within the jurisdiction (Smith & Alpert, 2002). Although better than static benchmarks like census and driver's license data, the use of observational data also has several limitations. First of all, it is labor intensive and is especially costly when contracted out to independent study groups. Also, the results cannot necessarily be generalized to the driving population of the entire jurisdiction. And finally, observational data can be inaccurate due to an observer's inability to identify race. Although some races may be easily distinguished under proper conditions, some minority groups may be difficult or impossible to identify when observed in a passing vehicle.

The problem of trying to determine race is not just limited to the observer collecting benchmark data. Another fundamental question is if police officers can even determine the race of an individual before making a traffic stop. If an officer cannot determine the race of a violator, it would be impossible to racially profile. A study completed by an independent group for the Los Angeles Police Department revealed that 63% of officers and 70% of civilian observers were unable to determine the race of a motorist when suspicion was formed or a violation was observed during the daytime (Alpert, Becker, Meister, Smith, & Strombom, 2005). If these percentages are a representation of all police officers, race would not be a factor on the majority of stops made, yet the data collected from these stops would still be factored into the analysis report. The high number of stops made when the race of a motorist is unknown would be scrutinized along with the remaining percentages of when the race was determined before the stop.

In some instances, a motorist's race will continue to be unknown to the police officer even after contact is made, especially when dealing with an individual who is of mixed race. The 2000 census revealed a growing mixed race population in the United States, and the number has only increased since the census was completed. Since the race of an individual is not indicated on a driver's license, the police officer will be left with two options, both of which could potentially offend the motorist.

The first option would be to guess the race. If the officer is wrong, the accuracy of the data collected will once again be affected and hostility could set in with the motorist once the data is revealed on the citation. The second option would be to ask the motorist about their race. The motorist may now assume that race was relevant if not for

the stop then at least as to whether or not they were going to be given a citation, searched, or arrested. Questioning race creates the impression that race is an important criteria when officers make enforcement decisions. The innocent act of not knowing a person's race can unleash a chain of events that can be damaging to the officer and their department.

An accusation of racism is a simple way to provide the motorist with a defense for any action taken. False accusations are common and difficult for agencies to defend. The agency will be expected to prove or disprove the complaint and afterwards provide a no-win explanation of the findings. If the motorist threatens litigation, he or she can be expected to publicly air their complaint while officers and the administration will be advised by the jurisdiction's attorney to not publicly comment (Hoover, 2000). Citizens can now assume the agency is hiding something.

Another deficiency in data collection being used to identify the practice of racially biased policing is that the law is trusting individual police officers to comply with no defined criminal punishment for not complying. It is assumed that most officers will use good judgment, making every attempt to comply with these laws since they are sworn to uphold all laws. The same assumption cannot apply for the few officers who use race as a pretext for stops making it difficult to trust these officers with providing accurate data. There is also nothing in place that would identify officers who seek out white violators to balance the number of minority violators that have already been stopped and counted.

METHODOLOGY

The research question to be examined considers whether "to collect" or "not to collect"; this refers to the collection of race data on police initiated stops. Obviously, S.B.

1074 answers this question by making the collection of data mandatory for all agencies, but the effectiveness of this law in the elimination of racial profiling is being questioned throughout the law enforcement community. The researcher hypothesizes that a vast number of issues exist relating to how ineffective S.B. 1074 has been since its inception in 2001. Although relatively new, studies of racial bias in police stops have rapidly evolved with increasingly sophisticated approaches. However, there is no agreement on any single analytical approach that should be implemented.

The methods of inquiry will include a review of studies, journals, and books. The instrument that will be used to measure the research findings as well as provide another method of inquiry regarding the subject of racial profiling data collection will include a survey distributed to law enforcement administrators from around the state of Texas. The size of the survey will consist of nine questions and space to provide personal comments on the topic of racial profiling or racial profiling prohibition laws. The types of agencies represented will include municipal police, the county sheriff's office, the constable's office, state agencies, school districts, and college police.

The survey participants will be asked about the number of formal complaints for racial profiling their agency handled in 2006 and the number of complaints that resulted in a substantiated finding. They will rate the racial profiling problem within their agency as well as the effectiveness of data collection. The researcher will also ask the participants to provide their feelings about the current racial profiling prohibition laws and the best method on stopping the problem.

A total of 26 law enforcement administrators will be asked to participate in the survey. The response rate to the survey instrument resulted in all 26 administrators

returning the survey instrument. The information obtained from the survey will be analyzed by comparing the various responses to locate any inconsistencies in the research issue.

FINDINGS

To establish the background of survey participants, they were first asked to indicate the category that best describes their agency and the position they serve. Of the 26 participants, 15 represented municipal police departments, four represented a state agency, three represented a school district or college police department, two represented a county sheriff's office, and two represented a constable's office. The participants ranged from the rank of Corporal to Chief of Police.

Figure 1 represents the population of the jurisdictions the participants serve. The methodology provided a balanced representation of departments of all sizes. The research discovered the size of the community had minimal impact on the amount of racial profiling complaints handled by the various agencies.

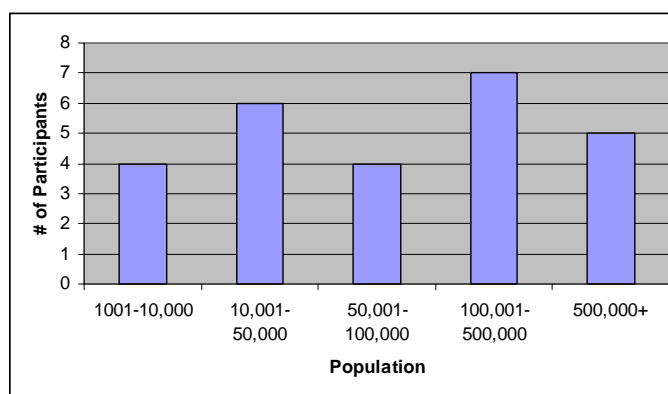


Figure 1. The number of participants and the population of the jurisdiction represented.

Table I reflects the number of formal racial profiling complaints handled by the 26 agencies during the calendar year 2006. Half of the participants reported their

departments handled one to five formal complaints, while 11 reported none. Only one agency handled between six and ten complaints, and one handled between 11 and 15. No agency represented handled more than 20 complaints. The agencies reporting more than six complaints serve a population of 100,000 or more.

Table I. The number of formal complaints handled by each participant's agency.

None	1-5 Complaints	6-10 Complaints	11-15 Complaints	16-20 Complaints	20+ Complaints
11	13	1	1	0	0

Formal complaints are those complaints that must be documented in writing and signed by the citizen in accordance with Texas Government Code Chapter 614.022 for an investigation to take place. Public perception has indicated how much of a widespread problem racial profiling is, but based on Table I, the actual filing of formal complaints is not as commonplace as one would think. Many citizens will openly complain about being racially profiled, but few actually meet the requirement of producing a written complaint for a formal investigation to take place. In addition, complaints of this nature are very difficult to prove since there is rarely any evidence to support the feeling of the citizen. It is only the officer who knows if race was the basis for the enforcement action. Since administrators lack the ability to look into the minds of officers, most complaints will be hard to prove.

Only one participant reported their agency having a substantiated finding of racial profiling taking place upon the conclusion of an investigation. This participant also indicated that data collection had no bearing on discovering the problem or proving the outcome. All other participants indicated no substantiated complaints.

Participants were asked to rate on a scale how much of a problem racial profiling is in their agency with “1” being no problem and “5” being a great problem. Two participants gave a rating of “1.5,” and one gave a rating of “3,” which represents somewhat of a problem. All others gave ratings of “1.” Their ratings were based mostly upon common knowledge of their agency, and the consensus was that data collection had nothing to do with establishing their rating.

To try and formulate an overall opinion of the racial profiling prohibition laws, the participants were asked to describe their feelings about the laws that were introduced in 2001. Three participants felt the laws have made a considerable impact against stopping racial profiling. Ten felt the laws have made somewhat of an impact against stopping racial profiling. Thirteen felt the laws have made no impact against stopping racial profiling.

Participants were also asked to rate their opinion of how much of an effective tool data collection is for revealing racial profiling. The scale represented “1” as none, “3” as somewhat effective, and “5” as extremely effective. Nine participants gave a rating of “1.” Five gave a rating of “2.” Eight gave a rating of “3.” Three gave a rating of “4,” and no one gave a rating of “5.” This indicated that very few participants have a strong favorable opinion about the use of data collection. The opinions varying on the lower end of the scale could contribute to many of the participants not having much experience with data collection because of their assignments.

The final question asked participants to give their opinion on the best way to stop law enforcement officers from racially profiling. Four participants felt no changes are needed, and the current laws are working, while 12 felt the laws should be eliminated

with the development and enforcement of effective administrative policies. Two participants did not respond to the question, while the remaining eight provided a response next to the category of “other.” All the responses in this category were similar and had to do with departments managing the racial profiling problem on their own and without legislative intervention.

Ten participants provided comments related to the topic. The comments ranged from departments managing the issue on their own to personal problems the participants have encountered with racial profiling issues. There were no comments in favor of how racial profiling is currently being addressed. Many participants felt the best way to conquer the issue is simply by better supervision.

Personal interviews were conducted with several of the participants and the consensus was that racial profiling does exist but a “shotgun” approach was taken to address an isolated problem. Most felt that more needed to be done by departments to address racial profiling and less by lawmakers. Some of the recommendations included improving department policies, building community relations, and the continued education of police officers and the community. None felt the problem should just be ignored.

DISCUSSION/CONCLUSIONS

The problem or issue examined by the researcher considered whether or not racial profiling laws related to data collection are an effective means of identifying and reducing racially biased policing. The purpose of this research was not to downplay or minimize the importance of eliminating racially biased profiling from law enforcement, but, instead, to examine what impact the racial profiling prohibition laws have had

towards identifying those officers who practice racially biased profiling. The research question that was examined focused on how productive these laws have been. The researcher hypothesized that numerous problems exist with data collection in its current form outlined in S.B. 1074.

Police officers take an oath to protect and serve their communities, and most legitimately expect that the public will assume they maintain a high regard for equal treatment of all individuals regardless of race. These officers are taught early on not to allow race to be an issue or brought up unnecessarily when dealing with the public. But in 2001, legislation was passed that required race to be brought up in every citizen stop through documentation. Now police officers legitimately expect that the public assume they routinely engage in discriminatory practices. It is insulting to many officers that they are required to justify themselves every day by documenting the race of every citizen they stop.

The researcher concluded from the findings that many deficiencies exist within the racial profiling laws. In addition, the State of Texas has recognized the deficiencies in data collection by including what some consider a built-in disclaimer in the law. The Code of Criminal Procedures Article 2.134 states, "The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling" (Lexisnexis Matthew Bender Publications, 2008, p. 162). Agencies are currently investing money and manpower towards meeting the reporting requirements, but, in the end, the data collected has no evidentiary value towards proving whether or not racial profiling is taking place. The same article also restricts agencies from including any identifying information about individual officers. This eliminates the small

possibility of identifying the individual officers who racially profile and still lumps their data in with the majority of officers who do not.

The consensus within law enforcement is that this long time problem was already being addressed without the need for legislative action. Many agencies had already committed to community policing strategies, and the Texas Commission on Law Enforcement Standards and Education (TCLEOSE) had already mandated continuous training on racial sensitivity and racial profiling for all certified peace officers. These efforts were already in place before S.B. 1074 was introduced. Critics would even have to take note of the fact that the problems associated with racial profiling were already improving before S.B. 1074, if compared to the 1980s and prior. These improvements were contributed to law enforcement departments policing their own personnel.

The findings of the research did support the hypothesis. The reason why the findings did support the hypothesis is probably due to the racial profiling laws being put in place too quickly under political pressure and without enough forethought. With these laws in place, there seems to be no hurry for legislators to abolish the current data collection system because of the political incorrectness that would be perceived in the process of taking such a stand. Limitations that might have hindered this study resulted because of the overwhelming amount of existing literature that criticizes the collection of racial profiling data and minimal studies showing its effectiveness. There is no clear solution in sight to what it will actually take to end racial profiling. The only real answer to the problem is best described in a quote from author Steve Holbert (2004), "It is only when our society becomes so ethically intermixed that racial profiling will meet its natural demise" (p. 1).

The study of the impact of racial profiling prohibition laws is relevant to contemporary law enforcement because police officers will continue to be burdened with data collection and continue to be subjected to unwarranted criticism until legislators revisit this issue. The entire field of law enforcement stands to benefit by the results of this research or potentially be influenced by some of the findings. As previously mentioned, there is an abundance of research in place supporting this conclusion. This research will serve the field of law enforcement as additional reinforcement to assist political figures, law enforcement administrators, civil rights leaders, and the public to understand the lack of success in the current system and potentially bring about change.

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APPENDIX

RACIAL PROFILING SURVEY

Please circle the best response:

1. What category best describes your agency?
 - a. Municipal Police Department
 - b. County Sheriff's Office
 - c. Constable's Office
 - d. State Agency
 - e. Federal Agency
 - f. School District/College Police
 - g. Prosecutor's Office
 - h. Other: _____

2. Select the position that best describes your job title.
 - a. Chief, Sheriff, Marshal, Constable, or related personnel
 - b. Chief Deputy, Assistant Chief, Captain, Major, or related personnel
 - c. Lieutenant, Sergeant, Corporal, or related personnel
 - d. Investigator, Patrol Officer, Deputy, or related personnel
 - e. Other: _____

3. What population does your agency serve?
 - a. Less than 1000
 - b. 1001 – 10,000
 - c. 10,001 – 50,000
 - d. 50,001 – 100,000
 - e. 100,001 – 500,000
 - f. more than 500,000

4. How many complaints for racial profiling has your agency handled in the past year?
 - a. None
 - b. 1 – 5
 - c. 6 – 10
 - d. 11 – 15
 - e. 16 – 20
 - f. More than 20

5. Of these complaints, how many were founded or substantiated as valid complaints for racial profiling?

- a. None
- b. 1 – 5
- c. 6 – 10
- d. 11 – 15
- e. 16 – 20
- f. More than 20

6. Please rate on the scale how much of a problem racial profiling is in your agency with “1” being no problem and “5” being a great problem.

None		Somewhat		Great
1	2	3	4	5

7. Since the racial profiling laws were introduced in 2001, which statement best describes your current feelings about these laws?

- a. The laws have made a considerable impact against stopping racial profiling.
- b. The laws have made somewhat of an impact against stopping racial profiling.
- c. The laws have made no impact against stopping racial profiling.

8. Please rate on the scale how much of an effective tool data collection is for revealing racial profiling with “1” being none and “5” being extremely effective.

None		Somewhat		Extremely
1	2	3	4	5

9. What do you feel is the best way to stop law enforcement officers from racially profiling?

- a. Improve the laws
- b. Eliminate laws and administrative policies
- c. Eliminate laws but develop and enforce effective administrative policies
- d. No changes are needed, the current laws are working
- e. Other: _____

Comments: _____
