Report From Agency

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

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

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

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

The report consists of the following parts:

Attachments

Administrative Rules - Fiscal Estimate

Legislative Council Rules Clearinghouse Recommendations

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

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

Analysis by the Office of Justice Assistance

Statutes Interpreted.

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

Statutory Authority.

Section 16.964 (16) (b), Stats.

Explanation of agency authority.

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

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

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

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

Related statute or rule.

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

Plain language analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comparison with rules in adjacent states.

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

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

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

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

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

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

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

> *Can we say whether or not ISP troopers are stopping, ticketing, searching or arresting people differently because of their race? The data in this report do not conclusively answer this question. They do give us an indication that Iowans are not more or less likely to be stopped by ISP troopers because of their race. . . .*
>
> *The data in this report also do not definitively answer the question of whether or not the ISP troopers are influenced by a person's race or ethnicity when deciding whether to conduct a search or issue a warning vs. a formal sanction. The data do seem to indicate that race or ethnicity may have sometimes influenced decisions in these areas. However, such observations are only indications because a substantial number of cases had missing data and because the impact of numerous other variables that should affect such decisions is unknown (e.g. existence of outstanding warrants, severity of alleged traffic violations, visible contraband, incriminating driver or passenger behavior).* (2003 Report p. 8)

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

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

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

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

> *The ratio of minority drivers stopped to the minority driving population has improved each year. That is, the percentage of minority drivers stopped by the police is getting closer to the estimated driving population.*
>
> *Law enforcement agencies continue to pay careful attention to this issue and many have introduced policies and procedures to correct deficiencies.*
>
> *Our newest measures of post-stop performance -- duration of stop -- suggests that traffic stops of minority drivers consume about the same time as those for Caucasian drivers.*
>
> *The number of consent searches in Illinois continues to decline, but minority drivers are still more likely to be consent searched than Caucasian drivers. Differential refusal rates do not appear to contribute to this difference.*
>
> *Police officers conducting consent searches are far more likely to find contraband in a vehicle driven by a Caucasian driver than by a minority driver. While there has been a significant amount of attention devoted to this issue, there is little evidence at this point of substantial improvement.* (2008 Report, p. 13)

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

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

Summary of factual data and analytical methodologies.

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

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

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

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

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

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

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

Effect on small business.

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

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

Place where comments could be submitted and deadline for submission.

The Office of Justice Assistance held a public hearings on April26 and 28, 2010. The agency contact person, Dennis Schuh, received public comments by email and mail until April 30, 2010.

PART 2--RULE TEXT IN FINAL DRAFT FORM.

SECTION 1. Chapter OJA 1 is created to read:

CHAPTER OJA 1

TRAFFIC STOP DATA COLLECTION AND ANALYSIS

OJA 1.01 Purpose. The purpose of this chapter is to establish rules describing the types of information that law enforcement agencies must collect at traffic stops, including the circumstances under which this information must be collected, the process and format that law enforcement agencies must use to submit the collected information to OJA, the types of analyses that OJA will perform, and requirements for OJA-authored reports.

OJA 1.02 Authority. This chapter is promulgated under the authority of ss. 16.964 (16) (b) and 349.027, Stats.

OJA 1.03 Definitions. As used in this chapter:

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

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

(a) A governmental agency of one or more persons comprising at least one full-time equivalent position, employed by this state or a political subdivision of this state, for the purpose of preventing and detecting crime and enforcing state laws or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: see Appendix for examples of a traffic stop.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The number of occupants.

(b) Whether any occupant other than the operator is a member of a racial minority or ethnicity. The officer shall not require the person stopped to provide race or ethnicity information.

(3) EVENT DATA. With respect to the traffic stop, the officer shall record all of the following:

(a) The date, time and location of the traffic stop, the name of the law enforcement agency and officer number of the officer making the traffic stop.

(b) The location of the stop using global positioning system coordinates if available, DOT standards for identifying the location of traffic accidents, or any other method that identifies the location with a reasonable degree of accuracy.

(c) The make and model of the motor vehicle, type of motor vehicle, state of motor vehicle registration and the motor vehicle license plate number.

(d) The reason for the stop.

(e) The outcome of the stop.

(f) The duration of the stop.

(4) SEARCH DATA. Whether the operator, any occupant, or the motor vehicle was searched and if so, all of the following:

(a) Whether a consent to search was requested, and, if so, whether it was granted or denied.

(b) The basis for the search.

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

(d) Type of contraband, if found.

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

(a) A law enforcement officer who makes a traffic stop may 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.

(b) If a law enforcement officer who makes a traffic stop is unable to submit the traffic stop data directly to OJA under par. (a), the law enforcement officer shall 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 agency shall arrange to have traffic stop data recorded under this subsection submitted to OJA electronically under the procedures identified in the MOU. The chief officer of the agency shall not submit more than one set of traffic stop data for each traffic stop. Paper submission of traffic stop data to OJA may be made only after approval from OJA.

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

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

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

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

(2) As part of its analysis, OJA may analyze traffic stop data to determine the extent to which a correlation exists between the race and ethnicity of motor vehicle operators and occupants and traffic stop event data described in s. OJA 1.05 (3) (d) – (f) and (4). OJA may also note whether the existence of other factors, such as specific law enforcement strategies, may contribute to disproportionalities in the 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.

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

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

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

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

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

(3) Law enforcement agencies shall 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.

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

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

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

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

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

Dated: _____

STATE OF WISCONSIN
OFFICE OF JUSTICE ASSISTANCE

_____
David Steingraber
Executive Director

Appendix
Traffic Stop Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Responses to Legislative Council Rules Clearinghouse Recommendations

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

Final Regulatory Flexibility Analysis

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

Fiscal Estimate

No changes were made to the fiscal estimate.

Public Hearing Summary

Public Comments Received at Website, by Mail and Email

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

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

Public Hearings

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

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

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

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

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

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

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

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

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

Persons appearing

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

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

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

2. Jessica Yee, De Pere, Wisconsin

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

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

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

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

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

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

3. Qi Gu, Madison, Wisconsin

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

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

4. Alex Gillis, Madison, Wisconsin

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

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

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

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

5. Z. Hawkness

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

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

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

6. Yvonne Geerts, Madison, Wisconsin

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

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

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

7. Seth Tulley, Friendship, Wisconsin

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

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

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

Financial assistance to enforcement agencies is needed.

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

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

8. Tracy Benson, Madison, Wisconsin

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

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

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

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

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

9. Richard Harris, Madison, Wisconsin

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

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

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

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

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

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

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

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

Persons appearing

10. Steven Kraus, Waukesha, Wisconsin

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

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

11. Sen. Lena Taylor, Milwaukee, Wisconsin

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

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

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

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

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

12. Peter Goldberg, Milwaukee, Wisconsin

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

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

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

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

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

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

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

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

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

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

13. Jill Vonnahme, Milwaukee, Wisconsin

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

14. Marion, Milwaukee, Wisconsin

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

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

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

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

Written Comments Received by the Agency

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

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

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

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

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

2. Officer David Havard, Fond du Lac Police Department

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

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

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

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

3. Ben Sauriol, Winneconne Police Department

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

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

4. Cheryl L. Stieve, Wausau Police Department

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

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

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

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

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

6. Jill Vonnahme, Voces de la Frontera

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

> A Latino man was pumping gas in his car in Hartford, Wisconsin when approached by the police and asked for identification. After running his Mexican ID card, it was shown that he had an unpaid traffic ticket on his record. He was subsequently arrested and has been detained by immigration and customs enforcement for the past month while awaiting proceedings in his deportation.
>
> A Latino man was driving through Grafton late one night when he was pulled over by local law enforcement. As he knew he had not broken any traffic laws, he asked the police what the problem was. Several times, the police officer asked him, "What are you doing around here so late?" At no point in time could the officer give reason for the traffic stop. Due to the stop, it was revealed that the individual was driving without a valid license. His car was towed at his expense. He was ticketed.

7. Peggy Hong

Ms. Hong provided an Internet link to an essay about racial profiling involving her son. See *Crows, Gates and White Privilege*, July 28, 2009 at: *http://stillinsirsasana.blogspot.com/2009/07/crows-gates-and-white-privilege.html* also available in audio at *http://www.wuwm.com/programs/lake_effect/view_le.php?articleid=791.*

8. Chief T. Wheeler, Blair Police Department

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

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

Changes to the Rule

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

Attachments

Administrative Rules - Fiscal Estimate

Legislative Council *Clearinghouse Report to Agency*

ADMINISTRATIVE RULES – FISCAL ESTIMATE

1. Fiscal Estimate Version

☐ Original ☒ Updated ☐ Corrected

2. Administrative Rule Chapter Title and Number

OJA 1 Traffic Stop Data Collection and Analysis

3. Subject

Collection, transfer and analysis of race/ethnicity of occupants of vehicles subjected to traffic stops and searches.

4. **State Fiscal Effect:**

☐ No Fiscal Effect ☐ Increase Existing Revenue ☒ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenue ☒ Yes ☐ No
☐ Decrease Costs

5. Fund Source Affected:

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

6. Affected Ch. 20 Stats. Appropriations

20.505(6)(kp) Data gathering and analysis
20.505(6)(kq) Traffic stop data collection; state
20.505(6)(kr) Traffic stop data collection; local

7. **Local Government Fiscal Effect:**

☐ No Fiscal Effect ☐ Increase Revenue ☐ Increase Costs
☒ Indeterminate ☐ Decrease Revenue ☐ Decrease Costs

8. Local Government Units Affected:

☒ Towns ☒ Villages ☒ Cities ☒ Counties ☐ School Districts ☐ WTCS Districts ☐ Others

9. **Private Sector Fiscal Estimate (small business only):**

☒ **No Fiscal Effect** ☐ **Increase Existing Revenue** ☐ **Increase Costs**
☐ **Indeterminate** ☐ **Decrease Existing** ☐ **Yes** ☐ **No**
☐ **Yes** ☐ **No** ☐ **Decrease Costs**

10. Types of Small Businesses Affected:

No businesses are affected by this rule.

Fiscal Analysis Summary

Expenditure Item	FY10	FY11
Justice Gateway Modifications/Maintenance	$50,600	$364,200
Data Analysis	$0	$230,300
Grant Program for Locals	$0	$99,500
Law Enforcement Trainings	$0	$59,000
Required Reports	$0	$4,000
Total	$50,600	$757,000