

Clearinghouse Rule 10-010

PROPOSED ORDER OF THE STATE OF WISCONSIN OFFICE OF JUSTICE ASSISTANCE CREATING RULES

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.¹

Statutory Authority.

Section 16.964(16)(b), Stats.²

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 (OJA) 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, procedures, costs, staffing 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, vehicle, 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.

All of the OJA traffic stop reports shall be filed as required by statute and published on the agency's website. Section OJA 1.08.

Under section OJA 1.10, a law enforcement agency that does not 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, the 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, TraCS Program Manager, Wisconsin Department of Transportation.
- 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.

Listening Sessions were held by the Advisory Committee and OJA from 4 and 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.

This rule does not have a significant effect on small business.

Effect on small business.

This rule does 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 are to be submitted and deadline for submission.

The Office of Justice Assistance anticipates holding a public hearing in early April, 2010. Comments should be submitted to the agency contact person, Dennis Schuh, at the above address, by April 1, 2010.

Text of Proposed Rule

1 SECTION 1. Chapter OJA 1 is created to read:

2 **CHAPTER OJA 1**

3 **TRAFFIC STOP DATA COLLECTION AND ANALYSIS**

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

10 **OJA 1.02 Authority.** This chapter is promulgated under the authority of
11 s. 16.964 (16) (b), Stats.

12 **OJA 1.03 Definitions.** As used in this chapter:

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

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

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

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

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

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

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

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

11 (4) "MOU" means the memorandum of understanding between DOT and
12 OJA.

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

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

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

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

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

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

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

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

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

19 Note: see Appendix for examples of a traffic stop.

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

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

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

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

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

18 (c) Modifying existing forms, data tables and data fields for use in collecting
19 traffic stop data. For example, the DOT TraCS "Warning" form shall be modified to
20 include fields for traffic stop data.

1 (d) Specifying the procedures, schedules and forms that will be used to
2 collect traffic stop data, where and how long the data will be stored and how long it
3 will be retained.

4 (e) Costs.

5 (f) Staffing.

6 (g) Training that DOT and OJA will provide to law enforcement agencies
7 though the Internet and at classes and conferences.

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

9 **OJA 1.05 Types of information that law enforcement agencies must collect**
10 **relating to traffic stops.** Beginning January 1, 2011, for each traffic stop, the chief
11 officer of an agency shall require the officer making the traffic stop to record the
12 following information using a computer or a paper form:

13 (1) Operator data. With respect to the motor vehicle operator, the officer
14 shall record all of the following:

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

16 (b) The race or ethnicity of the motor vehicle operator. The race or ethnicity
17 recorded for the operator shall be the race or ethnicity identified on records of the
18 DOT. If the operator's race or ethnicity is not available to the officer from the DOT,
19 the operator' race or ethnicity shall be determined by the perception of the law

1 enforcement officer responsible for reporting the traffic stop. The officer shall not
2 require the person stopped to provide race or ethnicity information.

3 (2) Occupant data. With respect to the motor vehicle occupants, the
4 officer shall record all of the following:

5 (a) The number of occupants.

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

9 (3) Event data. With respect to the traffic stop, the officer shall record all of
10 the following:

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

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

17 (c) The make and model of vehicle, type of vehicle, state of vehicle
18 registration and the registration number.

19 (d) The reason for the stop.

20 (e) Disposition or outcome of the stop.

1 (f) The duration of the stop.

2 (4) Search data. Whether the operator, any occupant, or the vehicle was
3 searched and if so, the following:

4 (a) If a consent to search was requested and whether granted or denied.

5 (b) The basis for the search.

6 (c) The race or ethnicity of each person searched determined according to the
7 procedure in sec. 1.05(1)(b).

8 (d) Type of contraband, if found.

9 **OJA 1.06. The process and format that law enforcement agencies must use**
10 **to submit traffic stop data to OJA.** (1) The chief officer of each agency shall arrange
11 to have all traffic stop data submitted to OJA under one of the following procedures:

12 (a) A law enforcement officer who makes a traffic stop may submit the traffic
13 stop data directly to OJA if the officer has suitable electronic equipment to make the
14 submittal in accordance with accepted DOT standards and procedures.

15 (b) If a law enforcement officer who makes a traffic stop is unable to submit
16 the traffic stop data directly to OJA under sub. (a), the law enforcement officer shall
17 record the traffic stop data at the site of the stop either electronically or on a paper
18 form approved by OJA. The chief officer of the agency shall arrange to have traffic
19 stop data recorded under this subsection submitted to OJA electronically under the
20 procedures identified in the MOU. The chief officer of the agency shall not submit

1 more that one set of traffic stop data for each traffic stop. Paper submission of traffic
2 stop data to OJA may be made only after approval from OJA.

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

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

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

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

16 (2) As part of its analysis, OJA may analyze traffic stop data to determine the
17 extent to which a correlation exists between the race and ethnicity of vehicle
18 occupants and traffic stop events such as the duration or outcome of the stop, and
19 search requests. OJA may also note whether the existence of other factors, such as
20 specific law enforcement strategies, may contribute to disproportionalities in the

1 number of traffic stops involving motor vehicles operated or occupied by members
2 of a racial minority compared with traffic stops involving motor vehicles operated or
3 occupied solely by persons who are not members of a racial minority.

4 (3) Analytical tools and benchmarks. The office of justice assistance shall
5 identify benchmarks and other analytical tools used in preparing its reports.

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

9 (2) Reports by OJA under this chapter shall include analyses that are
10 statewide in scope and data sufficiently specific to permit local law enforcement
11 agencies to analyze enforcement activity in their local jurisdiction.

12 (3) Law enforcement agencies shall have access to the results of their data
13 submissions at least 30 days prior to the release of a statewide report that includes
14 the data.

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

17 **OJA 1.09. Availability of records.** The office of justice assistance shall
18 distribute information about the release of each OJA report to the news media and
19 by an announcement on its website. All reports of OJA made under this chapter
20 shall be published on the OJA website at <http://oja.wi.gov>.

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

5

6 **EFFECTIVE DATE.** This rule shall take effect on the first day of the month
7 following publication in the Wisconsin administrative register as provided in s.
8 227.22 (2) (intro.), Stats. except that section s. OJA 1.05 shall not take effect until
9 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 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 drivers 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 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 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 driver 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 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 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 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 vehicle would not be a “traffic stop” because the stop was not initiated by the officer.

F. Operator F’s 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 driver’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 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 vehicle.

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

<p>5. Fund Source Affected: <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>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</p>
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7. Local Government Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenue	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenue	<input type="checkbox"/> 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 Revenue Yes No
 Decrease Costs

10. Types of Small Businesses Affected:
 No businesses are affected by this rule.

Fiscal Analysis Summary

	Year 1	Year 2
OJA	\$610,516	\$489,586
DOA/DET	\$1,044	\$2,088
DOT	\$59,000	\$70,000

NOTES

¹ **349.027 Collection of information related to motor vehicle stops.**

(1) **Information collection required.** For each motor vehicle stop made on or after January 1, 2011, by a law enforcement officer, the person in charge of the law enforcement agency employing the law enforcement officer shall cause to be obtained all information relating to the traffic stop that is required to be collected under rules promulgated under s. 16.964(16)(b)1.

(2) **Submission of information collected.** The person in charge of a law enforcement agency shall submit the information collected under sub. (1) to the office of justice assistance using the process, and in the format, prescribed by the rules promulgated under s. 16.964(16)(b)2.

² **16.964 Office of justice assistance.**

(16)(a) The office shall analyze the information submitted to it by law enforcement agencies under s. 349.027(2) to determine whether the number of motor vehicle stops and searches involving motor vehicles operated or occupied by members of a racial minority is disproportionate to the number of motor vehicle stops and searches involving motor vehicles operated or occupied solely by persons who are not members of a racial minority.

(b) The office shall promulgate rules relating to all of the following:

1. The types of information that law enforcement agencies must collect relating to traffic stops and the circumstances under which this information must be collected.

2. The process and format that law enforcement agencies must use to submit to the office the collected information specified in subd. 1.

3. The types of analyses that the office will perform in fulfilling the requirement under par. (a).

4. Requirements for making reports to the legislature under s. 13.172(2), to the governor, and to the director of state courts.