

**University of North Texas**  
Racial Profiling Analysis  
of the  
Texas Department of Public Safety

**Summary of Findings**

**Purpose**

The purpose of this study is to perform an analysis of traffic stop data, by race and ethnicity, collected by the Texas Department of Public Safety (TX DPS).

**Race Known Prior to the Stop**

Of the 2,171,021 traffic stops conducted by Highway Patrol troopers throughout the state in 2017, the trooper knew the race/ethnicity of the violator prior to the stop only 11,209 times (0.52% of all traffic stops).

A trooper cannot racially profile a violator when making a traffic stop unless the trooper knows the race/ethnicity of the violator prior to the stop.

This percentage is consistent across law enforcement agencies throughout Texas. An analysis of all annual racial profiling reports in 2014 submitted to the Texas Commission on Law Enforcement, as required by the Texas racial profiling law, found that in 97.1% of the traffic stops in Texas the officer did not know the race or ethnicity of the violator prior to the stop.

**Explanation of Disparities Across Regions/Districts**

Variations in the number of traffic stops across TX DPS regions and districts can be due to deployment practices and Department initiatives.

- Border initiatives approved by the Texas Legislature in 2015 to add 250 troopers for border security and to conduct Operation Secure Texas
- Strategic initiatives such as Violent Crimes Task Force operations in San Antonio and Harris County

The variation in the number of troopers deployed in each region can impact any disparity analysis completed across regions and districts.

**Analysis of Traffic Stop Enforcement Action**

The current state of the racial profiling literature recognizes the issues discussed above [related to race known prior to stop] and now focuses more on post stop actions which occur after the officer has made initial contact with the violator after the traffic stop.

After the initial contact, the officer knows the race/ethnicity of the violator. Post stop actions include the enforcement action of the stop (i.e., citation vs. warning) and searches.

Texas DPS 05.01.05 Enforcement Policies policy, provides troopers direction on the factors to consider when making an enforcement action decision. According to the policy:

*Officers in deciding on enforcement action to be taken shall be guided by the policies enunciated in the Manual and shall disregard irrelevant factors such as*

- (1) intention to violate the law,*
- (2) attitude exhibited by the violator,*

- (3) lack of actual hazard, and*
- (4) frivolous excuses.*

*The type of enforcement action taken shall be based only on*

- (1) the seriousness of the offense,*
- (2) the degree of the violation, or*
- (3) the conditions and circumstances surrounding the offenses that might aggravate its potential effect.”*

However, under certain circumstances, written warnings cannot be issued which leaves the trooper with the options of arrest or citation. According to Texas DPS 05.01.02 Types of Enforcement Action policy:

*Written warnings will not be issued under any circumstances for:*

- a) Driving While Intoxicated*
- b) Public Intoxication*
- c) No drivers license when not licensed*
- d) Any nontraffic offense*
- e) Violations which contribute to a traffic crash*

### **Explanation of Disparities in Warnings/Citations**

To state the reason for the disparity in citation rate across race/ethnicity is due to race only and thus demonstrates racial profiling on the part of the Highway Patrol troopers, is conjecture.

As illustrated in the Texas DPS 05.01.05 Enforcement Policies policy, the enforcement action decision is both complex and nuanced. The enforcement action (i.e., citation or warning) taken by a trooper is based on several factors.

The enforcement decisions troopers make are based on several factors and not all the factors are indicated on the citation or warning and thus included in the TX DPS database, especially the conditions and circumstances surrounding the traffic offense.

Therefore, since most of the factors considered by the officer before taking the enforcement action are unknown (i.e., not in the TX DPS database), it is invalid to state the factor that explains the disparity in enforcement actions is race/ethnicity.

A pattern of disparities in traffic stop enforcement actions does not establish a pattern of racial profiling.

If a disparity alone is an indication of discrimination, then the police in the United States discriminate based on gender when making arrest decisions. According to the 2015 Uniform Crime Reports, of the 8.3 million arrests in the United States, 73.1% of the arrestees were male while 26.9% were female. However, the 2010 Census illustrates that 49.2% of the U.S. population is male. This disparity is clearly not evidence of gender discrimination by the police, but it is the same analysis done by some to claim racial profiling.

As another example, according to the 2016 Uniform Crime Reports, 30.4% of the arrests in the United States were of 15-24 years old. However, the 2010 U.S. Census shows that only 14.1% of the U.S. population is 15-24 years old. Once again, this disparity is clearly not evidence of age discrimination by the police, but it is the same analysis done by some to claim racial profiling.

A disparity in enforcement actions (i.e., citation vs. warning) can be due to numerous factors.

It is invalid to conclude that any racial disparity in enforcement action is due to racial profiling.

### **Search Analysis**

Most traffic stops do not include a search. In 2017, Highway Patrol troopers conducted 2,171,021 traffic stops throughout the state, but only 99,322 of the stops included a search.

Overall, 4.57% of the traffic stops included a search.

#### Search Analysis

The UNT research team separated the justifications for the searches into two categories: discretionary and non-discretionary.

Searches conducted incident to arrest, based on probable cause, and pursuant to a vehicle inventory are classified as non-discretionary.

A trooper cannot be determined to be racially profiling when department procedures or state law compels the trooper to conduct a search.

The individual's race or ethnicity is irrelevant to the search under these non-discretionary search circumstances.

Consent searches, since they are discretionary actions, are particularly scrutinized in racial profiling analyses.

Although not required by Texas law, TX DPS requires reasonable suspicion for consent searches that provides additional protection to Texas motorists.

As indicated in the consent search rate in the 2017 Highway Patrol statewide data, consent searches occur in approximately two or fewer stops for every 100 stops regardless of race/ethnicity.

With over 2 million traffic stops in 2017 by Highway Patrol troopers throughout the state and less than 35,000 consent searches, this is an indication to the UNT research team of the judicious use of consent searches by TX DPS troopers across all racial/ethnic groups.

### **Internal Controls**

The TX DPS has implemented proactive, internal controls in support of its zero-tolerance regarding racial profiling. The primary internal controls are discussed below.

- 1) Troopers are required to record audio and video of each traffic stop.
- 2) Troopers must set the audio/video recording unit's operator selector switch to "automatic mode" so that as the patrol vehicle's emergency lighting equipment is activated, the audio/video recording unit will automatically activate to begin recording the entire contact or event.
- 3) Patrol vehicle recording units are set to capture at least two minutes prior to the activation of the video unit so that events occurring immediately prior to a public contact are recorded."  
\*Not captured in the UNT study, but in 2018 the Department purchased and implemented a body camera program for every trooper.
- 4) TX DPS sergeants are required to conduct 20 hours of video observation review every six months.
- 5) TX DPS citations and warnings are printed with a toll free phone number to the TX DPS Office of Inspector General. The Inspector General is appointed by and reports directly to the Public Safety Commission and independently receives and investigates complaints, including complaints of racial profiling, brought against TX DPS commissioned officers.

- 6) As previously mentioned, although not required by Texas law, TX DPS requires reasonable suspicion for consent searches that provides additional protection to Texas motorists.
- 7) TX DPS has an Early Intervention System (EIS), which is designed to assist supervisors with timely identification of employees whose performance warrants review and, where appropriate, intervention. An alert for supervisory review is generated by the EIS when an employee meets, or exceeds, an established threshold in the following areas: informal citizen concerns, counseling/coaching record, use of force incident, vehicle crashes, vehicle pursuits, and Equal Employment Opportunity complaints.
- 8) TX DPS 05.01.02 Types of Enforcement Action policy requires troopers write a written warning if the violator is not arrested or issued a citation.

### **Conclusion**

As another example, the International Association of Chiefs of Police states department policies 'should clearly convey that behavior and evidentiary standards should guide stop and search decisions, not race or ethnicity.' The TX DPS policies discussed throughout this report demonstrate that TX DPS meets this standard.

As previously stated, **the UNT research team concludes that the TX DPS internal controls align with documented best practices and do not offer any recommended changes to its current practices, policies, and protocols.**

The UNT research team also concludes that some of the **TX DPS internal controls exceed documented best practices**. For example, requiring reasonable suspicion for consent searches is uncommon among law enforcement agencies and provides additional protection to Texas motorists. Due to this requirement, troopers must identify legal, articulable factors to believe the violator may be engaged in criminal activity before asking for permission/consent to search. In addition, by requiring a written warning, TX DPS collects the race/ethnicity of the violator on all traffic stops which provides the most comprehensive data available for racial profiling analysis.

**TX DPS should be lauded for its internal control mechanisms to inhibit racial profiling.**