



**TRAFFIC STOP CONSENT SEARCHES
ACROSS THE STATE OF ILLINOIS
AND BY THE ILLINOIS STATE POLICE**

**American Civil Liberties Union of Illinois
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SUMMARY

This report addresses consent searches of vehicles during routine traffic stops, a police practice subject to data collection and analysis pursuant to the Illinois Traffic Stop Statistical Study Act of 2003 (“Study Act”). *See infra* Part I.

Unfortunately, the data collected and analyzed by state government pursuant to the Study Act clearly demonstrate a dramatic and persistent racial disparate impact caused by consent searches of vehicles during routine traffic stops. Taking the State of Illinois as a whole, African-American and Hispanic motorists are about 2½ to 3½ times more likely than white motorists to be subjected to consent searches, and when such searches are performed they are only about one-half as likely as white motorists to be found in possession of contraband. *See infra* Part II. Taking the State Police in particular, African-American and Hispanic motorists are about 2 to 4 times more likely than white motorists to be subjected to consent searches, and when such searches are performed they are only about one-half to one-eighth as likely as white motorists to be found in possession of contraband. *See infra* Part III.

To begin to solve this grave and continuing problem, executive action is needed to prohibit the State Police from requesting and performing consent searches of vehicles during routine traffic stops. *See infra* Part IV.

I. BACKGROUND

A consent search occurs when a police officer does not have individualized suspicion or other legal cause to require a search, yet nevertheless requests that a civilian give permission for a search. Consent searches during routine traffic stops raise at least three serious civil rights concerns. *See infra* Part I(A). For this reason, the Study Act mandates close scrutiny of whether such consent searches have a disparate impact upon motorists of color. *See infra* Part I(B).

A. Three inherent problems with consent searches

First, in many cases, the motorist’s supposed “consent” to search is not truly voluntary. Consent is often granted on an isolated roadside in a one-on-one encounter with an armed law enforcement official. This setting is inherently coercive. Many civilians believe they must grant consent. Other civilians fear the consequences of refusing to grant consent, such as the issuance of extra traffic citations, or the delay caused by further interrogation or bringing a drug-sniffing dog to the scene.

Second, once consent is granted, the result is an intrusive and publicly humiliating search of one’s car and/or person. *See Terry v. Ohio*, 392 U.S. 1, 24-25 (1968) (describing a pat-down frisk of one’s body as a “severe” intrusion, and as “annoying, frightening, and perhaps humiliating”); *Florida v. J.L.*, 529 U.S. 266, 272 (2000) (describing such frisks as “intrusive” and “embarrassing”).

Third, because the decision whether to request consent to search is typically based on the subjective judgment of individual police officers, consent searches are inherently susceptible to bias, conscious or otherwise. From a management perspective, consent searches are particularly troublesome. Since they are subjective, they are not subject to meaningful supervisory review.

B. Data collection about consent searches

The Study Act seeks to deter and detect bias-based policing during routine traffic stops, including in the use of consent searches. The Study Act does so by requiring all police officers in Illinois to document all of their traffic stops. 625 ILCS 5/11-212(a) & (b). As originally enacted in 2003, the mandated documentation includes: the race of the motorist, *id.* at §§ (a)(1) & (b)(1); and whether a consent search was performed, *id.* at §§ (a)(6) & (b)(6). As amended in 2006, the mandated documentation also includes: whether a consent search yielded the discovery of contraband, *id.* at §§ (a)(6.5) & (b)(6.5); whether consent to search was requested by the officer and denied by the civilian, *id.* at §§ (a)(5.5) & (b)(5.5); and the duration of the stop, *id.* at §§ (a)(4) & (b)(4).

Every police agency in the State of Illinois must periodically submit its traffic stop data to the Illinois Department of Transportation (“IDOT”). *Id.* at § (d). IDOT in turn must by July 1 of every year submit to the state’s elected leaders a report regarding the prior year’s data. *Id.* at § (e). In doing so, IDOT is authorized to contract with an outside entity. *Id.*

IDOT has contracted with the Northwestern University Center for Public Safety (“Northwestern”) to analyze the data compiled pursuant to the Study Act. So far, Northwestern and IDOT have released four annual reports, regarding traffic stops occurring in calendar years 2004 through 2007. The most recent report was released earlier this month. Each annual report begins with a summary of findings and methodology. The reports then present a single data sheet for each of the 1,000 or so police agencies in Illinois. All four Northwestern summaries are attached hereto, as exhibits 1 through 4. The summaries are also available on the IDOT website. *See* www.dot.state.il.us/trafficstop/results.html.

The Study Act’s data collection and analysis system is currently scheduled by statute to sunset on July 1, 2010. *See* 625 ILCS 5/11-212(i).

II. STATEWIDE DATA

Northwestern has made three critical statewide findings regarding the impact on minority drivers of consent searches during routine traffic stops:

- 1) In 2004 through 2007, motorists of color were 2½ to 3½ times more likely than white motorists to be subjected to consent searches. *See infra* Part II(A).

- 2) In 2007 (the one year so far with a mandate to collect the relevant data), motorists of color were only half as likely as white motorists to be found in possession of contraband when they were subjected to consent searches. *See infra* Part II(B).
- 3) In 2007, motorists of all races granted consent to search at nearly the same rate, thereby refuting the hypothesis that the racial disparity in consent search rate might be explained by a racial disparity in consent denial rate. *See infra* Part II(C).

Moreover, the Northwestern data for 2007 shows, statewide, that traffic stops of minority drivers lasted longer than those of white drivers. *See infra* Part II(D).

A. Racial disparity in who is subjected to consent searches

According to the Northwestern study of 2004 traffic stops:

The most troublesome area of the 2004 analysis is consent searches. While the number of consent searches is relatively small (1.3% of all stops) there is, nonetheless, a rather large disparity in the consent search data. In many communities minority drivers are two to three times as likely (statewide 2.6 times as likely) to be the subject of a consent search . . . This disparity is, coincidentally, very much like that which is found in communities throughout the country. Consent searches remain a very critical issue for many law enforcement agencies. The California Highway Patrol, for example, recently suspended the use of this strategy.

See Exh. 1 at p. 8.

According to the Northwestern study of 2005 traffic stops:

[A]pplication of consent searches by race has become more problematic. The vehicles of minority drivers are now 2.8 times as likely to be subject to a consent search as those of Caucasian drivers. The disproportionality is more pronounced when viewed by individual race. In 2005 an African American was 3.3 times as likely to be the subject of a consent search as a Caucasian driver; a Hispanic 2.7 times as likely.

See Exh. 2 at p. 7.

According to the Northwestern study of 2006 traffic stops:

[T]here is still evidence of racial disproportionality in the application of consent searches. In 2006, .68 percent of Caucasian drivers were consent searched; 2.04 percent of minority drivers were consent searched. In other

words, a minority driver was three times as likely to be consent searched than a Caucasian driver. This is up slightly over the 2.8 ratio in 2005.

See Exh. 3 at p. 8.

Finally, according to the Northwestern study of 2007 traffic stops:

As in past years, in 2007 consent searches were conducted disproportionately by race. . . . [A] Hispanic driver is 2.4 times as likely to be the subject of a consent search as a Caucasian driver, and an African-American driver is about 3 times as likely as a Caucasian driver.

See Exh. 4 at p. 10.

The following chart summarizes, for 2004 through 2007, the racial disparity in the statewide rate of consent searches per traffic stop. Specifically, it addresses how many times more likely a minority motorists is, compared to a white motorist, to be subjected to a consent search. The figures in this chart for 2005 and 2007 come from the Northwestern reports, and for 2004 and 2006 come from our calculations based on the Northwestern data. See Exh. 5.

	Black/White	Hispanic/White
2004	3.1	2.4
2005	3.3	2.7
2006	3.6	2.6
2007	3.0	2.4

B. Racial disparity in who is found with contraband

According to the Northwestern summary regarding 2007 traffic stops statewide:

In 2007 when the vehicle of a Caucasian driver was consent searched, police officers found contraband 24.56% of the time. By contrast when a vehicle driven by a minority driver was consent searched, officers found contraband 12.93% of the time. Thus although minority drivers are about 2.5 times as likely as Caucasian drivers to be the subject of a consent search, they are half as likely to have contraband in their vehicle. This pattern is quite consistent with results found in other studies.

Another way to think about the relationship between race and hit rate is to calculate the *conditional probability*. That is, we calculate the probability of finding contraband given the probability of having been consent searched. For Caucasian drivers the conditional probability of finding contraband, given the probability of being searched, is 41%. For minority drivers the conditional probability is 8%. Conditional probability is

calculated by dividing the probability of finding contraband by the probability of being consent searched.

See Exh. 4 at pp. 11-12 (emphasis in original).

Our calculations based on the Northwestern statewide data for 2007 show that Hispanic motorists have an 11.3% hit rate, and African-American motorists have a 13.8% hit rate. *See* Exh. 6. In the words of the Northwestern report, each of these figures is about “half” of the white hit rate of 24.6%. *See* Exh. 4 at 11.

There is no Northwestern analysis or published data regarding hit rates for 2004 through 2006, because the Study Act in those years did not mandate collection and analysis of whether consent searches yielded contraband. *See* Exh. 4 at 11.

C. No racial disparity in who refuses consent to search

The statewide consent search per stop rate is higher for minority motorists than white motorists. *See supra* Part II(A). Some law enforcement officials and commentators have argued that this is not because officers are more likely to ask minority motorists than white motorists for consent to search, but instead because minority motorists are more likely than white motorists to give consent when asked. This argument often rests on speculation that minority motorists are less aware than white motorists of their constitutional right to refuse consent to search. *See, e.g.*, Exh. 7 (*Chicago Sun-Times* article of September 11, 2005) at p. 2 (“It’s quite possible that Caucasians said ‘no’ more often,” according to the LaGrange Police Chief, who also noted that the Study Act at that time did not address “no” responses). To address this theory, the Study Act was amended in 2006 to require collection and analysis of data regarding the rate at which motorists of different racial groups grant or deny requests by officers for consent to search. 625 ILCS 5/11-212(a)(5.5) & (b)(5.5).

According to the Northwestern study of 2007 traffic stops statewide:

In the statewide data we found very similar experience across races relative to refusal. Caucasian drivers agreed to consent searches 91.45% of the time, while minority drivers agreed 90.31%. We also obtained the consent search rates by individual race. This data is described below [to wit, 90.23% for African-Americans, 89.65% for American Indians, 90.39% for Hispanics, and 91.11% for Asians]. As can be seen, there is little evidence to suggest that differential search rates can be explained by differential consent rates.

See Exh. 4 at 10.

D. Racial disparity in the duration of traffic stops

The data in the Northwestern report show, for 2007, a statewide racial disparity in the duration of traffic stops. Specifically, the statewide mean duration for a traffic stop is 12 minutes for white drivers, 13 minutes for African-American drivers, and 14 minutes for Hispanic drivers. *See* Exh. 8. There is no such Northwestern data for 2004 through 2006, because the Study Act in those years did not mandate collection and analysis of such data.

Consent searches increase the duration of a traffic stop. Thus, a considerable portion of this duration disparity is probably attributable to the aforementioned consent search disparity. We thus respectfully disagree with Northwestern's conclusion that this duration disparity comprises "very little difference." *See* Exh. 4 at 9.

III. ILLINOIS STATE POLICE

There are several reasons why a discussion of the racial disparate impact of traffic stop consent searches should focus not just on statewide data in general, but also upon the Illinois State Police in particular. First, the State Police is the second-largest police force in the State of Illinois. Second, the State Police has a significant impact on law enforcement policy and practice throughout the State of Illinois, and also nationally. Third, the State Police is led by the Governor of the State of Illinois.

The Northwestern data sheets for the State Police contain substantial information regarding State Police consent searches during routine traffic stops. Our simple calculations based on these Northwestern data sheets establish that the State Police is exemplary of all four of the statewide phenomena discussed above:

- 1) In 2004 through 2007, motorists of color stopped by the State Police were two to four times more likely than white motorists to be subjected to consent searches. *See infra* Part III(A).
- 2) In 2007, motorists of color subjected to consent searches by State Police troopers were only one-half to one-eighth as likely as white motorists to be found in possession of contraband. *See infra* Part III(B).
- 3) In 2007, when State Police troopers requested consent to search, motorists of all races granted consent at nearly the same rate. *See infra* Part III(C).
- 4) In 2007, State Police traffic stops took longer for minority motorists than for white motorists. *See infra* Part III(D).

A. Racial disparity in who is subjected to consent searches

The following chart summarizes, for the State Police in 2004 through 2007, the racial disparity in the rate of consent searches per traffic stop. Specifically, it addresses how

many times more likely a minority motorists is, compared to a white motorist, to be subjected to a consent search by a State Police trooper. This chart reflects our calculations based on the Northwestern data. *See* Exh. 9.

	Black/White	Hispanic/White
2004	1.8	2.9
2005	1.8	3.8
2006	1.8	4.0
2007	3.2	3.5

At the time of the release of the first set of traffic stop data in July 2005, Governor Blagojevich instructed the State Police to bring in a team of national experts to perform further analysis of the data. *See* Exh. 10 at 2. The State Police then retained a division of the University of Texas (“UT”) to analyze the data. The resulting UT study found through multi-variable regression analysis that minority motorists are 2.62 times more likely than white motorists to be searched during State Police traffic stops, even controlling for factors such as vehicle age, weekend nights, and State Police trooper rank and seniority. *See* Exh. 11 at pp. 1, 8. This UT report did not examine consent searches in particular, as opposed to all searches generally. Nonetheless, this UT finding regarding all kinds of State Police searches during traffic stops is congruent with the foregoing Northwestern data regarding State Police consent searches.

B. Racial disparity in who is found with contraband

Our calculations based on the Northwestern data sheet for the State Police in 2007 show the following hit rates: 8.9% for white motorists; 5.1% for African-American motorists; and 1.1% for Hispanic motorists. The white hit rate is eight times larger than the Hispanic hit rate, and nearly twice as high as the black hit rate. The Hispanic-to-white hit rate gap for the State Police is four times larger than the corresponding statewide gap. Strikingly, of the 179 State Police consent searches of vehicles driven by Hispanic motorists, *only two* yielded contraband. *See* Exh. 12. In short, for State Police consent searches in 2007, motorists of color are far more likely than white motorists to be consent searched, and far less likely to be found in possession of contraband.

C. No racial disparity in who refuses consent to search

Our calculations based on the Northwestern data sheet for the State Police in 2007 show very little variance in the rates that different races grant or refuse requests for consent to search. Specifically, the rates that motorists grant consent to search are: 93.9% for white motorists; 96.0% for African-American motorists; and 96.4% for Hispanic motorists. *See* Exh. 13. This minimal State Police spread between racial groups is comparable to the aforementioned statewide spread, which according to Northwestern comprised “little evidence to suggest that differential search rates can be explained by differential consent rates.” *See* Exh. 4 at 10.

D. Racial disparity in the duration of traffic stops

The Northwestern data sheet for the State Police in 2007 states that the mean duration for a traffic stop is: 14 minutes for white drivers; 16 minutes for black drivers; and 18 minutes for Hispanic drivers. *See* Exh. 14. This State Police duration gap is far larger than the statewide duration gap (*i.e.*, 12 minutes for white drivers, 13 minutes for black drivers, and 14 minutes for Hispanic drivers). *See* Exh. 8. The consent search racial disparity is probably a substantial part of the duration racial disparity. *See supra* Part II(D).

IV. SOLUTION

The foregoing data clearly demonstrate that consent searches have a dramatic disparate impact against Hispanic and African-American motorists, on a statewide basis and by the State Police in particular. The answer is to abolish consent searches during routine traffic stops. This measure has precedent: the California Highway Patrol in 2003 suspended its use of consent searches. *See* Exh. 1 (Northwestern report of July 2005) at p. 8; Exh. 3 (Northwestern report of June 2007) at p. 7. As to the State Police, this measure could be accomplished immediately by executive action, such as a Governor's executive order or a State Police Director's directive.