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June 7, 2010

VIA MAIL, E-MAIL to AND FAX (202) 514-0212

Thomas E. Perez
Assistant Attorney General, Civil Rights Division
Jonathan M. Smith
Chief, Special Litigation Section
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Complaint and request for investigation of Illinois State Police consent searches

Dear Assistant Attorney General Perez and Section Chief Smith:

I write on behalf of the American Civil Liberties Union of Illinois, and its 20,000 members and supporters throughout the state, to complain against and to ask the Special Litigation Section of the Civil Rights Division to investigate the Illinois State Police (“ISP”) concerning the substantial racial disparate impact caused by ISP consent searches to Hispanic and African American motorists.¹

Part I of this letter identifies the inherent danger that consent searches will invade civil rights and civil liberties. Part II describes the Illinois Traffic Stop Statistical Study Act of 2003, which mandates data collection and analysis about consent searches during routine traffic stops.

Part III sets forth the Study Act data showing the dramatic and persistent racial disparate impact caused by ISP consent searches. Critically, Hispanic and African American motorists are far more likely than white motorists to be subjected to ISP consent searches, yet white motorists subjected to ISP consent searches are far more likely than Hispanic and African American motorists to be found with contraband. For example, in 2009, the most recent year with publicly available data, Hispanic motorists were three times more likely than white motorists to be

¹ We submit this complaint and request pursuant to the U.S. Department of Justice’s civil rights enforcement powers under 42 U.S.C. § 14141(a) & (b) (the Violent Crime Control and Law Enforcement Act of 1994), 42 U.S.C. § 3789d(c)(1) & (c)(3) (the Omnibus Crime Control and Safe Streets Act of 1968), 42 U.S.C. § 2000d (Title VI of the Civil Rights Act of 1964), and the applicable regulations promulgated pursuant to those Acts.

consent searched, yet white motorists were three times more likely than Hispanic motorists to be found with contraband.

Part IV briefly addresses the racial disparate impact caused by other ISP searches. Part V suggests a solution to this problem: a prohibition of consent searches by the ISP. Part VI shows that for many years, Illinois' government has known about this problem but failed to solve it. Part VII briefly suggests a few statistical techniques that the Special Litigation Section might use to investigate this matter.

I. The inherent hazards of consent searches

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 and civil liberties concerns.

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. Thus, the overwhelming majority of motorists (94% to 99%), consent to a search when requested to do so by an ISP trooper. *See infra* pp. 4.

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 "hunch" 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.

II. The Illinois Traffic Stop Statistical Study Act

The Illinois Traffic Stop Statistical Study Act of 2003 ("the Study Act") requires all police officers in Illinois (including ISP troopers) to document all of their traffic stops, including motorist race and whether a consent search was performed. It also requires all police agencies in Illinois (including the ISP) to report their stops data to the Illinois Department of Transportation ("IDOT"). It then requires IDOT to publish an annual report about this data, with assistance from university scholars. *See* 625 ILCS 5/11-212. President Barack Obama, then an Illinois State Senator, was a leading architect of the Study Act. The Study Act's original sunset was December 2007.

In 2006, the Study Act was amended in three ways. *See* Public Act 94-997. First, the amendment required the collection, reporting, and analysis of a richer set of data regarding consent searches, to wit, whether contraband was found, and whether a motorist refused to grant consent to search. *See* 625 ILCS 5/11-212(a)(4), (5.5), (6.5). Second, the amendment extended the Study Act’s sunset to July 2010. Third, the amendment created the Racial Profiling Prevention and Data Oversight Board, with a mission to examine the Study Act data, and to make appropriate recommendations. *See* 20 ILCS 2715.

In 2009, the Study Act was amended to extend the sunset to July 2015. *See* Public Act 96-658.

Pursuant to the Study Act, IDOT has published annual reports for traffic stops that occurred during the six years from 2004 through 2009. The reports for 2004 through 2007 were prepared by Northwestern University’s Center for Public Safety. The reports for 2008 and 2009 were prepared by the University of Illinois at Chicago’s Center for Research in Law and Justice. The reports are available on the IDOT website.²

III. Study Act data regarding ISP consent searches

The Study Act data show that ISP consent searches have a persistent and dramatic racial disparate impact against Hispanic and African American motorists. *See generally* Exh. 1 (IDOT’s one-page data sheets for the ISP in 2004 through 2009).

First, Hispanic and African American motorists were far more likely than white motorists to be subjected to ISP consent searches. Specifically, as shown in the chart immediately below, Hispanic motorists were 2.7 to 4.0 times more likely to be consent searched, and African American motorists were 1.8 to 3.2 times more likely. *See also* Exh. 2 (detailed chart).

Consent searches per traffic stop, rates compared

	Hispanic/White	Black/White
2004	2.85	1.82
2005	3.84	1.77
2006	3.95	1.77
2007	3.49	3.17
2008	2.71	2.86
2009	3.18	2.89

Second, white motorists subjected to ISP consent searches were far more likely than Hispanic and African American motorists to be found with contraband, as shown in the chart immediately below. *See also* Exh. 3 (detailed chart).

² *See* www.dot.state.il.us/trafficstop/results.html.

Contraband finds per consent search, rates compared

	White/Hispanic	White/Black
2007	7.92	1.75
2008	1.31	1.02
2009	2.69	1.09

According to a leading treatise regarding traffic stop data:

[A] finding . . . that there is a lower rate of search hits for minorities than for Caucasians . . . indicates that different standards were utilized in selecting Caucasians and minorities for searches. Specifically, the implication is that a lower standard of proof was applied to searches of minorities than to searches of Caucasians.

See Police Executive Research Forum, *By the numbers: A guide for analyzing race data from vehicle stops* (2004) at p. 274.³

Third, motorists of all races almost always granted consent to search when ISP troopers asked for it, as shown in the chart immediately below. See also Exh. 4 (detailed chart).

Consents granted per consents requested

	White	Black	Hispanic
2007	94%	96%	96%
2008	96%	98%	99%
2009	96%	97%	98%

These very high consent rates – across race and across time – are doubly significant. First, they show that so-called “consent” searches by ISP troopers might not be perceived as consensual by motorists. Second, they show that the substantial racial disparity in which motorists are consent searched by ISP troopers cannot be explained by a racial disparity in which motorists grant consent.

IV. Other ISP searches

The ISP retained Prof. Timothy Bray of the University of Texas at Dallas to analyze its Study Act data. In July 2006, Prof. Bray submitted to the ISP a report regarding ISP searches in 2004. See Exh. 5 (the Bray report). Prof. Bray concluded that minority motorists were 2.62 times more likely than white motorists to be searched by ISP troopers, even after controlling for non-racial factors like vehicle age, weekend nights, and trooper rank and seniority. *Id.* at pp. 1, 8. This report did not examine consent searches in particular, as opposed to all searches generally. Nonetheless, this report’s finding regarding all searches is congruent with the foregoing Study Act data regarding consent searches.

³ See http://www.policeforum.org/upload/BytheNumbers%5B1%5D_715866088_12302005121341.pdf.

V. The solution: a ban on ISP consent searches

The solution is a prohibition of consent searches by ISP troopers during routine traffic stops. These consent searches cause the severe racial disparity discussed above. Moreover, consent searches are coercive and invasive of the privacy of motorists of all races.

VI. Illinois' failure to solve this problem

Time and again, Illinois' government has been advised of the substantial racial disparate impact caused by the ISP's consent searches, and has failed to solve the problem.

In July 2005, in response to the IDOT report regarding the first year of Study Act data, the former Illinois Governor concluded: "The study's most troubling finding is that minorities are more than two and a half times as likely overall to be the subject of a consent search." *See* Exh. 6 (press release). Illinois responded by collecting better data about consent searches. *See supra* pp. 2-3. However, Illinois took no action to regulate consent searches.

In July 2006, the ISP received the aforementioned report from Prof. Bray, showing that minority motorists were 2.62 times more likely than white motorists to be searched by ISP troopers, even after controlling for non-racial factors. *See supra* p. 4. There is no indication that the ISP received or implemented any recommendations to address this racial disparity.

In July 2008, the ACLU published a report regarding the substantial racial disparate impact caused by the ISP's consent searches. *See* Exh. 7. This report was the lead story in the print edition of the *Chicago Tribune* on July 25, 2008. *See* Exh. 8. At that time, the ACLU and six other civil rights groups sent the former Illinois Governor a letter asking him to end ISP consent searches. *See* Exh. 9. The Governor did not respond.

In April 2009, the ACLU published a new report regarding the ISP's consent searches. *See* Exh. 10. At that time, the ACLU and twelve other civil rights groups sent letters to both the current Illinois Governor and the Speaker of the Illinois House of Representatives, asking them to end ISP consent searches. *See* Exhs. 11 and 12. Again, no action was taken to limit consent searches.

Finally, the aforementioned Illinois Racial Profiling Prevention and Data Oversight Board was created in 2006 (*see supra* pp. 3), but it has never met.

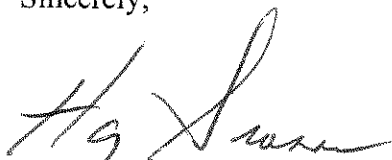
VII. Additional statistical analysis

If the Special Litigation Section investigates this matter, we urge it to expand the scope of its inquiry beyond consent searches and information that is available to the public through the Study Act. For example, the Special Litigation Section might analyze hit rates for searches based on reasonable suspicion; make trooper-by-trooper comparisons; and perform regression analysis of factors like those in the report of Prof. Bray, among others.

* * *

Thank you for your prompt attention to the ACLU's request that the Special Litigation Section investigate the ISP concerning the racial disparate impact caused by ISP consent searches during routine traffic stops. If you have any questions, please do not hesitate to contact me at (312) 201-9740, extension 321, or at hgrossman@aclu-il.org.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Grossman". The signature is fluid and cursive, with the first name "H." and the last name "Grossman" clearly visible.

Harvey Grossman
Legal Director
American Civil Liberties Union of Illinois

Agency: ILLINOIS STATE POLICE

▪ Stops

	Caucasian Drivers	Minority Drivers
Total Stops	290224	95587
Percentage Stops	75.22 %	24.77 %
Estimated Minority Driving Population		28.48 %
Ratio		.86

▪ Reason for Stop

	Caucasian Drivers		Minority Drivers	
Total	290224		95587	
Moving Violations	200849	69.20 %	67542	70.66 %
Equipment Violations	78858	27.17 %	22233	23.25 %
Licensing / Registration Violations	10517	3.62 %	5812	6.08 %

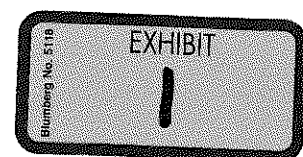
▪ Outcome of Stop

	Caucasian Drivers		Minority Drivers	
Total	290224		95587	
Citation	164934	56.82 %	58482	61.18 %
Written Warning	123571	42.57 %	36618	38.30 %
Verbal Warning / Stop Card	1719	.59 %	487	.50 %

▪ Searches

	Caucasian Drivers		Minority Drivers	
Total	290224		95587	
Consent Searches	1119	0.38 %	750	0.78 %

Key Indicators		Total	Caucasian	African American	Hispanic	Asia	Am. Indian	N/S
Stops		385811	290224	59602	27056	8035	894	0
Reason for Stop	Moving	268391	200849	42355	17962	6545	680	0
	Equipment	101091	78858	13402	7459	1214	158	0
	License	16329	10517	3845	1635	276	56	0
	N/S	0	0					0
Outcome of Stop	Citation	223416	164934	36518	16524	4955	485	0
	Written Warning	160189	123571	22787	10371	3052	408	0
	Verbal Warning/ SC	2206	1719	297	161	28	1	0
	N/S	0	0	0	0	0		0
Searches	Consent	1869	1119	418	297	32	3	0



Agency: ILLINOIS STATE POLICE

▪ Stops

	Caucasian Drivers	Minority Drivers
Total Stops	328420	112064
Percentage Stops	74.56 %	25.44 %
Estimated Minority Driving Population		28.48 %
Ratio		.89

▪ Reason for Stop

	Caucasian Drivers		Minority Drivers	
Total	328420		112064	
Moving Violations	226933	69.10 %	78950	70.45 %
Equipment Violations	88224	26.86 %	26694	23.82 %
Licensing / Registration Violations	13263	4.04 %	6420	5.73 %

▪ Outcome of Stop

	Caucasian Drivers		Minority Drivers	
Total	328420		112064	
Citation	192406	58.59 %	70348	62.77 %
Written Warning	135090	41.13 %	41491	37.02 %
Verbal Warning / Stop Card	924	.28 %	225	.20 %

▪ Searches

	Caucasian Drivers		Minority Drivers	
Total	328420		112064	
Consent Searches	1923	0.59 %	1520	1.36 %

Key Indicators		Total	Caucasian	African American	Hispanic	Asia	Am Indian	N/S
Stops		440484	328420	69543	32450	9240	831	0
Reason for Stop	Moving	305883	226933	49069	21614	7629	638	0
	Equipment	114918	88224	16131	9034	1374	155	0
	License	19683	13263	4343	1802	237	38	0
	N/S	0	0	0	0	0	0	0
Outcome of Stop	Citation	262754	192406	43402	20497	5988	461	0
	Written Warning	176581	135090	26018	11867	3238	368	0
	Verbal Warning/ SC	1149	924	123	86	14	2	0
	N/S	0	0	0	0	0	0	0
Searches	Consent	3443	1923	720	729	66	5	0

Agency: ILLINOIS STATE POLICE

Stops

	Caucasian Drivers	Minority Drivers
Total Stops	337529	122204
Percentage Stops	73.42 %	26.58 %
Estimated Minority Driving Population		28.48
Ratio		.93

Reason for Stop

	Caucasian Drivers		Minority Drivers	
Total	337529		122204	
Moving Violations	237835	70.46 %	85607	70.05 %
Equipment Violations	87754	26.00 %	28662	23.45 %
Licensing / Registration Violations	11940	3.54 %	7935	6.49 %

Outcome of Stop

	Caucasian Drivers		Minority Drivers	
Total	337529		122204	
Citation	199478	59.10 %	74482	60.95 %
Written Warning	137414	40.71 %	47550	38.91 %
Verbal Warning / Stop Card	637	.19 %	172	.14 %

Searches

	Caucasian Drivers		Minority Drivers	
Total	337529		122204	
Consent Searches	1819	0.54 %	1528	1.25 %

Key Indicators		Total	Caucasian	African American	Hispanic	Asia	Am. Indian	N/S
Stops		459733	337529	78721	32868	9805	810	0
Reason for Stop	Moving	323442	237835	54651	22284	8056	616	0
	Equipment	116416	87754	18262	8784	1447	169	0
	License	19875	11940	5808	1800	302	25	0
	N/S	0	0	0	0	0	0	0
Outcome of Stop	Citation	273960	199478	47128	20496	6379	479	0
	Written Warning	184964	137414	31492	12316	3411	331	0
	Verbal Warning/ SC	809	637	101	56	15	0	0
	N/S	0	0	0	0	0	0	0
Searches	Consent	3347	1819	752	700	68	8	0

Agency: ILLINOIS STATE POLICE

Stops		
	Caucasian Drivers	Minority Drivers
Total Stops	364377	130476
Percentage Stops	73.63	26.37
Duration (mean/median)	14/12	16/15
Estimated Minority Driving Population		28.48
Ratio		.93

Reason for Stop				
	Caucasian Drivers		Minority Drivers	
Total	364377		130476	
Moving Violations	267250	73.3%	96246	73.77%
Equipment Violations	85276	23.4%	26691	20.46%
Licensing / Registration Violations	11851	3.3%	7539	5.78%

Outcome of Stop				
	Caucasian Drivers		Minority Drivers	
Total	364377		130476	
Citation	215880	59.25%	79583	60.99%
Written Warning	147871	40.58%	50695	38.85%
Verbal Warning / Stop Card	626	.17%	198	.15%

Consent Searches				
	Caucasian Drivers		Minority Drivers	
Total	364377		130476	
Requested	591	0.16 %	636	0.49 %
Granted	555	93.91 %	612	96.23 %
Performed	520	93.69 %	571	93.3 %
Found	46	8.85 %	22	3.85 %

Key Indicators		Total	Caucasian	African American	Am. Indian	Hispanic	Asian	N/S
Stops		494853	364377	82954	713	35933	10876	0
Duration (mean/median)		15/12	14/12	16/15	14/12	18/15	14/12	0/0
Reason for Stop	Moving	363496	267250	60562	590	25952	9142	0
	Equipment	111967	85276	17089	101	8063	1438	0
	License	19390	11851	5303	22	1918	296	0
	N/S	0	0	0	0	0	0	0
Outcome of Stop	Citation	295463	215880	49886	446	22284	6967	0
	Written Warning	198566	147871	32936	266	13601	3892	0
	Verbal Warning/ SC	824	626	132	1	48	17	0
	N/S	0	0	0	0	0	0	0
Consent Searches	Requested	1227	591	421	0	196	19	0
	Granted	1167	555	404	0	189	19	0
	Performed	1091	520	375	0	179	17	0
	Found	68	46	19	0	2	1	0

ILLINOIS TRAFFIC STOP STUDY, 2008

Agency: ILLINOIS STATE POLICE

	Stops	
	Caucasian Drivers	Minority Drivers
Total Stops	342352	112924
Percentage Stops	75.2	24.8
Duration (Mean\Median)	14\12	16\15
Estimated Minority Driving Population		28.48
Ratio		0.87

	Reason for Stop			
	Caucasian Drivers		Minority Drivers	
Total	342352		112924	
Moving Violations	251321	73.41%	81655	72.31%
Equipment Violations	80728	23.58%	26240	23.24%
Licensing / Registration Violations	10303	3.01%	5029	4.45%

	Outcome for Stop			
	Caucasian Drivers		Minority Drivers	
Total	342352		112924	
Citation	196203	57.31%	67626	59.89%
Written Warning	145595	42.53%	45138	39.97%
Verbal Warning/ Stop Card	554	0.16%	160	0.14%

	Consent Searches			
	Caucasian Drivers		Minority Drivers	
Total	342352		112924	
Requested	570	0.17%	467	0.41%
Granted	548	96.14%	458	98.07%
Performed	480	87.59%	416	90.83%
Found	108	22.50%	84	20.19%

Key Indicators		Total	Caucasian	African American	Am. Indian	Hispanic	Asian	N/S
Stops		455276	342352	683787	41	33750	10055	0
Duration(Mean/Median)		15\12	14\12	16\15	15\13	17\15	14\12	0\0
Reason For Stop	Moving	332976	251321	491076	14	23592	8342	0
	Equipment	106968	80728	159741	11	8685	1470	0
	License	15332	10303	3297	16	1473	243	0
	N/S	0	0	0	0	0	0	0
Outcome Of Stop	Citation	263829	196203	406375	08	20379	6102	0
	Written Warning	190733	145595	276402	32	13326	3940	0
	Verbal Warning/ SC	714	554	101	1	45	13	0
Consent Searches	N/S	0	0	0	0	0	0	0
	Requested	1037	570	306	1	147	13	0
	Granted	1006	548	299	1	145	13	0
	Performed	896	480	277	1	128	10	0
	Found	192	108	61	0	22	1	0

ILLINOIS TRAFFIC STOP STUDY, 2009

Agency:

ILLINOIS STATE POLICE

Stops

	Caucasian Drivers	Minority Drivers
Total Stops	340485	118683
Percentage Stops	74.15	25.85
Duration (Mean\Median)	14\12	16\15
Estimated Minority Driving Population Ratio		28.48
		0.91

Reason for Stop

	Caucasian Drivers		Minority Drivers	
Total	340485		118683	
Moving Violations	259487	76.21%	89303	75.24%
Equipment Violations	72371	21.26%	24802	20.90%
Licensing / Registration Violations	8627	2.53%	4578	3.86%

Outcome for Stop

	Caucasian Drivers		Minority Drivers	
Total	340485		118683	
Citation	190807	56.04%	68535	57.75%
Written Warning	149200	43.82%	50011	42.14%
Verbal Warning/ Stop Card	478	0.14%	137	0.12%

Consent Searches

	Caucasian Drivers		Minority Drivers	
Total	340485		118683	
Requested	521	0.15%	480	0.40%
Granted	501	96.16%	469	97.71%
Performed	460	91.82%	443	94.46%
Found	104	22.61%	73	16.48%

Key Indicators	Total	Caucasian	African American	Am. Indian	Hispanic	Asian	N/S	
Stops	459168	340485	74054	826	33295	10508	0	
Duration(Mean/Median)	14\12	14\12	15\14	15\15	17\15	14\12	0\0	
Reason For Stop	Moving	348790	259487	55288	694	24245	9076	0
	Equipment	97173	72371	15521	114	7920	1247	0
	License	13205	8627	3245	18	1130	185	0
	N/S	0	0	0	0	0	0	0
Outcome Of Stop	Citation	259342	190807	42655	536	19049	6295	0
	Written Warning	199211	149200	31317	290	14200	4204	0
	Verbal Warning/ SC	615	478	82	0	46	9	0
	N/S	0	0	0	0	0	0	0
Consent Searches	Requested	1001	521	317	3	150	10	0
	Granted	970	501	309	3	147	10	0
	Performed	903	460	289	3	143	8	0
	Found	177	104	60	0	12	1	0

Illinois Traffic Stop Statistical Study Act:
RATE OF CONSENT SEARCHES PER TRAFFIC STOP, BY RACE,
ILLINOIS STATE POLICE IN 2004 THROUGH 2009

Year (A)	White drivers			Black drivers			Hispanic drivers			Rates Compared	
	Stops # (B)	Consent searches # (C)	% (D=C/B)	Stops # (E)	Consent searches # (F)	% (G=F/E)	Stops # (H)	Consent searches # (I)	% (J=I/H)	Black/White (K=G/D)	Hispanic/White (L=J/D)
2004	290,224	1,119	0.39%	59,602	418	0.70%	27,056	297	1.10%	1.82	2.85
2005	328,420	1,923	0.59%	69,543	720	1.04%	32,450	729	2.25%	1.77	3.84
2006	337,529	1,819	0.54%	78,721	752	0.96%	32,868	700	2.13%	1.77	3.95
2007	364,377	520	0.14%	82,954	375	0.45%	35,933	179	0.50%	3.17	3.49
2008	342,352	480	0.14%	69,078	277	0.40%	33,750	128	0.38%	2.86	2.71
2009	340,485	460	0.14%	74,054	289	0.39%	33,295	143	0.43%	2.89	3.18

Data source: Information in columns B, C, E, F, H, and I is from the NU/UIC data sheets. Specifically, B, E, and H is reported as "stops", and C, F, and I is reported as "searches - consent" or "consent searches - performed".

Note: As to the information above in column E for 2008, the data sheet contains a typo (a number of stops that is impossibly large), and the ACLU has substituted a corrected number (by subtracting the number of stops of other groups from the total number of stops).

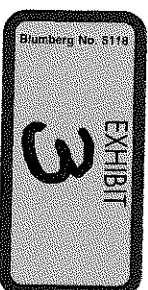
Data analysis: Information in columns D, G, J, K, and L is calculated as shown by the ACLU.

Illinois Traffic Stop Statistical Study Act:
RATE OF CONTRABAND FINDS PER CONSENT SEARCH, BY RACE,
ISP IN 2007 THROUGH 2009

Year	White drivers			Black drivers			Hispanic drivers			Rates Compared	
	Consent search # (B)	Contr. found # (C)	% (D=C/B)	Consent search # (E)	Contr. found # (F)	% (G=F/E)	Consent search # (H)	Contr. found # (I)	% (J=I/H)	White/Black (K=D/G)	White/Hispanic (L=D/J)
2007	520	46	8.85%	375	19	5.07%	179	2	1.12%	1.75	7.92
2008	480	108	22.50%	277	61	22.02%	128	22	17.19%	1.02	1.31
2009	460	104	22.61%	289	60	20.76%	143	12	8.39%	1.09	2.69

Data source: Information in columns B, C, E, F, H, and I is from the NU/JIC data sheets. Specifically, B, E, and H is reported as "consent searches - performed", and C, F, and I is reported as "consent searches - found".

Data analysis: Information in columns D, G, J, K, and L is calculated as shown by the ACLU.



Illinois Traffic Stop Statistical Study Act:
RATE OF CONSENT SEARCHES GRANTED PER REQUESTED, BY RACE,
ISP IN 2007 THROUGH 2009

Year (A)	White drivers			Black drivers			Hispanic drivers			Rates Compared	
	Consent Requested # (B)	Consent granted # (C)	% granted (D=C/B)	Consent Requested # (E)	Consent granted # (F)	% granted (G=F/E)	Consent Requested # (H)	Consent granted # (I)	% granted (J=I/H)	Black/ White (K=G/D)	Hispanic/ White (L=J/D)
2007	591	555	93.91%	421	404	95.96%	196	189	96.43%	1.02	1.03
2008	570	548	96.14%	306	299	97.71%	147	145	98.64%	1.02	1.03
2009	521	501	96.16%	317	309	97.48%	150	147	98.00%	1.01	1.02

Data source: Information in columns B, C, E, F, H, and I is from the NU/UIC data sheets. Specifically, B, E, and H is reported as "consent searches - requested", and C, F, and I is reported as "consent searches - granted".

Data analysis: Information in columns D, G, J, K, and L is calculated as shown by the ACLU.

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BIASED BASED POLICING

EXPLORING THE ODDS OF A SEARCH



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EXECUTIVE SUMMARY

As has been noted by government and policing agencies in many forums, bias is a state of mind. As defined by state statute in Illinois, bias-based policing occurs when an officer engages in an enforcement action based solely on the race of the party involved. The enforcement activities that the general public most often associate with bias-based policing involve traffic stops, searches, and seizures. Over-representation of one race or class in traffic stop figures is often taken as prima facie evidence of bias.

The analyses presented herein serve to illustrate the care that should be taken in considering simple over-representation figures outside of the total contexts in which the activities occur. For instance, one might consider that an officer's decision to search a stopped motorist is a product of influences operating on several levels. Most immediate might be such things as visible evidence of contraband, illegal or otherwise suspicious behaviors, or a recently transmitted description of a criminal suspect. Of less immediate importance, but still factoring into his or her decision, might be an officer's training, prior knowledge of the motorist, associates, or area, availability of back up, and a host of other factors. These factors, while important and part of the decision making environment, might never be "known" in any concrete fashion, precluding their use in analyses of officer decision making. While biases and prejudices, when present, can influence the decision environment, they are clearly not the only factors related to enforcement outcomes.

This report presents analyses that make use of very basic administrative information, readily available in the Illinois State Police computerized data systems, to demonstrate the clear impact that even very basic officer- and stop-level characteristics might have on understanding the outcomes of officer decisions. The following summary relates to the analyses of search decisions using 2004 stop card information.

- The odds of a stop resulting in any kind of search were 0.007. These odds were higher for stops occurring in some counties than in others, and were higher for some involving some officers than for others.
- Without considering any other decision factors, minority motorists were 2.76 times as likely as non-minority motorists to be searched during a stop. This factor also varied across officers.
- A variety of basic decision environment information was found to be related to the decision to search, including: age of vehicle, time of day and day of week, and officer's rank, years of service, and age upon joining the department. Importantly, the race of the officer involved in the stop was found to have no bearing on the decision to search, either directly or by mediating the effect of the stopped party's race.
- These factors also affected the odds of search for minority drivers. Controlling for these very basic factors reduced the minority odds from 2.76 times that of non-minorities to 2.62 times that of non-minorities. This is almost a 5% reduction in over-representation, before considering more proximal factors to the decision making environment.

The report that follows will detail these findings and illustrate the additional data and information that will make future analyses even more informative.

INTRODUCTION

This report was prepared for the Illinois State Police, using operational data collected by the agency in compliance with Illinois State Law. The results reported herein are the sole property of the Illinois State Police, and may not be disseminated without their express permission.

BACKGROUND

In July of 2003, the 93rd Illinois General Assembly passed Senate Bill 30, enacting Public Act 93 0209 and establishing a four-year traffic stop statistical study of the race of drivers stopped on Illinois roads. As part of the study, all agencies in Illinois are required to collect race and other information about the drivers they stop in a standardized format. This information is reported to the Illinois Department of Transportation, which is responsible for conducting the statewide analysis.

The Illinois State Police, an enforcement agency in Illinois responsible for the majority of enforcement activity on the state's interstate highways and a substantial portion on state highways and county roads, seeks a more in-depth analysis of their traffic stop data. The data, recorded on Stop Card/Written Warning forms and Citation forms, includes specific information regarding the location of the stop, the age, race, and sex of the driver, and identifying information for the issuing trooper.

This multi-level analysis serves as a follow-up to an initial cross-sectional report that was prepared in June, 2005. This initial report provided a basic cross-sectional analysis of the data collected by the ISP for reporting to IDOT. This multi-level analysis makes use of additional information from the Illinois Uniform Crime Reporting Program (I-UCR) and the ISP human resource system (WAGE).

ABOUT THE DATA

This data was taken from a file provided by the Illinois State Police, from which data for IDOT is reported. Each record represents one stop. For that stop, a variety of indicators are collected, including location, demographic information about the driver, and the particular reasons and outcomes related to the traffic stop. The data provided by ISP represented all stops occurring during calendar year 2004. For each stop, the age of the stopped vehicle was computed by subtracting the vehicle year reported in the file from 2005 (2005 models began appearing on the street in the last quarter of 2004). Driver's race was coded as White when the driver's race was reported as Caucasian and non-white when coded otherwise. A dummy variable was created to flag weekend night stops; those stops occurring between Friday at 10:00 p.m. and Saturday at 6:00 a.m., and those occurring between Saturday at 10:00 p.m. and Sunday at 6:00 a.m. were set at 1, all others were set at 0.

Additional data for these analyses were taken from the ISP personnel records system, known as WAGE. This information included officer's years of service, computed by subtracting each officer's hire date from December 31, 2004. It also included officer rank, coded in serial progression from the rank of cadet through the rank of deputy director. Age at entry to ISP service was computed by subtracting each officer's birth date from his or her date of hire. Finally, each officer's race was coded as white for those officers whose race was reported in WAGE as Caucasian, and non-white for those reported otherwise.

Information about the counties in which each stop occurred was taken from the I-UCR 2004 data file and the stop card database. Each county's 2004 drug crime arrest rate was computed by dividing the number of drug arrests reported in I-UCR by the 2004 population reported in I-UCR, then multiplying the quotient by 1,000. The number of law enforcement agencies in the county was approximated by counting the number

of I-UCR reporting agencies in each county. Finally, the number of ISP stops occurring in each county was recorded by counting the number of records in the ISP stop card database by TIPS county code.

The final record set was compiled by identifying those stop records that had Officer IDs matching those on file in WAGE and county IDs matching those on file for Illinois. The results of analyses in this report are based on 398,452 stops, occurring in 5,374 unique county-officer ID combinations, involving 1,423 officers.

ODDS OF SEARCH AND THE MODELING APPROACH

The general public accepts the premise that there are odds associated with any event in life, be it as remote as "being struck by lightning" or as probable as death. One might expect this to be the case with the events that unfold during the stop of a motorist, including the decision to search. The analyses described herein seek to identify the various factors that influence variations in that probability.

FACTORS INFLUENCING ODDS OF SEARCH

In general, one might consider these influential factors in terms of their immediacy or proximity to the stop event. Figure 1 presents a basic model for the search decision environment. This model was developed in close cooperation with ISP research personnel. The basic factors used by officers when making enforcement decisions, including the decision to search, can be subdivided into three areas: immediate environmental factors, informational factors, and background factors. Immediate environmental factors are those most proximal to the stop event itself. As Figure 2 illustrates, immediate environmental factors include such items as stop-related attributes (e.g., time of day, day of week, race of driver), as well as other attributes, such as officer's duty assignment for the day. As the illustration also indicates, some of the factors are more readily available than others. Vehicle age, for instance, can be computed from data obtained on the stop card. Other factors, such as number of passengers in the car, are more difficult to obtain, but might be more easily captured with revisions to existing forms and paperwork. Still other factors, such as the geographic context of the stop, suggest more abstract attributes that are difficult to quantify and record, and might likely never be captured.

Informational factors are only slightly more distal from the stop event, as they include the types and nature of the information available to the officer at the time of the stop. These are illustrated in Figure 3. Informational factors include such items as the wanted or caution status of the vehicle or driver at the time of the stop, the availability of criminal history (CHRI) data to the officer, etc. As many of these factors involve recreating computerized data files as they looked just before a stop occurred, and in light of the more than 400,000 stops completed by ISP personnel annually, the research team was unable to find any informational factors that were reasonably obtainable for use in this analysis.

Finally, background factors are those most distal from the event, and include the various offender and officer characteristics that "set the stage" for the stop event. As illustrated in Figure 4, these factors include relatively easily obtainable information, such as personnel data, that reflect an officer's length of service, rank, and demographic. More difficult to obtain are such factors as a count of complaints lodged against the officer, which would require policy change and potential collective bargaining to secure. Additional desirable, though difficult to obtain, background factors include an understanding of the officer's ingrained biases, attitudes, and beliefs.

It is important to note that this is just a basic sampling of the myriad factors that influence enforcement decisions, such as the decision to search. Many of these factors are quantitatively intangible; such things as an officer's sense of safety in a given location and his or her attitudes about gender based in religious and personal beliefs might never be quantified and categorized in such a way that their effects on enforcement decisions can be easily measured. Yet, it is precisely in these regions where bias motivations lie. Conceptually,

an officer's bias against a minority racial group can be included in a model as a contributing factor, alongside such things as length of service and age of vehicle. Unfortunately, we cannot practically include such a variable because we lack the ability concretely identify and quantify it. Because these and many other factors each play an important part, it is imperative that any observed effect of driver's race on the decision to search not immediately be attributed to a bias motive. Instead, the analyses presented below seek to dissect the differential impact of driver's race on odds of search occurring by first removing those portions of the differential impact that can be attributed to other factors. Only then can one begin to truly understand the decision making environment and the potential role played by bias.

THE HIERARCHICAL MODELING STRATEGY

These analyses use a statistical modeling technique called hierarchical modeling. At their core, these models suggest that the odds of a stop resulting in a search are a function of some base odds that exist for all ISP stops. Those odds are allowed to vary from county to county and from officer to officer. The basic modeling approach is simply to explore the ways in which the various hypothesized decision making factors impact these odds.

The basic level of analysis, the stop-level model, includes decision factors that are related to the stop itself. These include such things as time of day, age of vehicle, etc. The hierarchical modeling technique allows for each of these stop-level variables to have some core impact on the odds of a search that are true for all ISP stops, then allows for some variation in the effects of those factors from county to county and officer to officer. As an example, it's possible to use this modeling technique to identify the basic impact of vehicle age on the odds of being searched, then determine those counties where the contribution of vehicle age is more important and those where it is less.

The hierarchy established for the analyses presented herein places stop events inside counties, and so the next level of analysis allows for the examination of location-level factors (i.e., attributes of the counties where stops occur) on the odds of a search occurring. Such location-level factors might include, for example, the drug arrest rate of the county where the stop event occurred. Again, because of the hierarchical approach, one can explore for variation in the effect of these location-level factors across officers.

Finally, at the highest level of the hierarchy are the officer-level factors – those factors that are attributes of the officers who make the stops. These might include, for example, the officer's age, length of service, or race. In the end, the hierarchical modeling approach provides a rich tool capable of identifying not just the stop-, location-, and officer-level factors that make a difference in the odds of search, but also to identify how they contribute to the decision.

KEY CAUTIONARY NOTE

An important point must be made to caution the reader. Namely, the statistics presented in this report are simply indicators of differential impact. In other words, statistical evidence that members of one race are more or less likely than members of another to be searched does not constitute solid evidence of bias. Bias refers to motive; these data only report actions. The statistical effects reported herein are meant to guide future policy and training changes, and to provide pointers where potential areas of concern may exist.

ANALYSES AND RESULTS¹

As stated earlier, the analyses pursued herein represent an attempt to uncover those stop-, location-, and officer-level factors that influence the odds of a traffic stop resulting in a search. In accordance with a "ground-up" approach to building these models, the analyses begin by first looking at the overall odds of a search occurring.

At the margin, the odds of any ISP traffic stop resulting in a search of any type are 0.03. There is evidence that these so-called base odds varied across the counties in which officers conducted stops, as well as from officer to officer. In other words, these odds were higher in some places than in others and higher for some officers than for others. See Model 001 in Table 1 of Appendix II for a complete presentation of regression findings.

EXPLORING STOP-LEVEL FACTORS

Often the over-representation of one or more groups in search results is taken as prima facie evidence of bias. Bias, however, is a motive that cannot be directly assessed statistically. It is possible, however, to assess a variety of other stop-level characteristics which, in theory, might also have an impact on search probabilities. To begin, we can inspect for a differential representation of racial groups by exploring the differential odds for each of two groups: white motorists and non-white motorists. Controlling for motorist's race in such a way, one finds that non-white motorists are 2.759 times as likely as white motorists to have a stop result in a search, with odds for white motorists at 0.02 and odds for non-white motorists at 0.055 (see Model 003 in Table 1). In addition, there is evidence that this differential effect of motorist race varied from officer to officer, in addition to the cross-county and cross-officer variation in base odds.

The decision to search is predicated on a wealth of decision factors, some of which are not directly observable or easily captured on a stop card. Even so, it is possible to use what elementary information is available to inspect for effects of basic differences in stops on both the overall odds of a search outcome, as well as the differential effect of motorist's race. After a series of iterative steps (presented in Models 004 through 008 in Table 2), the following stop-level factors were found to significantly impact the odds of a stop resulting in a search: driver's race, age of vehicle, and day and time of stop.

Specifically, stops involving a vehicle older than the average vehicle stopped by an officer in a given county were more likely to result in a search: the odds increased by a factor of 1.055 for each year older than the average vehicle. Age may be related to search likelihood for a variety of reasons. Older vehicles are more likely to be stolen (the top five makes and models stolen in 2005, for instance, were at least 10 years old²). Furthermore, stops occurring on a weekend night (Friday or Saturday, from 10:00 p.m. to 6:00 a.m.) were 1.801 times more likely to result in a search than those occurring at other times. As these hours are typically the most active for many criminals, it is possible that officers more heavily scrutinize motorists they stop during these hours. Controlling for motorist's race, the time and day of stop, and the age of vehicle, the base odds of a stop resulting in search remained constant (0.018).

The differential effect of race, however, was diminished, dropping from 2.759 times as likely to 2.685 times as likely (in other words, from 0.055 to 0.047). This suggests that, at least to some extent, the

¹ For a more thorough discussion of model development and results, see Appendix I.

² National Insurance Crime Bureau, 2006.

differential effects of motorist race may be a function of the differential effects of vehicle age and time and day of stop. With a history of economic segregation and the waves of new immigrants entering the state, it is feasible that non-white motorists are more likely than white motorists to be driving older vehicles. Likewise, one might expect those with fewer educational opportunities and those newly joining the workforce to be employed in occupations which put them on the road during later hours.

EXPLORING LOCATION-LEVEL FACTORS

In addition to those factors that change from stop to stop, a variety of location-related factors may influence the odds of a stop resulting in a search. As with stop-level factors, some of these factors are abstract or otherwise difficult to record (for instance, an officer's perception of the safety and protection afforded by a location, etc.). From the variety of factors that are available, a basic sampling have been selected for analysis of their effect on the likelihood of a stop resulting in a search. First, the drug arrest rate for the county in which a stop occurs might influence the likelihood of search, as officers stopping motorists may be carefully searching for evidence of drug crimes. Second, the number of law enforcement agencies operating within a county is included as a proxy for the general level of development in a county along the rural to urban continuum. The nature of enforcement activities differs in each type of jurisdiction, and so too might the odds of a stop resulting in a search. Finally, the total number of traffic stops conducted by ISP in the county in which a stop occurs is included as an indicator of the degree to which ISP troopers patrol a given area. Officers may be more likely to conduct searches in more familiar surroundings, and in counties where ISP troopers patrol more frequently, there is an increased likelihood that ISP troopers might be involved in a variety of proactive details that increase the likelihood of searches. Both the agency count and stop count variables were "group mean centered," meaning the model inspected for the impact of an officer making a stop in counties that were relatively more urban or ISP-patrolled than the other counties in which he or she worked.

Models 009 through 014, presented in Table 3, present the iterative steps through which the location-level model was developed. In short, none of the location-level predictors had a significant impact on the likelihood of a stop resulting in a search. While none of the impacts were statistically significant, one factor did exhibit some impact on the others. Namely, county drug arrest rates for the county in which the stops occurred caused some noticeable movement, most clearly an increase in the effect of day and time of stop and a decrease in the effect of motorist's race. One likely substantive reason for this finding is that these are very cursory county-level variables, and officers are likely to make their decisions based on a much more granular level of analysis. For instance, a trooper making a stop in Sangamon county, just inside the Lincoln county border, is likely taking into account factors from both counties, and in particular his or her more immediate vicinity. The use of county-level variables in the location model may not be precise enough to detect the effects of location. On a methodological note, the failure of the county drug arrest rates to achieve significance may be an artifact of the hierarchical structure chosen, nesting counties within officers rather than officers within counties³.

EXPLORING OFFICER-LEVEL FACTORS

Beyond stop- and location-level factors are those factors that are unique to each officer. Again, these analyses make use of simple personnel data available in the human resource management system (WAGE). These officer-level factors include officer rank, years of service, age upon entering the academy, and race. One might expect that officers of higher rank engage in less enforcement activity than entry-level officers; as such, one might expect to see differences in search probabilities across levels of rank. Officer's years of

³ For a more thorough discussion of the hierarchy strategy chosen, see Appendix I.

service represent the era in which the officer joined policing, and to some extent, the culture of policing into which the officer was indoctrinated (e.g., the era of professional policing, the era of community policing, etc.). There may, then, be differences in the odds of search as years of service increase. Not all ISP troopers started with the State Police as their first law enforcement position. Some enter ISP service by way of a local law enforcement agency. To assess the degree to which differences in search probabilities exist between these two groups of officers, the age of the officer upon entering ISP service is included in the model, with lower values associated with officers joining ISP nearer to the start of their professional career. Finally, the race of the officer might be expected to impact the search probabilities of the stops that the officer makes. The officer's race effect may occur in two ways. First, one might expect to see a difference in the impact of the motorist's race across officer race categories. Second, a more general difference in overall search odds might be expected across groups.

Models 015 through 019, presented in Table 4, detail the results of the iterative officer-level modeling strategy. Specifically, Model 017 presents the final, fully specified officer-level model. As anticipated, the results show significant effects for officer rank, length of service, and age at entry to ISP service. The odds of a stop resulting in a search increased by a factor 1.217 for each additional rank held by the officer making the stop. Length of service, however, was negatively associated with odds of a search resulting. For each year of service beyond the department average, the odds of a stop resulting in a search decreased by a factor of 0.903. Likewise, a similar negative relationship was identified between search odds and age at entering ISP service. For each year of age at entry beyond the department average, the probability of a stop resulting in a search decreased by a factor of 0.963. Race of officer did not exhibit a significant effect, either as a general factor or as a mediating force on the effect of motorist race (see Models 018 and 019).

Introducing these three officer-level factors reduced the differential impact of motorist's race from a factor of 2.685 to 2.629. In other words, after controlling for these officer-level factors, the odds of a white motorist's stop resulting in a search were 0.009, while the odds of a non-white motorist's stop resulting in a search were 0.023. Significant cross-county variation remained unexplained in the base odds of search and the effect of day and time, and significant cross-officer variation remained unexplained in the base odds of search and the effect of motorist's race. This cross-officer variation has remained relatively constant, despite the introduction of officer-level characteristics.

SUMMARY

The results for Model 017, presented in Table 4, represent a fully specified and executed three level hierarchical model. These results suggest that, for ISP stops in 2004, the odds of a search resulting were 0.007. The odds were increased in cases where the driver was non-white (by a factor of 2.629), where the stop involved an older vehicle (by a factor of 1.055 per year over the average age), and where the stop occurred on a weekend night (by a factor of 1.779). The length of service of the officer and the age at which the officer joined ISP also had significant effects on the odds of search, reducing the odds by a factor of 0.903 per year over average service length and a factor of 0.963 per year over average starting age. Officer rank also played a role, with the odds of search increasing by a factor of 1.217 for each successive rank above cadet. The race of the officer was not a significant predictor of either the base odds of a search or the effect of motorist's race. Evidence suggests there is significant variation in the base odds of search across counties and across officers. Additionally, there is evidence of significant variation in the effects of day and time of stop across counties (but not officers), and in the effect of driver's race across officers (but not counties).

IMPLICATIONS FOR BETTER UNDERSTANDING OF BIAS-BASED POLICING

The analyses presented above inform the current understanding of bias in enforcement decisions in two key ways. First, they illustrate that enforcement decisions, such as the decision to search a stopped motorist,

are complex events that are impacted by a variety of factors both distal and proximal to the event. They are moved beyond simple factors limited solely to preconceived notions and attitudes, and encompass a wealth of information that does not all carry the same weight. In addition, these findings show that the effects of some of these factors can vary from officer to officer and from county to county.

More importantly, the results illustrate that the effects of one factor can be related to the effects of many other factors. As is the case with the race of the motorist, models including it as the sole factor report a differential impact factor of 2.759. The addition of other meaningful factors, even those as distal as the personnel data presented here, reduced the differential impact factor to 2.629, a reduction of almost 5%. If nothing else, these results illustrate the multidimensional nature of the bias issue, and suggest the inadequacy of simple measures of over-representation to fully understand the dynamic impact of race.

Finally, these data can neither prove nor disprove the existence of bias in the motives of the officers involved in the traffic stops reported here. No matter how sophisticated the modeling, nor how advanced the technique, only further analyses of the officers' actual interactions can shed light on motive. These results are intended to shape policy and procedure discussions, as well as to provide pointers to areas of potential concern.

With these results in hand, ISP research personnel should continue a discussion centered on identifying factors that are important to understanding the decision making environment. Particular emphasis should be made on revising existing data collection instruments (e.g., stop card/written warning and citations) to ensure that additional data that is collected will provide insight into the important question of bias. Additional data collection or data availability steps, such as policy revisions and access rules, may be needed to ensure that other important factors at the location- and officer-level are obtainable and used to inform the ongoing analyses.

APPENDIX I - TECHNICAL NOTES AND DISCUSSION

OVERVIEW OF MODELING STRATEGY

The analyses presented in this report were executed using HLM - Hierarchical Linear Modeling software published by SSI Central. The general approach to model development was the "step-up" approach suggested by the software's creators. Essentially, this means that the stop-level factors affecting the odds of a search were completely developed before exploring the location-level predictors. That location-level model was likewise fully specified before exploring the officer-level predictors.

The general hierarchical modeling approach takes advantage of the multiple levels, or hierarchy, inherent in the data. For the research at hand, the hierarchy of stops within counties within officers was selected. In other words, the model assumes that the odds of a stop resulting in a search are a function of stop-level factors, which may change from county to county and officer to officer, location-level factors, which may change from officer to officer, and officer-level factors. It should be noted that an alternative hierarchy might have been chosen, one in which stops are nested within officers, who are nested within counties, thus specifying county as the highest level of hierarchy. The choice to nest counties within officers is based on the premise that it is more likely that officer attributes mediate the effects of county-level factors than that county-level attributes mediate the effects of officer-level factors. At its core, the hierarchical modeling strategy, in the case of the three levels chosen here, suggests that for any given stop the odds of it resulting in a search are a function of some statewide base rate, plus some variation around that base rate across counties and officers.

MODEL BY MODEL ITERATION

Model 001, presented in Table 1, depicts the starting point for model building, known as the fully unspecified model. The results of Model 001 suggest that the base rate, or odds, of an ISP stop resulting in a search are 0.029. The variance components for county and officer variation are both significant, suggesting there is significant variation across counties and officers in the base odds.

As the research at hand is primarily focused on bias-based policing, which expects as its mode an effect of driver race on enforcement decisions, the first stop-level factor introduced is driver race (coded as 0 for white and 1 for non-white). When first introduced in Model 002, the effect of driver race is allowed to vary by county and officer. The findings, presented in Table 1 suggest that cross-county variation in the effect of driver race was significant, while cross-officer variation was not. However, reliability estimates (not shown) indicate the potential for greater evidence of variation exists at the officer level, and suggest that the significant finding for county variation and non-significant finding for officer variation may be an artifact of over-specification. Accordingly, Model 003 was specified only allowing the effect of driver race to vary at the officer level. The results of Model 003, presented in Table 1, indicate a continued effect of driver race on the odds of a search resulting from a stop, and provide evidence that effect varies from officer to officer. The addition of driver's race as a factor in the odds of search reduced the cross-county variation in the base odds. Based solely on driver's race, the base odds for a stop resulting in search are 0.020 (down from 0.029 when race is excluded from the model), and are increased by a factor of 2.759 for non-white motorists.

Having inspected the effects of driver's race, the next steps in the model development process involve developing the full specification for the level 1, or stop-level, factors thought to influence odds of search. Models 004 and 005 (presented in Table 2), depict the introduction of time and day of stop (coded 1 for weekend night stops and 0 for other days and times). In Model 004, the effect of day and time is allowed to vary by county and officer; the results suggest that cross-officer variation is not significant, and so the effect of day and time is constrained to vary only by county in Model 005. The results for Model 005, controlling

for the impact of driver's race and day and time of stop, depict a base odds of 0.018. Stops occurring on a weekend night show odds increased by a factor of 1.830, while those involving non-white motorists show odds increased by a factor of 2.721 (down from earlier estimates of 2.759 when day and time were excluded). Models 006 and 007 depict the introduction of age of vehicle. For all analyses in this report, vehicle age has been group mean centered. In other words, a car of average age for a given officer in a given county has a value of 0. A value of 1 represents 1 year older than the average age of vehicles stopped by a given officer in a given county. As was the case with day and time of stop, the initial specification for the effect of vehicle age was allowed to vary by county and officer. As the results for Model 006 indicate, this effect does not show significant variation by county or officer, and no significant variation is observed when constrained to vary only at the officer level (Model 007).

Model 008, therefore, presents the fully specified stop-level model. The odds of a stop resulting in a search are given as base odds of 0.018 for all stops, with evidence of significant cross-county and cross-officer variation in these base odds. The odds are increased by a factor of 1.801 when occurring on a weekend night and by a factor of 1.055 for each year the vehicle exceeds the average age stopped in a given county by a given officer. While the effects of day and time show significant variation from county to county, the effects of vehicle age do not vary – they are constant for all ISP stops. The odds of a stop resulting in a search are increased by a factor of 2.685 when the stop involves a non-white motorist, and this effect shows significant variation from officer to officer. Note that this factor of 2.685 for driver's race, when controlling for vehicle age and day and time of stop, is lower than the factor of 2.759 observed when no other stop-level factors were included.

Having a fully-specified stop-level model, the next step in model progression is to develop the level-2 specification, or location-level model. In this case, location refers to the county where the stop occurred. Models 009 through 014 (presented in Table 3), depict the sequential addition and development of three location-level factors: 2004 county drug arrest rate, 2004 I-UCR reporting agency count, and total ISP stops in a given county in 2004. In each case, the location-level factor is first allowed to vary across officers. This specification results in a non-significant variance component (no evidence of officer-level variation) as well as a non-significant main effect. Subsequently, the factor is constrained to be constant for all counties. Even upon removal of the variance term, none of the three location-level factors are found to contribute to the odds of a stop resulting in a search.

Substantively, it may simply be that the county attributes selected for the analyses are simply not granular enough to detect their effects. It is likely that officers use much more proximal cues that tend to be centered on their stop location rather than simply the broad brush stroke information available at the county level. From a methodological standpoint, the failure of the county's drug arrest rate to achieve significance may be an artifact of the hierarchy chosen. The county drug arrest rate was the only location-level factor to make a noticeable difference in the other predictors in the model, even though it failed to achieve significance. It is feasible that, were the stops within officers within counties hierarchy selected, the effect may achieve statistical significance.

Having found evidence of significant cross-county variation, but unable to isolate predictors to better understand it, the model building strategy next explores the officer-level factors that may account for cross-officer variation observed in both the base odds and the effect of driver's race. In these analyses, the officer attributes include length of service, rank, age when beginning ISP service, and race. Both length of service and age beginning ISP service are grand mean centered, meaning that officers with an average number of years of service or starting age receive a value of 0, and officers with 1 more year of service or 1 year older when starting receive value of 1. Models 015 through 019 (presented in Table 4) depict the basic officer-level modeling strategy.

The first officer attribute introduced was the officer's length of service (see Model 015). Length of service was found to reduce the odds of stops resulting in searches by a factor of 0.937 for each year of service beyond the average for all officers. Likewise, rank, which was sequentially numbered in order from cadet to deputy director, increased the odds of search by a factor of 1.213 for each successive rank held by the officer conducting the stop (see Model 016). The introduction of rank reduced the differential impact of length of service from 0.937 to 0.908. Age at start of ISP service was also found to reduce the odds of a search by a factor 0.963 for each year beyond the average starting age (see Model 017). The introduction of starting age increases the differential impact of rank from 1.213 to 1.217, and further decreased the differential impact of length of service from 0.908 to 0.903.

The introduction of these officer-level factors reduced the base odds of a stop resulting in a search from 0.018 to 0.007, or roughly 50 percent. These officer-level factors also reduced the differential impact of driver's race from an initial factor of 2.759 to 2.629. Significant variation remains across counties and officers in the base odds of search, as well as across officers in the effect of driver's race.

The final officer-level factor to be introduced to the model is race of the officer. Race of officer might exhibit two different effects. First, one might expect the race of the officer making the stop to mediate the effect of the driver's race. As the results of Model 018 suggest, officer's race does not have a significant impact on the effect of the driver's race. Second, one might expect that the race of the officer might play a general role, impacting the base odds of a search. The results of Model 019 suggest that this, also, is not the case. Whatever might account for cross-officer variation in the effect of driver's race and overall base rates, it is not the race of the officer involved.

To that end, Model 017 stands as the final, fully-specified multi-level model of the odds of a stop resulting in a search. At the stop-level, stops involving non-white drivers, those occurring on weekend nights, and those involving older vehicles are more likely to result in a search. No significant location-level factors were identified in the modeling strategy, save that the effect of a county's drug arrest rate may have failed to achieve significance due to the modeling hierarchy adopted. At the officer level, stops involving older officers and officers who started with ISP later in life were less likely to result in a search, while those involving persons of higher rank were more likely to result in a search. Officer race was found to affect neither the overall base odds, nor the differential impact of driver's race. Significant county and officer variation remains in the overall odds of a search occurring, even after controlling for these stop-level, location-level, and officer-level factors. Significant county variation remains in the effect of day and time of stop, while significant officer variation remains in the effect of driver's race.

APPENDIX II - TABLES AND FIGURES

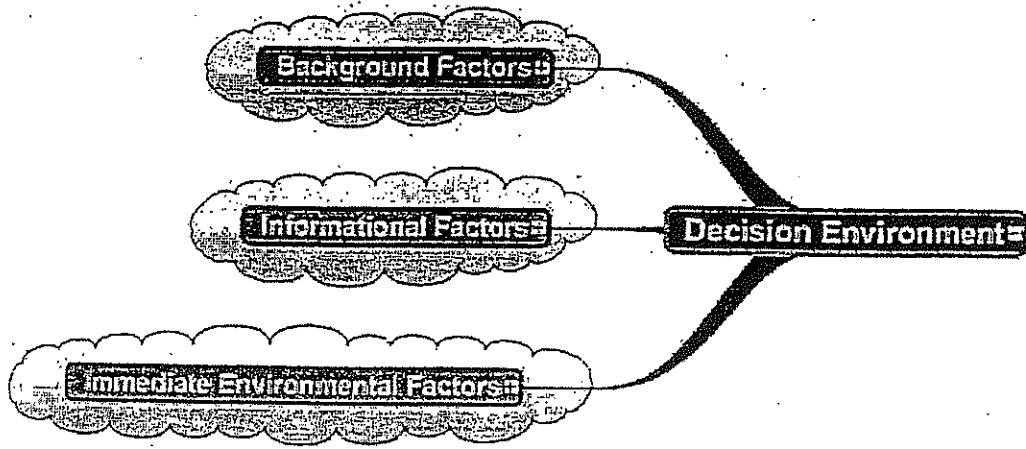


Figure 1 - Basic Model of the Decision Environment

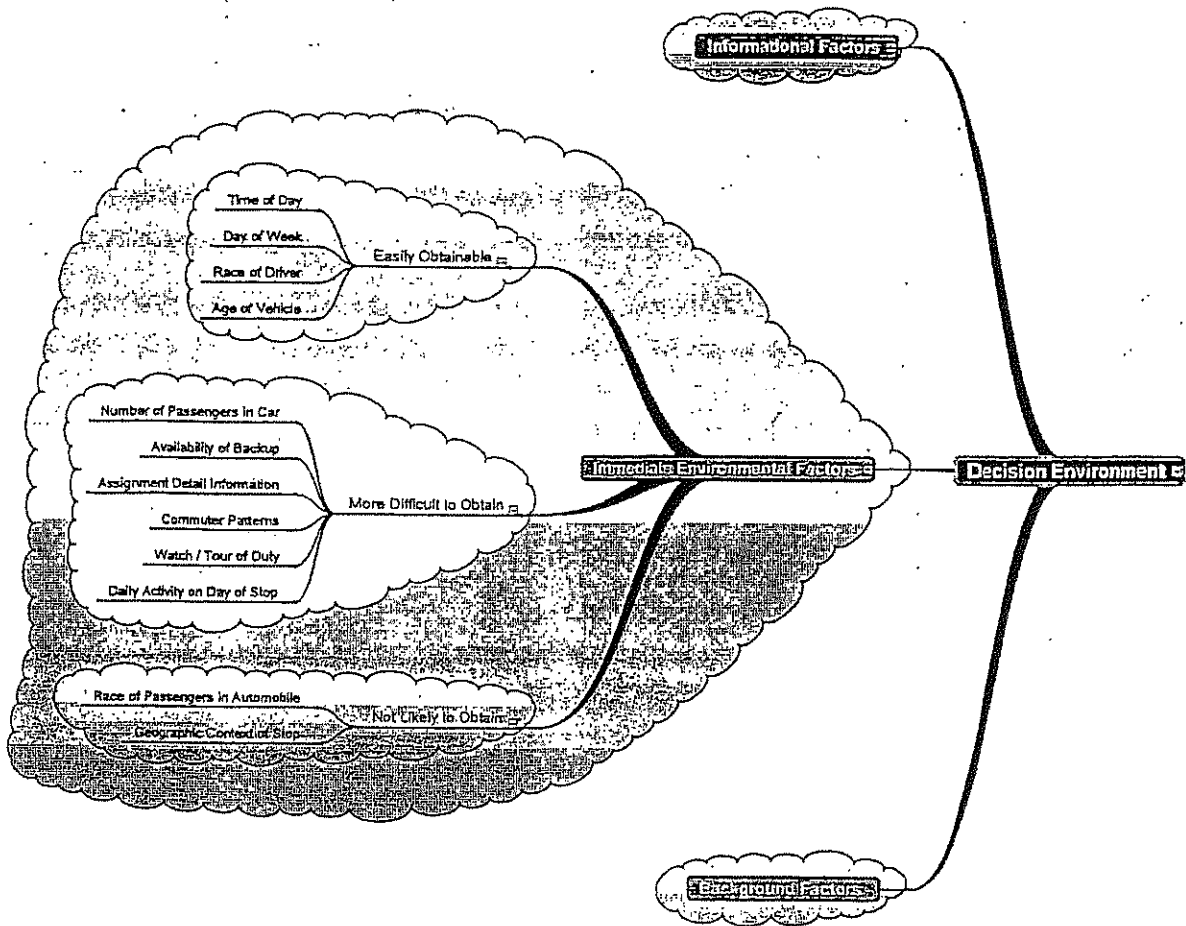


Figure 2 – Immediate Environmental Factors by Availability

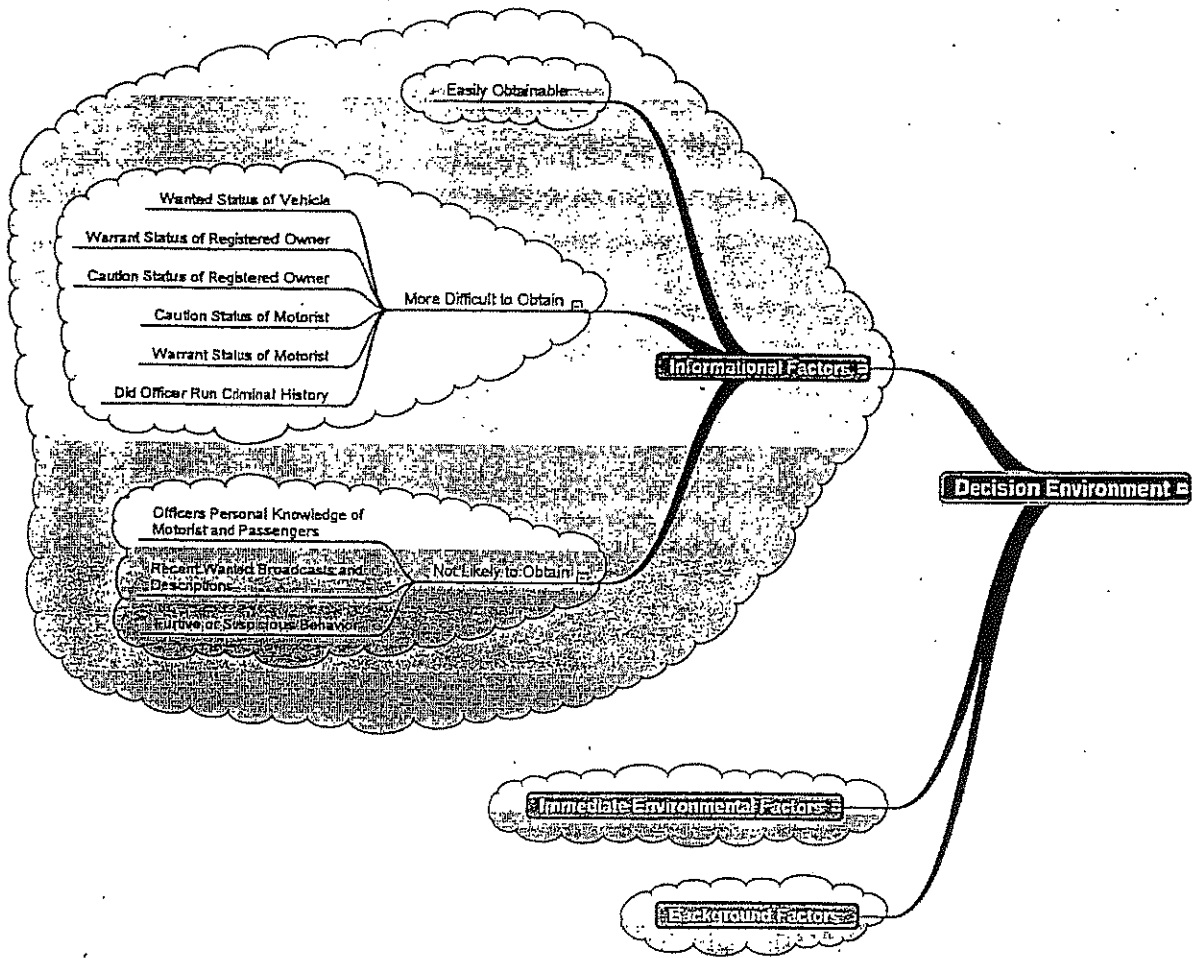


Figure 3 – Informational Factors by Availability

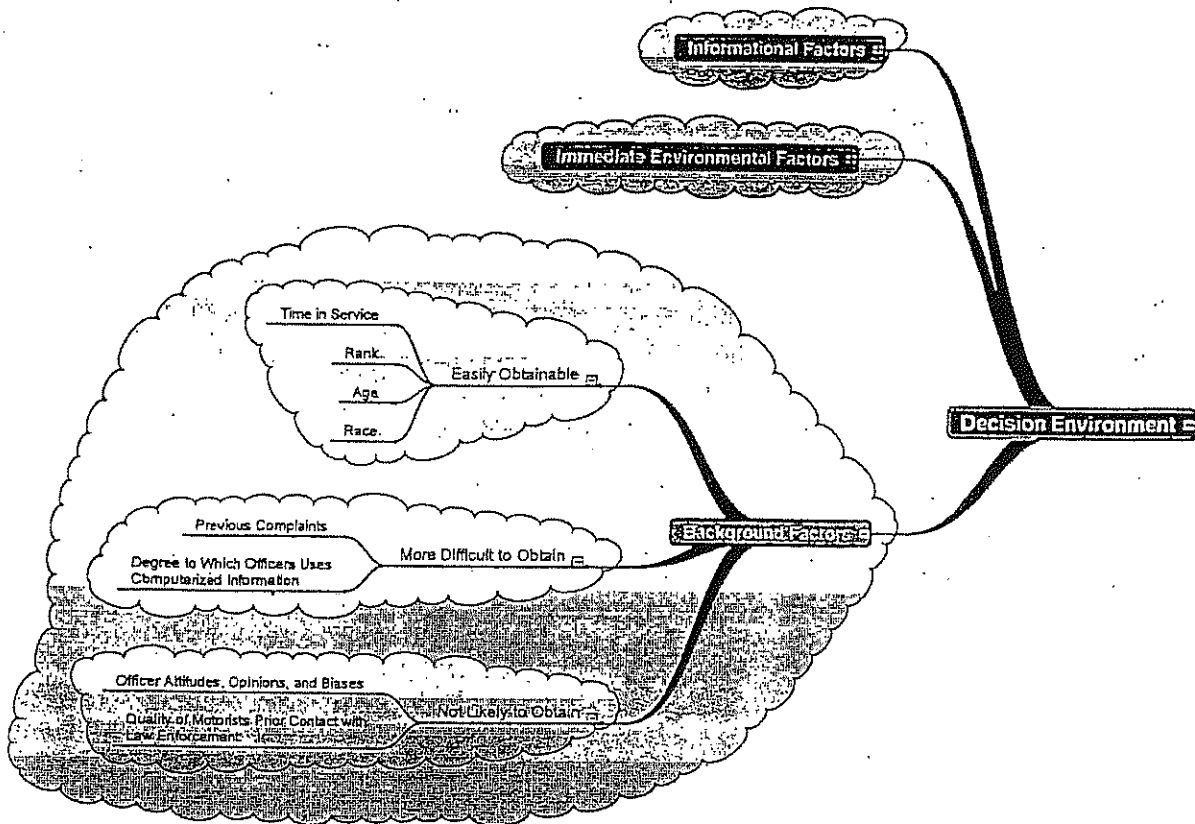


Figure 4 – Background Factors by Availability

Table 1 – Hierarchical Modeling Results – Fully Unspecified and Driver's Race Models

	Model 001 Fully Unspecified Model	Model 002 Intermediate Model	Model 003 Final Model for Driver's Race Alone
Fixed Effects			
π_0 – Intercept			
γ_{000} – Base Rate	-3.556* 0.029 (0.036)	-3.902* 0.020 (0.037)	-3.902* 0.020 (0.037)
π_1 – Driver's Race			
γ_{100} – Base Effect	—	1.018* 2.767 (0.026)	1.015* 2.759 (0.026)
Variance Component			
π_0 – Intercept			
τ_0 – County Variation	0.214*	0.215*	0.182*
u_{00} – Officer Variation	1.092*	1.184*	1.212*
π_1 – Driver's Race			
τ_1 – County Variation	—	0.112*	—
u_{10} – Officer Variation		0.148 ^{n.s.}	0.225*

Table 2 – Hierarchical Modeling Results – “Stop-Level” Models

	Model 004 Intermediate Model	Model 005 Intermediate Model	Model 006 Intermediate Model	Model 007 Intermediate Model	Model 008 Final Level 1 Model
Fixed Effects					
π_0 – Intercept					
γ_{000} – Base Rate	-4.013*	-4.005*	-4.045*	-4.045*	-4.038*
	0.018 (0.037)	0.018 (0.036)	0.018 (0.037)	0.018 (0.037)	0.018 (0.037)
π_1 – Driver’s Race					
γ_{100} – Base Effect	0.996*	1.001*	0.987*	0.988*	0.988*
	2.707 (0.026)	2.721 (0.026)	2.683 (0.025)	2.685 (0.025)	2.685 (0.025)
π_2 – Weekend Night					
γ_{200} – Base Effect	0.656*	0.604*	0.587*	0.588*	0.589*
	1.927 (0.026)	1.830 (0.025)	1.799 (0.025)	1.801 (0.025)	1.801 (0.025)
π_3 – Vehicle Age					
γ_{300} – Base Effect	—	—	0.059*	0.058*	0.054*
			1.060 (0.002)	1.060 (0.002)	1.055 (0.001)
Variance Component					
π_0 – Intercept					
τ_0 – County Variation	0.165*	0.181*	0.187*	0.185*	0.184*
u_{000} – Officer Variation	1.155*	1.112*	1.151*	1.152*	1.138*
π_1 – Driver’s Race					
τ_1 – County Variation	—	—	—	—	—
u_{100} – Officer Variation	0.217*	0.214*	0.200*	0.201*	0.206*
π_2 – Weekend Night					
τ_2 – County Variation	0.121*	0.213*	0.209*	0.209*	0.218*
u_{200} – Officer Variation	0.097 ^{n.s.}	—	—	—	—
π_3 – Vehicle Age					
τ_3 – County Variation	—	—	0.000*	—	—
u_{300} – Officer Variation	—	—	0.000 ^{n.s.}	0.001 ^{n.s.}	—

Table 3 – Hierarchical Modeling Results – “Location-Level” Models

	Model 009 Intermediate Model	Model 010 Intermediate Model	Model 011 Intermediate Model	Model 012 Intermediate Model	Model 013 Intermediate Model	Model 014 Final Level 2 Model
Fixed Effects						
π_0 – Intercept						
γ_{000} – Base Rate	-3.910*	-4.036*	-4.042*	-4.048*	-4.045*	-4.052*
	0.020 (0.032)	0.018 (0.037)	0.018 (0.038)	0.017 (0.038)	0.018 (0.038)	0.017 (0.038)
β_{01} – Drug Arrests						
γ_{010} – Base Effect	-0.008 ^{n.s.}	-0.008 ^{n.s.}	—	—	—	—
	0.992 (0.007)	0.992 (0.005)				
β_{02} – Agency Count						
γ_{020} – Base Effect	—	—	0.000 ^{n.s.}	0.001 ^{n.s.}	—	—
			1.000 (0.001)	1.001 (0.000)		
β_{03} – Stop Count						
γ_{030} – Base Effect	—	—	—	—	0.000 ^{n.s.}	0.000 ^{n.s.}
					1.000 (0.000)	1.000 (0.000)
π_1 – Driver’s Race						
γ_{100} – Base Effect	0.900*	0.989*	0.972*	0.985*	0.990*	0.987*
	2.460 (0.024)	2.687 (0.025)	2.644 (0.026)	2.677 (0.025)	2.691 (0.025)	2.684 (0.025)
π_2 – Weekend Night						
γ_{200} – Base Effect	0.606*	0.588*	0.586*	0.589*	0.598*	0.590*
	1.833 (0.024)	1.801 (0.025)	1.797 (0.025)	1.802 (0.025)	1.819 (0.025)	1.804 (0.025)
π_3 – Vehicle Age						
γ_{300} – Base Effect	0.055*	0.054*	0.054*	0.054*	0.054*	0.054*
	1.056 (0.001)	1.055 (0.001)	1.055 (0.001)	1.055 (0.001)	1.055 (0.001)	1.055 (0.001)
Variance Component						
π_0 – Intercept						
County Variation						
γ_0 – Base Rate	0.139*	0.184*	0.186*	0.185*	0.189*	0.186*
Officer Variation						
u_{00} – Base Effect	0.826*	1.139*	1.040*	1.135*	1.099*	1.146*
u_{01} – Drug Arrests	0.012 ^{n.s.}	—	—	—	—	—
u_{02} – Agency Count	—	—	0.000 ^{n.s.}	—	—	—
u_{03} – Stop Count	—	—	—	—	0.000 ^{n.s.}	—
π_1 – Driver’s Race						
u_{10} – Officer Variation	0.186*	0.206*	0.209*	0.206*	0.207*	0.206*
π_2 – Weekend Night						
γ_2 – County Variation	0.193 ^{n.s.}	0.210*	0.209*	0.211*	0.210*	0.211*
u_{20} – Officer Variation	—	—	—	—	—	—
π_3 – Vehicle Age						
u_{30} – Officer Variation	—	—	—	—	—	—

Table 4 – Hierarchical Modeling Results – “Officer-Level” Models

	Model 015 Intermediate Model	Model 016 Intermediate Model	Model 017 Final Level 3 Model	Model 018 Exploratory Model	Model 019 Exploratory Model
Fixed Effects					
π_0 – Intercept					
γ_{000} – Base Rate	-4.129* 0.016 (0.036)	-4.925* 0.007 (0.155)	-4.940* 0.007 (0.153)	-4.936* 0.007 (0.153)	-4.926* 0.007 (0.154)
γ_{001} – Length of Service	-0.065* 0.937 (0.005)	-0.097* 0.908 (0.007)	-0.102* 0.903 (0.008)	-0.102* 0.903 (0.008)	-0.101* 0.904 (0.008)
γ_{002} – Rank	—	0.193* 1.213 (0.036)	0.197* 1.217 (0.037)	0.196* 1.217 (0.036)	0.196* 1.217 (0.036)
γ_{003} – Age at Start	—	—	-0.037* 0.963 (0.007)	-0.037* 0.964 (0.007)	-0.037* 0.964 (0.007)
γ_{003} – Officer Race	—	—	—	—	-0.064 ^{n.s.} 0.938 (0.084)
π_1 – Driver’s Race					
γ_{100} – Base Effect	0.973* 2.645 (0.025)	0.968* 2.633 (0.025)	0.967* 2.629 (0.025)	0.979* 2.662 (0.027)	0.968* 2.633 (0.025)
γ_{101} – Officer Race	—	—	—	-0.075 ^{n.s.} 0.927 (0.062)	—
π_2 – Weekend Night					
γ_{200} – Base Effect	0.580* 1.785 (0.025)	0.577* 1.780 (0.025)	0.576* 1.779 (0.025)	0.577* 1.780 (0.025)	0.576* 1.780 (0.025)
π_3 – Vehicle Age					
γ_{300} – Base Effect	0.054* 1.055 (0.001)	0.054* 1.055 (0.001)	0.054* 1.055 (0.001)	0.054* 1.055 (0.001)	0.054* 1.055 (0.001)
Variance Component					
π_0 – Intercept					
τ_0 – County Variation	0.177*	0.177*	0.176*	0.176*	0.176*
u_{00} – Officer Variation	1.001*	0.955*	0.926*	0.925*	0.926*
π_1 – Driver’s Race					
u_{10} – Officer Variation	0.206*	0.205*	0.205*	0.204*	0.205*
π_2 – Weekend Night					
τ_2 – County Variation	0.209*	0.208*	0.208*	0.208*	0.208*

APPENDIX III - SQL CODE

The following SQL code was used to generate the level 1, or stop-level, data file.

```

use [isp racial profiling]
select t1.ofcid, t2.FIPSCode, (CASE
  WHEN CitRace = 'W' then 0.0
  ELSE 1.0
END) DNONWHIT, datepart(bb,dtmade) stophour, (CASE
  WHEN SResult = '1' THEN 2.0
  WHEN SResult = '2' THEN 1.0
  WHEN SResult = '3' THEN 0.0
END) STRSLT, (CASE
  WHEN Search = 'Y' THEN 1.0
  WHEN Search = 'N' THEN 0.0
END) ANYSRCH, YEAR(DTMADE) (CASE
  WHEN VEHYEAR >= 2005 THEN 2005
  ELSE VEHYEAR
END) vehage, datepart(dw,dtmade) DOW, (CASE
  WHEN datepart(dw,dtmade) = 6 AND datepart(bb,dtmade) >=18 THEN 1.0
  WHEN datepart(dw,dtmade) = 7 AND (datepart(bb,dtmade) <=5 OR datepart(bb,dtmade)
  >=18) THEN 1.0
  WHEN datepart(dw,dtmade) = 1 AND datepart(bb,dtmade) <=5 THEN 1.0
  ELSE 0.0
END) WENIGHT
from dataall t1 left join ltblcounties t2 on t1.county = t2.tipscnty
where ofcid in (select distinct idnumber from sworn04) and t1.county is not null

```

The following SQL code was used to generate the level 2, or location-level, data file.

```

use [isp racial profiling]
select t0.ofcid, t1.FIPSCode, t2.totadrug, t2.totpop, t2.drgarate, t2.agncyent, count(seqnum) stopcnt
from dataall t0 left join ltblcounties t1
  on t0.county = t1.TIPSCnty left join (select county, sum(adrug04) totadrug, sum([04pop]) totpop,
  (sum(adrug04)/ sum([04pop]))*1000 drgarate, count(*) agncyent
  from crime04
  group by county) as t2
  on t1.county3 = t2.county
where FIPSCode IS NOT NULL and ofcid in (select idnumber from sworn04)
group by ofcid, FIPSCode, totadrug, totpop, drgarate, agncyent

```

The following SQL code was used to generate the level 3, or officer-level, data file.

```
use [isp racial profiling]
select idnumber ofid, (CASE
    WHEN RACE = 'W' THEN 0.0
    ELSE 1.0
END) NONWHITE, RANKORD, SUPORD, AGE04, SERV04, AGEIN
from sworn04
where idnumber in (select distinct ofid from dataall)
```



OFFICE OF THE GOVERNOR

ROD BLAGOJEVICH - GOVERNOR

NEWS

FOR IMMEDIATE RELEASE

July 1, 2005

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First year report on racial profiling released

Governor calls for permanent collection of racial profiling data more training on consent searches

SPRINGFIELD - Governor Rod. R. Blagojevich today announced actions the state will take to eliminate racial disparities in traffic stops, as results from the first year of Illinois' racial profiling study were released. The study, which involved approximately a thousand police agencies statewide, found that minorities are more likely to be pulled over than whites for a traffic stop and two and a half times as likely to have their car searched when pulled over.

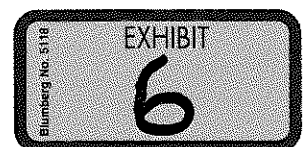
"Some of the results of this study are positive, but other aspects are troubling. The only acceptable goal is making sure that everyone is treated equally and respectfully," Governor Blagojevich said. "Collecting this data was a good start, but now that we have the data, our job is to make sure that we take every possible step so that everyone is treated fairly, and that's what we're doing today."

"It is a source of great pain for all of us when the police use their powers to pull someone over, or search their vehicle for no other reason than the color of their skin," said the Rev. Jesse Jackson. "I am proud of the governor for giving this matter his attention and recognizing the importance of defeating racial profiling, not just profiling behind the wheel but all aspects of life."

Data for the study was collected by the Illinois Department of Transportation in partnership with the Northwestern University Center for the Public Safety, which provided analysis of the data. The report being released today is for calendar year 2004.

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Initial findings from the overall 2004 report show that minorities are more likely to be pulled over than whites. In Illinois we estimated the minority driving population to be about 28%, while the overall percentage of minorities pulled over was 33%. However, in more than 47% of the agencies studied, the percentage of minorities pulled over was less than the estimated percentage of the minority driving population. The study also finds that minorities are more likely to get a ticket than whites, while caucasians are more often dismissed with a written warning.

However, data specific to traffic stops by the Illinois State Police show equal treatment between whites and minorities in the areas of stops and citations. The data indicates that minorities are less likely to be pulled over by the Illinois State Police. 25% of those pulled over by State Troopers were minority, and the estimated percentage of the driving population for minorities was 28.5%. Also, the reasons for stops were very similar for both whites and minorities as were the outcomes of stops, with approximately 58% of whites pulled over receiving tickets and 62% of minorities stopped receiving tickets.

The study's most troubling finding is that minorities are more than two and a half times as likely overall to be the subject of a consent search. A consent search is one in which there is no other legal or procedural justification for the search. These searches are based on a request by the officer to search the vehicle and are highly discretionary. Less than 1% of whites pulled over were subjected to consent searches, while 2.27% of minorities pulled over were subjected to these searches.

"We know the problem exists, now let's move forward and fix it by working together," Gov. Blagojevich said. "That's why we've put forth several new initiatives to ensure equal treatment. I also want to make the requirement to collect racial profiling data permanent, so we can always ensure that people are being treated equally and fairly."

"This study shows what many of us knew all along that racial profiling exists and it's real. While some of the results are encouraging, it's clear that more needs to be done," said State Senator James Meeks (I—Chicago). "I appreciate Governor Blagojevich taking a leadership role to help address this problem and I will join him in his efforts to ensure that everyone, regardless of the color of their skin, is treated fairly."

Specific initiatives that are being introduced to address the racial disparities pointed out in the study are as follows:

- Increased sensitivity training for police officers, specifically training that deals with consent searches.
- Bringing in a team of national experts to perform further analysis of the data and to make recommendations for combating racial profiling.
- Creation of a task force of community leaders, elected officials and civic groups that will focus on solutions and implementation of recommendations.
- Making the data collection and profiling study permanent, to ensure that progress made between 2004 and 2008 is maintained.

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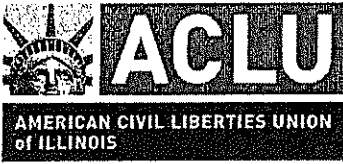
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“This pattern of the increased likelihood of consent searches for minorities is very troubling to me,” said Rep. Marlow Colvin (D—Chicago) “I join Governor Blagojevich today in his call for additional training and more study of this data. We owe it to everyone in Illinois to take this opportunity and move forward.”

“Governor Blagojevich should be applauded for signing this legislation. I will never forget that day and the crowd that came out to witness the beginning of this historic study,” Rep. Monique Davis (D—Chicago). “Our governor is concerned with protecting the rights of all citizens, and racial intolerance is not acceptable to anyone.”

The Illinois Traffic Stop Study is the largest and most comprehensive study of its type undertaken to date. Data was collected from approximately 1,000 police agencies, including Illinois State Police, county, municipal, railroad, college and university police. Under the act, police officers are required to record specific data about each and every stop. Data collection for the study began on January 1, 2004, and will continue through at least December 31, 2007, if it is not made permanent. The full report and an executive summary are available for viewing at the IDOT website at <http://www.dot.il.gov> .

###



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

**American Civil Liberties Union of Illinois
July 23, 2008**



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 motorist 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.

Chicago Tribune

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Study sees racial bias in traffic-stop searches

By Monique Garcia and Ray Long
TRIBUNE REPORTERS

Civil rights groups called Thursday for ending the state police practice of searching vehicles during routine traffic stops, citing new statistics that show black and Hispanic motorists are searched more often even though drugs or other illegal items turn up

more frequently among white drivers.

In a letter to Gov. Rod Blagojevich, the groups said the state-funded research shows that minorities are unfairly singled out by police departments around the state. They called on him to order the Illinois State Police to end "consent searches," in which drivers agree to open their cars for inspection.

"Now we have the proof in the pudding and that is that not only are (these searches) occurring with greater frequency among minority drivers, but that they are occurring with dramatically less effectiveness," said Harvey Grossman, legal director for the ACLU of Illinois.

Although similar reports have for the last several years revealed that minorities are stopped and searched at higher rates than whites, last year was the first time police agencies were required to disclose their "hit rate," or how often the searches turn up drugs, weapons, stolen goods or other "contraband."

The Democratic governor said in a statement that he opposed "any unjustified differ-

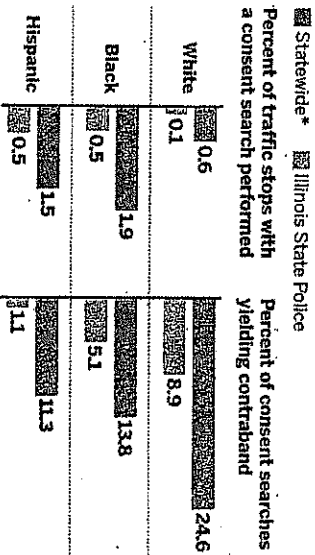
stopped and searched at higher rates than whites, last year was the first time police agencies were required to disclose their "hit rate," or how often the searches turn up drugs, weapons, stolen goods or other "contraband."

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More scrutiny of minority drivers

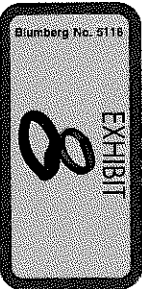
A consent search occurs after an officer asks to search a vehicle during a traffic stop and the driver says yes. New figures show there are more searches when minority motorists are stopped, yet more contraband found when white drivers are searched.

CONSENT SEARCHES CONDUCTED IN 2007



*Statewide figures do not include results from 96 municipal, university, airport and park district police departments that failed to submit data.
SOURCES: Northwestern University Center for Public Safety, IBCOT TRIBUNE GRAPHIC

PLEASE SEE SEARCHES D PAGE 21



» SEARCHES

CONTINUED FROM PAGE 1

ential treatment of any group," but did not address the request to stop the searches. "I look forward to working with the coalition to further our shared goals," Blagojevich said.

The state police called the proposed ban a "drastic step" and said it was premature given that the latest numbers are part of a yearslong study into potential discrimination that won't end until 2010.

"Biased-based policing is unacceptable and will not be practiced or tolerated by the ISP," Director Larry Trent said in a statement.

The study, required under racial-profiling legislation sponsored by then state Sen. Barack Obama of Chicago, is being conducted by the Northwestern University Center for Public Safety based on numbers reported to the state by police agencies around Illinois.

The 2007 statewide data show that compared with whites, police agencies searched blacks three times more often and Hispanics more than twice as often. But police discovered illicit goods roughly twice as often when whites agreed to searches.

The civil rights groups singled out the numbers for the state police, which showed troopers searched minorities three times as often as whites. But troopers found contraband in the vehicles of white motorists almost twice as often as they did in the vehicles of blacks and eight times more often than the vehicles of Hispanics.

"Officers are more trusting of whites than they are of blacks, and they are particularly suspicious of Hispanics," Grossman said of state police. "It's clear from the data that officers require less certainty when they ask Latinos to be searched than they do whites, there are more stringent standards for whites."

The report also contradicted a 2005 state-sponsored

study that found minority drivers are more likely to agree to voluntary searches than whites—one possible explanation for why they are more often searched.

Agencies were also required for the first time in 2007 to track how often motorists refuse consent searches. The refusal rates were almost equal among whites and minorities, with whites agreeing to searches 91 percent of the time; and blacks and Hispanics agreeing to 90 percent of requests.

The actual number of consent searches conducted was small—less than 1 percent, or slightly more than 23,000, of the more than 2.4 million traffic stops conducted in the state last year. Just more than 18 percent of the searches found contraband.

Other groups joining in the letter to Blagojevich with the American Civil Liberties Union of Illinois included Rainbow/PUSH, the Mexican American Legal Defense and Education Fund, the Chicago chapter of the Council on American-Islamic Relations, the Illinois Coalition for Immigrant and Refugee Rights, the Chicago Lawyers' Committee for Civil Rights Under Law and the Illinois conference of the National Association for the Advancement of Colored People.

State lawmakers, including several with law enforcement backgrounds, were quick to defend consent searches.

Rep. Edward Acevedo (D-Chicago), on leave from the Chicago Police Department, said the consent searches "should still be allowed."

"Sometimes you have to perform a search when there is immediate danger," Acevedo said.

Sen. John Millner (R-Carol Stream), a former Elmhurst police chief and officer for 31

years, said it's important for officers to have discretion and gave the example of an officer noticing a person was unusually nervous during a stop. He maintained state police are "absolutely not" making stops or conducting searches based on race.

"Color or ethnicity means nothing," Millner said.

Sen. Dale Righter (R-Charleston), a former prosecutor who has handled cases in which defendants were involved in consent searches, said he would oppose stopping the procedure until law enforcement had a chance to independently review the data.

"Just to take the ACLU's conclusions and order a stop of investigations based on that, I think would be a mistake," Righter said.

In 2006, a 15-member Racial Profiling Prevention and Data Oversight Board was created and scheduled to begin meeting this year, but only three members—representing the attorney general's office and the leaders of the House and Senate—have been appointed.

Sen. Kwame Raoul (D-Chicago), one of the appointees, said he hopes the board will be filled and begin meeting soon, and added that he wanted to study the year-to-year breakdown of the numbers before he embraced the call by civil rights groups to end consent searches.

Raoul said he would not want to stifle a cop's ability to sense when "something's going on."

But, Raoul said, "you don't want these hunches to develop because of the color of people's skin. So there's a balancing act that must be done."

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Complete

July 24, 2008

Governor Rod R. Blagojevich
James R. Thompson Center, Suite 16-100
Chicago, IL 60601

Re: Racial disparity in consent searches during routine traffic stops

Dear Governor Blagojevich:

We thank you for your leadership in the ongoing effort to prevent bias-based policing in Illinois. Your support was critical in 2003 to the enactment of the Illinois Traffic Stop Statistical Study Act, and in 2006 to the extension and expansion of that watershed legislation. It is also highly significant that in July 2005, you publicly condemned bias-based policing, and commanded the Illinois State Police to scrutinize its own traffic data regarding this issue. We write now to request that you continue to provide statewide leadership on this important issue.

Unfortunately, year after year, the data collected and analyzed by state government pursuant to the Study Act demonstrate a dramatic and persistent racial disparate impact caused by consent searches of vehicles during routine traffic stops. Most recently, this pattern is reaffirmed in the Study Act Report issued earlier this month regarding traffic stops in 2007. Taking the State of Illinois as a whole, African-American and Hispanic motorists are (respectively) 3.0 and 2.4 times more likely than white motorists to be subjected to consent searches. Similarly, taking the State Police, African-American and Hispanic motorists are (respectively) 3.2 and 3.5 times more likely than white motorists to be subjected to consent searches. The data for 2004 through 2006 are very similar, both statewide and for the State Police. The recent Study Act Report also shows – based on data mandated to be collected for the first time in 2007 – that when consent searches are performed, minority motorists are far less likely than white motorists to be found in possession of contraband. Specifically, the statewide “hit rates” for African-American and Hispanic motorists are about half of the white hit rate. The State Police hit rates for African-American and Hispanic motorists are (respectively) about one-half and one-eighth of the white hit rate. All of this is documented in the enclosed ACLU report based on the Study Act data.



We believe that it is critical that you take executive action immediately. After four years of study, the conclusion is obvious – consent searches are an invidious device that is a condition of inequality imposed on minority citizens on our roadways. The State Police’s own study, which is discussed in the attached report, only strengthens this conclusion. In light of these facts, we respectfully request that you order the State Police to stop requesting and performing consent searches of vehicles during routine traffic stops. We would welcome the opportunity to discuss this with you and your staff at your earliest convenience.

Sincerely,

American Civil Liberties Union of Illinois

Chicago Lawyers’ Committee for Civil Rights Under Law

Council on American-Islamic Relations, Chicago Chapter

Illinois Coalition for Immigrant and Refugee Rights

Mexican American Legal Defense and Education Fund

National Association for the Advancement of Colored People,
Illinois Conference

Rainbow/PUSH Coalition



TRAFFIC STOP CONSENT SEARCHES BY THE ILLINOIS STATE POLICE

**American Civil Liberties Union of Illinois
April 2009**



SUMMARY

This report addresses consent searches of vehicles by Illinois State Police (“ISP”) troopers during routine traffic stops. Consent searches are inherently coercive, invasive, and subject to bias. *See infra* Part I. Four years of statistical data about ISP traffic stops overwhelmingly demonstrate severe racial disparities in ISP consent searches. *See infra* Part II. Given these harms, and the very low productivity of ISP consent searches, ISP troopers should be prohibited from performing consent searches of vehicles during routine traffic stops – a policy already adopted by the California Highway Patrol. *See infra* Part III.

I. THE INHERENT HAZARDS OF CONSENT SEARCHES

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 and civil liberties concerns.

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. Thus, when an ISP trooper asks a motorist for permission to search their car, the overwhelming majority of motorists (95%) grant permission. *See* Exh. 1 (data and computations).

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 “hunch” 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.

II. THE ISP’S FLAWED USE OF CONSENT SEARCHES

From 2004 to the present, the Illinois Traffic Stop Statistical Study Act (“Study Act”) has required all police officers in Illinois (including ISP troopers) to document all of their traffic stops; required all police agencies in Illinois (including the ISP) to report their stops data to the Illinois Department of Transportation (“IDOT”); and required IDOT to

publicly release an annual report about this data, with assistance from university scholars. See 625 ILCS 5/11-212. From 2005 through 2008, IDOT released reports regarding the stops data from the previous year. Each of these reports was written by Northwestern University's Center for Public Safety. The reports are available on the IDOT website. See www.dot.state.il.us/trafficstop/results.html.

Year after year, this Study Act data clearly demonstrates that ISP consent searches have a statistically significant disparate impact against African-American and Hispanic motorists. Yet nothing has been done to solve this problem.

A. ISP traffic stops in 2004

In July 2005, IDOT released its first annual report, regarding traffic stops in 2004. See Exh. 2 (this report). Data in this report prove that ISP troopers were 2.9 times more likely to subject Hispanic motorists to consent searches, and 1.8 times more likely to subject black motorists to consent searches, compared to white motorists. See Exh. 3 (data and computations).

B. ISP responses to its 2004 stops data

Two ISP responses to its 2004 consent search data bear emphasis.

First, in July 2005, the former Governor announced that the ISP would retain a national expert to analyze the ISP stops data, and to make recommendations to address the racial disparity in the data. See Exh. 4 (press release). The ISP retained Prof. Timothy Bray of the University of Texas at Dallas to analyze its stops data. In July 2006, Prof. Bray submitted to the ISP a report regarding ISP searches in 2004. See Exh. 5 (the Bray report). Prof. Bray concluded that minority motorists were 2.62 times more likely than white motorists to be searched by ISP troopers, even after controlling for non-racial factors like vehicle age, weekend nights, and trooper rank and seniority. *Id.* at pp. 1, 8. This report did not examine consent searches in particular, as opposed to all searches generally. Nonetheless, this report's finding regarding all searches is congruent with Northwestern's data regarding ISP consent searches.

Unfortunately, as explained below, Prof. Bray's report did nothing to reduce the grave racial disparity in ISP consent searches. Moreover, there is no evidence that the ISP received or implemented any recommendations to address this racial disparity. Further, to our knowledge, the ISP never released Prof. Bray's report to the public or to the Illinois General Assembly; we obtained it only through a FOIA request.

Second, in response to public concerns about the 2004 data regarding consent searches by the ISP and other police forces, a task force was created to recommend legislative improvements to the Study Act. Task force members from the civil rights community urged permanency for the Study Act, which at the time was subject to a four-year sunset. Unfortunately, task force members from the ISP and other law enforcement groups

opposed permanency, and instead agreed to only a two-year extension – which is why data collection under the Study Act is now scheduled to terminate in December 2009.¹

The 2006 amendments to the Study Act made two other pertinent changes. First, the amendments mandated the collection of a richer set of data about consent searches: whether the motorist refused consent to search; whether the consent search yielded contraband; and the duration of the entire stop. Second, the amendments created an Oversight Board to examine and make recommendations regarding the Study Act data. *See* 20 ILCS 2715.

C. ISP traffic stops in 2005 and 2006

In July 2006 and July 2007, IDOT released its annual reports regarding traffic stops in (respectively) 2005 and 2006. *See* Exhs. 6 & 7 (these reports). Data in these reports proved a continuing racial disparity in ISP consent searches. In 2005, ISP troopers were 3.8 times more likely to consent search Hispanic motorists, and 1.8 times more likely to consent search black motorists, compared to white motorists. And in 2006, ISP troopers were 4.0 times more likely to consent search Hispanic motorists, and 1.8 times more likely to consent search black motorists, compared to white motorists. *See* Exh. 3 (data and computations).

D. ISP traffic stops in 2007

In July 2008, IDOT released its report regarding traffic stops in 2007. *See* 8 (this report). This was the first IDOT report to contain analysis of the richer consent search data mandated by the 2006 amendments to the Study Act. Four sets of data in this report prove a continuing racial disparity in ISP consent searches.

First, ISP troopers were 3.5 times more likely to consent search Hispanic motorists, and 3.2 times more likely to consent search black motorists, compared to white motorists. *See* Exh. 3 (data and computations). This was the fourth year in a row with a severe racial disparity in the ISP ratio of consent searches per stops.

Second, white motorists were far more likely to be found with contraband as a result of consent searches, compared to minority motorists. This is the most compelling data evidencing that race alone is being improperly used as a proxy for suspicion of crime. According to a leading treatise regarding traffic stop data:

¹ House Bill 648 would extend the Study Act by ten years. That bill recently passed the Illinois House by a 75-41 vote. It is now pending in the Illinois Senate.

[A] finding . . . that there is a lower rate of search hits for minorities than for Caucasians . . . indicates that different standards were utilized in selecting Caucasians and minorities for searches. Specifically, the implication is that a lower standard of proof was applied to searches of minorities than to searches of Caucasians.

See Police Executive Research Forum, *By the numbers: A guide for analyzing race data from vehicle stops* (2004) at p. 274.²

For the ISP in 2007, consent searches yielded contraband from 8.9% of white motorists, 5.1% of black motorists, and 1.1% of 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. Strikingly, of the 179 ISP consent searches of Hispanic motorists, *only two* yielded contraband. See Exh. 9 (data and computations). Neither of those two searches yielded drugs or guns. See Exh. 10 (data and computations). In short, for ISP consent searches in 2007, motorists of color were far more likely than white motorists to be consent searched, and far less likely than white motorists to be found with contraband. See Exh. 11 (bar graphs).

Third, there is very little variance in the rates that motorists of different races grant requests for consent to search. Specifically, the consent rates are: 93.9% for white motorists; 96.0% for African-American motorists; and 96.4% for Hispanic motorists. See Exh. 1 (data and computations). Northwestern University opined that a very similar statewide variance comprised “little evidence to suggest that differential search rates can be explained by differential consent rates.” See Exh. 8 at 10.³

The ISP’s dramatic racial disparities in consent searches were the lead story in the *Chicago Tribune* on July 25, 2008. See Exh. 13. In the nine months since the public release and discussion of this data, neither the ISP nor any other commentator has offered an innocent explanation for these racial disparities. Nor has anyone suggested that there are any flaws in these data and computations.

² At http://www.policeforum.org/upload/BytheNumbers%5B1%5D_715866088_12302005121341.pdf.

³ Before the 2006 amendments to the Study Act, some law enforcement officials had argued that the racial disparity in the ratio of consent searches per stops is not caused by officers asking minority motorists more frequently than white motorists for consent to search, but rather by minority motorists more frequently than white motorists giving 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. 12 (*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).

III. SOLUTION: A BAN ON ISP CONSENT SEARCHES

The solution is a prohibition of consent searches by ISP troopers during routine traffic stops. These consent searches have very high costs, including a severe racial disparity. *See supra* Part II. Moreover, consent searches are coercive and invasive of the privacy of motorists of all races, leading *Chicago Tribune* columnist Steve Chapman to call for a ban of this practice. *See* Exh. 14 (his column). *See also supra* Part I.

On the other side of the cost-benefit ledger, the Study Act data for the ISP in 2007 demonstrate that consent searches have very little law enforcement value. The “hit rates” discussed above – 8.9% for white motorists, 5.1% for black motorists, and 1.1% for Hispanic motorists (exh. 9) – demonstrate not just a severe disparate impact, but also very low productivity for motorists of all races.

The low value of consent searches is further demonstrated by the kinds of contraband found by ISP consent searches in 2007. Not one of these searches yielded significant amounts of illegal drugs. Only a quarter yielded any amount of drugs, and half of those involved less than two grams. Thus, consent searches are not an important part of the ISP’s interdiction of large drug shipments. Moreover, only two ISP consent searches yielded a weapon. Finally, the majority of consent searches yielding contraband involved only unlawful alcohol – presumably an open container in a moving vehicle. While not minimizing the threat from alcohol impaired drivers, the ISP can rely on other law enforcement techniques, without using consent searches, to protect the motoring public from the dangers of drunk driving. *See* Exh. 10 (data and computations).

Given the low benefit and high cost of consent searches, it is no surprise that the California Highway Patrol in 2003 suspended its use of consent searches. *See* Exh. 2 (Northwestern report of July 2005) at p. 8; Exh. 7 (Northwestern report of June 2007) at p. 7. The time has come for the ISP likewise to end its use of consent searches.

April 10, 2009

VIA HAND DELIVERY

The Honorable Patrick Quinn
Governor of Illinois
100 West Randolph Street, Suite 16-100
Chicago, Illinois 60601

Re: The Illinois Traffic Stop Statistical Study Act

Dear Governor Quinn:

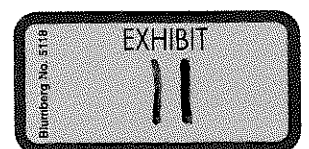
We write to urge you to prohibit by means of executive order or in conjunction with the legislative action, Illinois State Police troopers from performing consent searches on vehicles during routine traffic stops. Consent searches are inherently coercive, invasive, and subject to bias. Statistical data overwhelmingly demonstrate severe racial disparities in ISP consent searches, and show that these searches are unproductive. The California Highway Patrol already prohibits consent searches, and so should the ISP. These points are more fully developed in the attached report.

We hope to discuss this recommendation with you at your earliest convenience. If you have any questions for us, please contact Harvey Grossman of the ACLU, at (312) 201-9740-x321. At this time, we are also asking Speaker Madigan to support a prohibition on ISP consent searches.

Sincerely,

American Civil Liberties Union of Illinois
Asian American Institute
Black Women Lawyers Association
Chicago Council of Lawyers
Chicago Lawyers Committee for Civil Rights Under Law
Cook County Bar Association
Council on American-Islamic Relations – Chicago Chapter
Hispanic Lawyers Association of Illinois
Illinois Coalition on Immigrant and Refugee Rights
Jewish Council on Urban Affairs
Mexican American Legal Defense and Educational Fund
NAACP Illinois Conference
Rainbow Push Coalition

cc: Jerry Stermer, Chief of Staff to the Governor
Theodore Chung, General Counsel to the Governor
Sean Vinck, Chief Legislative Counsel to the Governor



April 10, 2009

VIA U.S. MAIL

The Honorable Michael Madigan
Speaker of the Illinois House of Representatives
300 Capitol Building
Springfield, IL 62706

Re: ISP consent searches

Dear Speaker Madigan:

Thank you for providing an opportunity for our organizations to offer suggestions about ways to improve the performance of the Illinois State Police ("ISP"). We respectfully urge you to support legislation that prohibits ISP troopers from performing consent searches on vehicles during routine traffic stops. Consent searches are inherently coercive, invasive, and subject to bias. Statistical data overwhelmingly demonstrate severe racial disparities in ISP consent searches, and show that these searches are unproductive. The California Highway Patrol already prohibits consent searches, and so should the ISP. These points are more fully developed in the attached report.

We hope to discuss this recommendation with you at your earliest convenience. If you have any questions for us, please contact Harvey Grossman of the ACLU, at (312) 201-9740-x321. At this time, we are also asking Governor Quinn to support a prohibition on ISP consent searches.

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Asian American Institute
Black Women Lawyers Association
Chicago Council of Lawyers
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Cook County Bar Association
Council on American-Islamic Relations – Chicago Chapter
Hispanic Lawyers Association of Illinois
Illinois Coalition on Immigrant and Refugee Rights
Jewish Council on Urban Affairs
Mexican American Legal Defense and Educational Fund
NAACP Illinois Conference
Rainbow Push Coalition

cc: Jay Curtis, House Democratic Staff 2009 Technical Review Unit
David Ellis, Chief Counsel to the Speaker

