



November 12, 2020

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VIA EMAIL

Dear Ken:

We are writing regarding your latest analyses of the traffic stop data submitted by police departments pursuant to the Comprehensive Community-Police Relationship Act (CCPRA). We have not shared our views with you sooner because our organizations first wanted to carefully and thoroughly review and digest CCSU's latest annual report of "Traffic Stop Analysis and Findings" for 2018, as well as your more recently released preliminary findings from the 2019 data. As you have noted, your latest report has come out at a time when the statutory requirement for traffic stop data collection and analysis has expired, and the General Assembly must consider whether to renew it. As participants in the lobbying effort that first led to passage of a data collection law 20 years ago, we have a natural interest in the statute's fate as well.

However, after many years of frustration, we have reached a point where we must question the continued utility of these reports, and the analysis and interpretation of the collected data underlying them, in light of the premises, history and focus of the reports and the response of police departments to them. We fear that, however unintentionally, the annual reports have allowed police departments to avoid addressing the issue of racial bias in traffic stops and searches rather than serving as a tool for encouraging accountability and addressing persistent disparities. As a result, in the absence of additional provisions strengthening the CCPRA and the reporting requirements, we are not convinced that extending the deadline is worthwhile unless significant changes are made. There are a few reasons that lead us to this unfortunate conclusion.

First, as you may recall, our groups have raised concerns from the beginning about some of the assumptions underlying CCSU's annual analyses and the way that the findings are presented. CCSU's use of a 95% confidence level of statistical significance to single out police departments for more detailed review, even though you have acknowledged that 85% is the common and well-recognized standard, sets a uniquely high bar before police departments are given closer analysis. This choice, which has been made by CCSU on its own, is a weighty and *subjective one* that puts a thumb on the scale from the very start. The decision to use the 95% standard presupposes a stronger interest in protecting the reputation of police departments than of the communities of color being disparately treated by those departments.<sup>1</sup>

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<sup>1</sup> This problem is heightened by CCSU's decision to explore the data of police departments more deeply only if they show statistically significant differences, except in the case of the "solar visibility" analysis, in two or three categories.

In addition, the reports routinely make assumptions and statements that tend to justify, rather than question or be neutral about, police department conduct. For example, the executive summaries, while consistently noting the racial disparities highlighted by the data, have routinely included the comment that “it is impossible to clearly link these observed disparities to racial profiling as they may be driven by any combination of policing policy, heterogeneous enforcement patterns, or individual officer behavior.”<sup>2</sup> However, any one of those rationales may in fact be the *direct cause and product* of racial profiling. It is, after all, heterogeneous enforcement patterns and individual officer behavior that allow for, promote, and often explain racial profiling. Similarly, some policing policy decisions (e.g., placing police cars in “high crime” areas to perform traffic enforcement, a factor mentioned in the reports) are almost certain to lead to racially disparate practices. To say that these contingencies make it impossible to aver the presence of racial profiling is to almost concede the impossibility of ever even suggesting discriminatory conduct.

Since the start of traffic stop analysis in Rhode Island almost two decades ago, police departments have sought to discredit any data demonstrating significant racial disparities in traffic stops by questioning the methodology used, no matter what protocols and statistical adjustments have been made to address that point. All too often, traffic stop disparities in municipalities with largely white populations are ultimately justified, by both the police and the reports, by concluding that non-white drivers who live outside the municipality make significant use of their highways. In fact, this is the rationale accepted in the most recent completed report to explain away the disparities in all four of the departments given detailed scrutiny. At some point, however, a theory that relies on transient non-white motorists roaming the state and violating (often minor) traffic laws to explain these consistent disparities must fall of its own weight.

To give just one example, CCSU’s most recent report exonerates the Smithfield Police Department of any misconduct by relying almost exclusively on the fact that the “traffic stop data reflects the influence of the Putnam Pike and Douglas Pike corridors that appear to be somewhat more diverse than the predominantly white resident driving age population.”

Perhaps it makes some sense to assume that, in a town whose population is 95% white, there might be a “somewhat more diverse” driving population on a major highway in the town. But can it fully explain the solar visibility analysis disparities that were found to be “statistically significant at a level greater than 99%”? And what of the fact that the average driving age population of the five towns bordering Smithfield, where one could easily presume most out-of-town traffic is coming from, is 93% white? The facile acceptance of a “diverse driving population” to explain the data that otherwise points to the possibility of racial profiling is deeply troubling.

The report’s review of the town’s search data is also less than helpful. Although searches of Black and Hispanic drivers in Smithfield were higher than those for white drivers, the report concludes that the data set was too small to draw any firm conclusions, and that search data collected over a longer period of time would need to be examined. That is a reasonable caveat, but one would have hoped that the report, designed to give special scrutiny to the department, would thereupon examine the year’s data in conjunction with previously collected search information in order to provide further depth to the analysis.

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<sup>2</sup> In our response to the 2017 report, we highlighted this wording as an issue and were told it would be removed. That it remains is indicative to us of the assumptions underlying the report.

Other red flags abound in the reported data but get mentioned only in passing. For instance, in each of the four analyzed municipalities, white drivers were more likely to be stopped for hazardous driving behavior, while Black and Hispanic drivers were more likely to be pulled over for equipment and inspection-related violations. To us, this is not just a throwaway line, but instead a clear indication of something less innocuous.

Ultimately, the report concludes for each of the four departments analyzed that “the disparities do not appear excessive in nature,” notwithstanding the fact that these departments were singled out *precisely because* their disparities *were* excessive in nature.

The exonerations remind us of an illustration you gave in 2017 about CCSU’s analysis of Connecticut municipal data, and which we have previously pointed out. You highlighted one department with significant racial disparities that could be traced to a program of pulling over hundreds of cars a year for taillight violations as a pretext for finding drunk drivers. Even though virtually none of the stops led to DUI arrests, you used this municipality to argue that deep dives into police department practices could uncover non-racially-biased reasons for traffic stop disparities; in this case, a well-meaning police department’s attempt to crack down on drunk driving.

But to us, it seemed to demonstrate the opposite. The use of pretext stops, the focus on a violation as trivial as broken taillights, and the department’s apparent abysmal failure over a lengthy period of time to recognize that these stops were having no impact on DUI stops – each *individually*, never mind combined, struck *us* as quintessential signals of racial profiling.<sup>3</sup> Giving a department the benefit of the doubt under such circumstances – as we believe CCSU has comparably done in its follow-up analyses for Rhode Island municipalities – makes one wonder what it would take to ever find that a department’s disparities *were*, at least in part, race-based.<sup>4</sup>

As you are aware, our groups have also expressed concern from the outset about the almost singular focus of the reports on traffic stops, as opposed to searches. In light of the continued questioning by departments of any methodology used to estimate the racial makeup of those driving in any particular municipality, we have conveyed our belief numerous times that a close look at search data – which is discrete and divorced from those methodological questions – would be particularly informative. The CCPRA envisions as much, requiring the annual reports to analyze not only whether racial disparities in traffic stops exist, but also “whether searches of vehicles and motorists are being conducted in a disparate manner.” R.I.G.L. §31-21.2-6(a). However, the annual report provides no race-specific information on the percentage of drivers searched.

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<sup>3</sup> As you are likely aware, there is a fair amount of empirical analysis addressing the racially disparate use of pretext stops. See, e.g., “An Empirical Assessment of Pretextual Stops and Racial Profiling,” [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3506876](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3506876)

<sup>4</sup> We can’t help but compare the assumptions underlying the CCSU analyses with the very different ones articulated in a Harvard Law School report that came out in September, examining racial disparities in criminal sentencing in Massachusetts’ state court system. See, e.g.: “It is also important to note that observing raw disparities diminish (or increase) after including additional factors in the model does not necessarily imply that the disparity is justified and/or not driven by race or racism. This is because many of the additional factors we control for in the analysis may themselves be affected by prior racially disparate treatment or even racial disparities elsewhere in the legal system.” *Racial Disparities in the Massachusetts Justice System*, The Criminal Justice Policy Program, Harvard Law School, <http://cjpp.law.harvard.edu/assets/Massachusetts-Racial-Disparity-Report-FINAL.pdf>, page 30.

As a result, when the data show that the search “hit rate” (how often contraband is found when a search is conducted) for racial minorities is lower than for white motorists, and the differences are “statistically significant at the 99 percent level,” the report’s “interpretation” is that “municipal departments may be disproportionately searching minority motorists.” But there should be no need for interpretation: it is a *fact* that departments are disproportionately searching minority motorists. The annual report simply doesn’t bother to break down the search information to demonstrate that fact.<sup>5</sup> Armed with that information, the “interpretation” of the hit rate findings should instead be that departments may be *engaging in racial profiling* in conducting searches.

The unfortunate upshot of the data collection analysis is this: in 2018 (as was true in 2017 and 2016, and, based on your recent presentation, in 2019), police departments in Rhode Island stopped Black and Hispanic drivers at disproportionate rates. Each of those years, police departments also disproportionately searched minority drivers. Yet, notwithstanding the disproportionate stops and disproportionate searches of Black and Hispanic drivers, white drivers were more likely to be found with contraband each year. Despite these grim but consistent statistics, not one department has been found to have engaged in any improper conduct. For those of us who have been reviewing the data for a long time, this is especially disheartening since these glaring statistical disparities mirror those that have been found in *every study* conducted in Rhode Island on this issue since traffic stop data collection began *twenty years ago*.

We have come to the realization that the academic analysis of the data has not had, and does not appear to have, any meaningful positive effect on police departments as related to the noted racial disparities. Distressingly, one unintentional impact of the report’s vindication of the handful of departments singled out for special scrutiny is that other departments also consider themselves vindicated for not being singled out in the first place. Nowhere do the reports attempt to come to grips with the puzzling situation that consistent and overwhelming evidence of racial disparities never manages to lead to any findings of racial discrimination.

Taking all this into account, we are left with the conclusion that simply gathering and analyzing more data in this way only postpones confronting the ugly truth behind the statistics – a truth that just about any person of color can attest to from their daily experiences, and that the statistics themselves confirm until they are rationalized away.

We therefore do not support continuation of the data collection studies unless and until, at the very least, the data from these recent studies are reexamined and used to address – not to explain away – the continuing racial disparities that they reveal. More specifically, we believe that CCSU should, at a minimum: (1) re-run the data for each year to indicate which police departments show racial disparities at a statistically significant level with an 85% level of confidence – not 95% – for each method of analysis used, and (2) report the search data for police departments broken down by race and, for those police departments where the number of searches conducted in a year provided too small a sample to analyze, combine the data collected for all the years studied in order to obtain a statistically significant dataset for review. Nothing in the data collection provisions of the CCPRA prevented, or prevents, CCSU from presenting information in these ways. To the contrary, these are points we have made in the past.

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<sup>5</sup> By our unofficial review of the search data contained in the quarterly reports for 2018, it appears that approximately 57% of searches conducted statewide by police were of Black and Hispanic drivers.

To the extent funding issues prevent re-running the data, we believe it is essential that, if the data collection provision is to be renewed, amendments to the CCPRA must be enacted that both address these issues and require community input before the issuance of findings about police departments that have been the subject of follow-up analysis.

While we recognize that it is outside the scope of CCSU's responsibilities, we also believe it has become clear that there is a need to strengthen the CCPRA in other ways – including police departments' obligations regarding the review and response to the data – in order to try to reduce some of the police practices that consistently lead to these findings of racial disparities.

We welcome your response to this.

Sincerely,

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