

Recommendations from Previous Reports

From FY2021 report

RECOMMENDATION 1: *The percentages and Disparity Indexes (DIs) presented in this preliminary report should not be interpreted to indicate that any individual law enforcement agency is practicing bias-based profiling.*

Given the limitations noted above, these figures should only be used to identify where the numbers indicate that certain ethnic/racial groups are being disproportionately stopped, which may bear further review to identify why this is occurring and whether any action should be considered to reduce or eliminate it.

This is a standing recommendation given the limitations of the CPA's current data fields. In addition, any year-to-year comparison of CPA findings should take into consideration both methodological differences and external factors involved in each year's report.

RECOMMENDATION 2: *Collect data on the time of day at which each traffic stop was made and add this data to the CPA database. This data would allow DCJS to analyze traffic stop data by comparing disparities in driver stops made during hours of daylight and nighttime.*

HB 1142 of the 2022 General Assembly session proposed adding time of stop to the mandated CPA data elements, but this bill ultimately failed passage. Including this data field would still lend analytical weight to the CPA Report. Additionally, time of stop would serve as a valuable identifier variable to help resolve the issue of record duplicates which has emerged in the CPA dataset (see Exclusion Criteria).

RECOMMENDATION 3: *Collect data on the race/ethnicity, age, and gender of drivers involved in traffic accidents in each Virginia locality. (It would not be necessary to collect personally identifiable information on the driver, only the demographic data.) How and where this data would be collected and stored would need to be determined, but the data would need to be maintained in a way that would allow DCJS to compare it with traffic stop data for each locality.*

DCJS and VSP have explored the possibility of this recommendation and have determined that this data is currently unavailable from either the Virginia Department of Transportation, the Department of Motor Vehicles, or the State Police. DCJS will continue to research possible methods of improving estimates on the Virginia driving population.

RECOMMENDATION 4: *Collect data on searches made for contraband during traffic stops, and the results of the searches, and add this data to the CPA database.*

HB 1142 of the 2022 General Assembly session proposed adding additional search data to the mandated CPA data elements, but this bill ultimately failed passage. Including this data field would still lend analytical weight to the CPA Report, allowing for statistical analysis which bypasses the population benchmarking problem and draws instead from the known pool of stopped and searched drivers.

RECOMMENDATION 5: *Collect data on the residence of drivers involved in traffic stops and add this data to the CPA database. This might be done using data collected from the driver's license.*

VSP added Residency as an optional data for the fiscal year 2022 Community Policing Act Database. Beginning July 1, 2023, Residency will be a mandatory field required for all stop records. This will allow for DCJS to derive an understanding of the proportion of drivers which reside outside of the jurisdiction of their traffic stop and help to measure the validity of the population estimate data used to develop disparity index benchmarks. Implemented by VSP.

RECOMMENDATION 6: *Collect data on the method by which the traffic stop was initiated, to distinguish stops in which an officer's observation of the driver's race/ethnicity could have played a role from stops in which it would be less likely to play a role. Add this data to the CPA database.*

While no additional data fields have been added to the CPA for method of stop initiation, DCJS has added the "Call For Service" reason for stop to the analysis dataset exclusion criteria. This change eliminates a subset of stops with a low degree of officer discretion involved in stop initiation. DCJS is in discussion with VSP to clarify training and instructions on which cases to include in the "Calls for Service" type, including traffic accidents. VSP has also issued clarifying instruction to agencies on the use of the "Checkpoint" stop reason, to help identify these cases for exclusion from the analysis dataset. Implemented by DCJS.

RECOMMENDATION 7: *Virginia should examine the need to provide resources to smaller law enforcement agencies that had difficulty implementing the CPA data collection and reporting requirements. Assistance could be provided in several ways, such as helping these agencies train staff on reporting requirements and practices, and providing them with more effective data collection tools such as a statewide electronic summons application.*

In November 2021, DCJS distributed a Community Policing Act Needs Assessment to all Virginia law enforcement agencies, garnering input on resourcing priorities to help the agencies improve CPA data collection and submission. The results of this assessment have been compiled and utilized in an application to the National Highway Traffic Safety Administration's (NHTSA) federal grant on collecting and reporting racial trends in traffic stop data. Grant funding was not awarded.

RECOMMENDATION 8: *Virginia should examine the feasibility of obtaining more accurate data on the race and ethnicity of drivers who are involved in law-enforcement traffic stops. Under the CPA, law-enforcement officers now have two methods for determining the race/ethnicity of a driver: officers must either make their own determination about a driver's race/ethnicity (which may or may not be accurate) or ask for that information in the course of the traffic stop, which could raise constitutional concerns or escalate the perception of conflict in certain situations. Virginia does not collect and store information about a driver's race or ethnicity.*

SB 277 of the 2022 General Assembly session proposed that the Virginia Department of Motor Vehicles collect driver race and ethnicity data solely for use in the Community Policing Act Database, but this bill failed passage. While substantiating data on the self-reported race and ethnicity of drivers could be a helpful supplement for analysis, the variable of interest for most research on bias-based profiling is the officer's perceived race of the driver as the influential factor in profiling. Therefore, the officer's estimate

of a driver's race and ethnicity remains a relevant data element for collection. At the same time, officers should not be put in the position of having to ask drivers to report their race/ethnicity during traffic stops.

RECOMMENDATION 9: *Virginia should examine the feasibility of collecting data on the race/ethnicity of the law-enforcement officers making traffic stops and adding it to the CPA database.*

This would allow DCJS staff to assess whether there are indications that the race/ethnicity of the officer making a stop is related to racial/ethnic disparities in stops.

HB 1142 of the 2022 General Assembly session proposed adding officer race and ethnicity to the mandated CPA data elements, but this bill ultimately failed passage. This variable would still add analytical strength to the report if added, allowing DCJS to analyze the impact of officer race on stop decisions and racial/ethnic disparities in drivers stopped.

RECOMMENDATION 10: *DCJS staff should conduct additional research on methods for calculating driver racial/ethnic disparities for agencies serving towns.*

Currently, the resident driving-age population data needed to examine stops by these agencies is limited, and DCJS staff should determine if this data, or other suitable data, is available. Similarly, DCJS staff should examine whether it is feasible to reliably assess traffic stop disparities for "other" agencies that do not have stable, defined resident population figures.

DCJS has identified a census-derived data source, IPUMS NHGIS, which publishes age and race grouped population estimates at the town level. DCJS intends to use the NHGIS estimates as Town agency benchmarks for the analysis of the calendar year 2024 data. This data will allow for the report to include disparity indices and other population-based analyses at the Town agency level, similar to the City and County Agency findings currently included.

RECOMMENDATION 11: *DCJS staff should continue to work with VSP to determine how data on complaints of excessive use of force can be collected in a manner that allows for an examination of bias-based profiling in use of excessive force cases.*

The reporting format for use of force complaint data is the same this year as for FY2021-FY2023. VSP has established an online data collection repository as of June 2024 which should provide DCJS with access to (July-December) data regarding complaints of excessive use of force for next year's report.

From FY2022 report

RECOMMENDATION 12: *The General Assembly should consider providing more specific definitions on the types of investigatory detentions which require CPA data collection. VSP's Instructions and Technical Specifications Version 5.2 (effective July 1, 2022)⁸ includes a section providing clarification on investigatory detentions; however, the addition of pedestrian stops to the collection mandate has introduced many nuanced detention scenarios which are ultimately left up to the interpretive judgement of individual LEAs on whether to report them as Community Policing Act data.*

Code of Virginia § 52-30.2(C) currently states that officers must collect Community Policing Act data “Each time a law-enforcement officer or State Police officer stops a driver of a motor vehicle, stops and frisks a person based on reasonable suspicion, or temporarily detains a person during any other investigatory stop.”

This broad definition includes many situations which are not relevant to the analysis of discretionary profiling in police encounters. To narrow down situations in which either criminal suspicion or officer discretion are not involved, DCJS proposes that the General Assembly consider amending this section to require the collection of CPA data as follows (or with substantially similar language):

“Each time a law-enforcement officer or State Police officer stops a driver of a motor vehicle, stops and frisks a person based on reasonable suspicion, or temporarily detains a person ***on the basis of criminal suspicion during any other investigatory stop not in service of a warrant or other court orders.***”

This change would ensure that Community Policing Act data collection is focused on stops which are relevant to analysis, and that law enforcement agencies are given less of a burden in determining which stops mandate collection.

VSP Data Collection Instructions and Technical Specifications updated to Version 5.3. Implemented by VSP for 2023.

RECOMMENDATION 13: *Consider amending Community Policing Act legislation to change the report deadline to November 1.*

Because this report is due to the General Assembly on July 1 of each year per § 9.1-192(B) of the *Code of Virginia*, the date range of Community Policing Act data used for analysis cannot span the full fiscal year at hand. With an additional three months to process and analyze more recent data, the report could cover the full 12 months of each preceding fiscal year, including any seasonal trends from April through June currently missing from the report’s data.

Due to issues in processing and transferring data from VSP, DCJS changed the data collection window from Fiscal year to Calendar year. This increased the amount of more time between the deadline for data reporting and deadline for the report from 2 months to a more feasible 5 months. This also increased the collection window by an additional 3 months, allowing for a full year of data.

RECOMMENDATION 14: *DCJS should continue to research additional sources of information and analytic approaches to help determine whether any observed disparities between different racial/ethnic groups in traffic stops are due to bias-based policing or they are due to other factors that could lead to disproportionate numbers of stops for minority drivers. One such factor that DCJS should attempt to examine is whether there are differences in the proportion of successful legal challenges made to traffic stops, searches, and arrests for minority and non-minority drivers.*

Currently reviewing ways to implement this recommendation.

From FY2023 report

RECOMMENDATION 15: *For the DCJS 2024 CPA report, local resident analyses should be broken out for Town agencies and benchmarked against county-level census-derived benchmark estimates.*

Effective July 1, 2023, VSP's Community Policing Data Instructions and Technical Specifications Version 5.3 have revised value "R" for the Residency data element from "Resident of town/city/county of stop" to "Resident of city/county of stop." This change removes a degree of ambiguity from the residency coding of Town agency data – for the 2023 analysis, DCJS was unable to distinguish cases where a Town agency had marked "R" referring to town residency vs. county residency, which rendered the Residency field problematic for Town agency level analysis. With "town" removed as a possible descriptor in the "R" value, DCJS can more confidently categorize these cases as local county residents and follow the same benchmarking process as the City and County agencies accordingly.

A key assumption to this approach is that in the typical Virginia town, local county drivers are intermixed with the town's drivers enough that the town's driving population closely resembles its overall county's driving population. Anecdotally, feedback along these lines is what led to the Residency value change in the version 5.3 technical specifications. However, DCJS could consult with VSP, Town agencies reporting traffic stops, and academic/demographic institutions working in the field of criminal justice research to develop testing and pre-implementation thresholds to validate this assumption. This recommendation does not require new legislative action or executive action beyond agency implementation.

Implemented by DCJS for 2024.