

To: Logistics Subcommittee, Police Transparency and Accountability Task Force

From: Connecticut Racial Profiling Prohibition Advisory Board

Date: February 4, 2021

RE: Evaluation and recommendations of a primary and secondary traffic enforcement system

## **Task**

Outline the merits and feasibility of the establishment of primary and secondary traffic violations in the general statutes; and the establishment of a requirement in the general statutes that any police traffic stop be based on the enforcement of a primary traffic violation.

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## **Background**

### *Analyzing Traffic Stops*

Disparities in the criminal justice system, particularly police enforcement, have been a major source of political protest and social unrest in the United States. Motor vehicle enforcement is a frequent focus of the conversation due to the fact that it is the public's most frequent interaction with law enforcement. On average, police in Connecticut conduct more than 500,000 traffic stops each year. Since 2013, Connecticut has collected and analyzed data for over 3.5 million traffic stops.

Since 2014, the Institute for Municipal and Regional Policy (IMRP) at Central Connecticut State University has produced five annual reports which analyze racial disparities in traffic stops submitted by 107 law enforcement agencies. The analysis has consistently identified these trends in the data:

1. Our annual studies have identified statistically significant racial and ethnic disparities in traffic stops, although the data has shown improvements over the last three-years.
2. Black and Hispanic drivers are disproportionately stopped and disproportionately searched compared to White drivers.
3. Police are significantly less likely to find contraband resulting from a search involving a Black or Hispanic driver.
4. Black and Hispanic drivers are stopped at a greater rate for equipment violations and administrative offenses compared to White drivers. However, there is little evidence to support a claim that Black and Hispanic drivers more frequently commit these offenses.

### *Costs and Consequences in Traffic Stop Enforcement*

There are societal and other costs to every police interaction both for the citizen and law enforcement. For citizens there are the immediate and obvious costs of an interaction resulting in an infraction ticket. A fine imposed may only be one of the real costs for individuals stopped by the police. However, there is a disparate impact on Black and Hispanic individuals stopped by the police. Certain violations such as administrative and equipment related infractions may not be the result of criminal intent but can be the result of not having the resources to bring the vehicle fully into compliance. Limited financial resources for people with lower incomes can create difficult choices. If the fine is not paid on time it may lead to further financial or criminal consequences. It may also have a detrimental effect on a person's livelihood because of the suspension of a license or registration. The

consequences of a relatively minor violation may start with a fine but can result in unintended consequences.

Effective policing must be based on trust and legitimacy between law enforcement and the communities they serve. Actions by the police that are unfair or create a perception of unfairness can diminish public trust in police. That lack of trust reinforces perceptions that the justice system is biased. Once that trust is broken, it isn't easily repaired.

Every traffic stop can be stressful and unpredictable for both the officer and the driver. Both parties are uncertain of what they are walking into and how it is going to end. It makes sense that the people on both sides of the car window would want to limit these interactions to situations where they are truly needed. The American Psychological Association has noted that the "victim effects" of racial profiling include post-traumatic stress disorder, other forms of stress-related disorders, and increased perception of race-related threats. Studies have shown that racial-ethnic minority groups who experience discrimination on a regular basis are subject to chronic stress which in turn can lead to higher rates of chronic diseases. Decreasing the number of interactions that have the least effect on the overall safety of our roadways might help to decrease the stress for these racial-ethnic minority groups.

Concepts of traffic enforcement have evolved over time. A significant shift of purpose occurred in response to a 1980's effort to bolster drug interdiction activities. Law enforcement agencies like the federal Drug Enforcement Agency (DEA) understood that motor vehicle laws afforded police with a unique opportunity to enhance drug interdiction programs. In 1986, the DEA developed a popular program called "Operation Pipeline" which trained officers on techniques to identify drug couriers including using more aggressive enforcement of the motor vehicle laws as a way to increase the opportunities for interactions with drivers. Officers were trained to stop suspected drug couriers for low level equipment or administrative offenses as a pretext to question and search the driver. These training programs and policing practices came under scrutiny for what appeared to be a disproportionate impact on Black and Hispanic communities. Some associated pretext stops with racial profiling, and its legacy is still felt in Black and Hispanic communities across the country.

#### *Traffic Enforcement System in Connecticut*

Police use traffic enforcement to maintain the safety of our roadways and respond to other community needs. When considering how to patrol their communities, police consider many factors including accident rates, traffic volume, citizen complaints, calls for service, and crime, to name a few. Law enforcement administrators, policy makers, researchers, and other stakeholders have long recognized the valuable role that traffic enforcement can play in ensuring community safety.

It is very easy for drivers to violate a motor vehicle law. The motor vehicle code is both lengthy and technical. Officers have considerable discretion to enforce the motor vehicle laws in a manner that best serves the public. We rely on officers to be reasonable in their application of the law. For example, a motorist traveling 32-mph in a 30-mph speed zone may be a technical violation of the law, but most reasonable people would agree that a traffic stop is probably not warranted in such a situation. On the other hand, a motorist driving 50 mph in a school zone is inherently more dangerous and most reasonable people would agree that a traffic stop would be warranted in this situation. Society has long expected officers to use reasonable discretion in their decision making. However, such discretion can have the potential to lead to uneven or biased decision making of enforcement decisions. It is also worth noting

that when police spend their time pulling over drivers for relatively minor traffic violations, they are committing resources that then cannot be used for other activities that may have a greater impact on public safety.

Many motor vehicle laws in Connecticut date back more than 100 years. While many new laws have been enacted, some of the statutes are still reflective of the conditions that existed at the time of their original enactment. To our knowledge, assessing the motor vehicle code through a racial justice lens has never been done before in Connecticut. We are attempting to highlight areas of concern in the motor vehicle code and provide an assessment of the merits and feasibility of a traffic enforcement system that might classify some violations as either primary offenses or secondary offenses.

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### **What is a primary and secondary traffic law system?**

Traffic laws can be enforced either on their own (primary offense) or as a consequence of a traffic stop having been made (secondary offense). As a primary traffic offense, a violation can cause a driver to be stopped for that specific act. A secondary traffic offense would be one where the officer identifies other laws that have been violated after enforcement action has been taken for the primary offense. In other words, the basis for the stop cannot simply be for the secondary offense.

Currently, Connecticut does not explicitly distinguish between primary and secondary offenses. However, certain violations only reveal themselves after a vehicle has been stopped. For example, speeding, traffic control signal, stop sign, equipment and other general moving violations are all primary offenses because the driver can be observed committing those offenses. However, some offenses are secondary simply by their nature. This is most common with certain administrative offenses like operating without a valid driver's license, operating under suspension or with certain equipment violations relating to the condition of a vehicles tires or brakes. While a presumption exists in the law that the registered owner is the operator of the motor vehicle, that is not always the case and it is rare that the police officer would have specific knowledge of the driver prior to the stop.

State motor vehicle laws vary throughout the country. Most states do not categorize motor vehicle offenses as primary and secondary. Historically, seat belt and distracted driving offenses are the most common offenses that states categorize as secondary. Over the years, many states with secondary seat belt or distracted driving laws have converted them to primary offenses. According to the Governors Highway Safety Association, 15 states currently have secondary seat belt laws for adult front seat occupants, and four states have secondary laws for text messaging while driving. Although statutory language for distinguishing a secondary offense varies by state, the Massachusetts seat belt law provides a typical example:

*"The provisions of this section shall be enforced by law enforcement unit only when an operator of a motor vehicle has been stopped for a violation of the motor vehicle laws or some other offense."*

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### **Where to focus on initial reform/assessment**

The motor vehicle code is extensive, and the Connecticut Racial Profiling Prohibition Project advisory board believes that if such a change is made, the initial efforts should focus on the areas that demonstrate significant racial disparities but have a lesser impact on public safety. As part of the Alvin W. Penn Act, police are required to report the statutory reason for stopping a motor vehicle. There are hundreds of

individual motor vehicle statutes, but for its analytical purposes the IMRP has categorized the reported statutory reason for stopping a vehicle into 15 groups. The 15 groups are further aggregated into three broader categories: (1) safety related, (2) equipment related, or (3) administrative related offenses. On average, 15% of all traffic stops are for an equipment-related offense, 14% are for an administrative-related offense, and 71% are for a safety-related offense.

There is a general sense that stops categorized as safety-related should remain unchanged. These include cell phone, seat belt, speed, stop sign, and traffic control signal violations, as well as numerous other types of moving violations. Not only are these violations often hazardous to roadway safety, but the annual traffic stop assessment does not identify the same level of racial disparity in that data as it does in the other categories.

It is recommended that equipment and administrative offenses be reviewed for possible modification or inclusion in a secondary level of traffic enforcement. Equipment offenses include defective lights, display of plates, window tint and other general equipment violations. Administrative offenses include registration, unlicensed operation, uninsured operation, and other general types of administrative violations. Careful consideration should be given to each specific statute within these broader categories. Some violations may more directly impact the safety of a vehicle on the roadway. For example, a vehicle not displaying any headlights in darkness will logically impact roadway safety more significantly than a vehicle operating with one taillight not operating.

While data shows that Black and Hispanic drivers, when compared to their presence in the general population, are stopped at a higher rate for all types of traffic violations than White driver, the disparity is more significant for equipment and administrative offenses. On average, 68% of safety-related stops involve White drivers compared to 32% that are non-White drivers. On the other hand, 54% of equipment-related violations and 58% of administrative offenses involved White drivers, compared to 46% and 42% that are non-White drivers respectively. Within their respective demographic groups, Black drivers are almost twice as likely and Hispanic drivers are 1.5 times more likely to be stopped for an equipment-related violation compared to White drivers. The disparity is slightly less for administrative offenses. Within their respective demographic groups, Black drivers are 1.2 times and Hispanic drivers are 1.3 times more likely to be stopped for an administrative offense compared to White drivers.

There is a commonly held belief that disparities in equipment and administrative offenses occur more frequently in the Black and Hispanic community due to socioeconomic factors rather than police enforcement decisions. Since 2015, the IMRP has conducted an in-depth analysis of 28 municipal police departments identified with statistically significant racial and ethnic disparities. Frequently, these disparities are identified in equipment and administrative offenses and are a significant contributing factor to the department's overall disparity. In considering the role that socioeconomic factors may play in such violations, socioeconomics may not be the only reason these disparities exist. However, there is evidence that police officers are more likely to enforce equipment and administrative violations in areas with higher Black and Hispanic populations or where Black and Hispanic drivers are more likely to be traveling. This is taken in combination with the fact that police presence is also greater in these areas due to resource allocation decisions that follow factors such as crime, calls for service and accidents. When police enforce these laws in areas with greater White populations, the racial composition of violators reflects that.

For some, one way to address this disparity is to identify certain equipment and administrative violations to be changed from a primary violation to a secondary violation. However, as a corollary to this, there are some laws that regardless of whether they are part of a primary or secondary system need to be improved with additional requirements to make their enforcement more equitable. For example, the window tinting law would benefit from adding requirements preventing those who sell or install tinting materials from doing so with materials that violate Connecticut law. We have outlined additional topics raised during our discussions that should also be considered.

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## **Additional Considerations Highlighted by CTRP3**

### **Traffic Enforcement in Crime Reduction and Community Safety**

The Department of Transportation's National Highway Traffic Safety Administration partnered with the Bureau of Justice Assistance and the National Institute of Justice to develop a data-driven approach to managing both crime and traffic safety. The program, called Data-Driven Approaches to Crime and Traffic Safety (DDACTS), integrates location-based traffic crash, crime, calls for service and enforcement data to establish effective methods for deploying police resources. The idea of the program is to identify areas with high incidences of crashes and crime to employ highly visible and targeted enforcement to these areas. DDACTS' stated goal is to reduce the incidence of crashes, crime, and social harm in communities.

Some notable agencies in Connecticut, like the Connecticut State Police, have subscribed to the DDACTS model for many years. Other agencies utilize parts of the program but are hampered by limited staff able to conduct the required ongoing analysis for the program to be effective. The goal of a program like DDACTS is to provide a more evidence-based approach to manage both traffic crashes and crime. According to the most recent report about the DDACTS program published by NHTSA in 2014, "this approach, grounded in community-oriented and evidence-based policing, is more efficient as a focus of law enforcement actions; provides a more stable target for law enforcement activities; has a stronger evidence base; and raises fewer ethical and legal problems."

Based on the in-depth follow-up analyses that we have conducted as part of this project for 28 police departments since 2015, our work has demonstrated that many police departments appear to deploy resources based on traffic crashes, crime, calls for service and other factors. High visibility proactive traffic enforcement has long played a role in our policing strategy. Any changes to the motor vehicle code should consider the role that high visibility policing plays in reducing both traffic crashes and crime.

### **Impact to Public Safety**

Some work group members have expressed a concern that creating a tiered traffic enforcement model may affect highway safety through increased motor vehicle accidents. There are over 30,000 fatal motor vehicle crashes in the United States each year. In 2019, there were 255 fatal crashes in Connecticut. During that same period, there were over 112,000 reported motor vehicle accidents in the state. A review of Connecticut's motor vehicle crashes between 2015 and 2019, indicates that excessive speed was a contributing factor in at least 29% of all crashes. Meanwhile, motor vehicle equipment issues (i.e. brakes, tires, power train, suspension, lights, windows, mirrors, etc.) were a contributing factor in approximately 12% of accidents. There is no data on crashes related to administrative offenses because they do not affect the data. The largest contributing factors in crashes involving an injury was failure to stay in the lane and following too closely.

It does not appear that the types of equipment violations being enforced in Connecticut relate in any significant way to the types of equipment issues that are identified as contributing to accidents. On average, equipment-related violations account for 14% of all traffic stops. On its face it may appear to mirror the percentage of crashes where an equipment issue was a contributing factor, but the data does not support this conclusion. Of the equipment-related stops, defective lighting accounts for 9.4%, but is only identified as a contributing factor 0.1% of accidents. Stops for a display of plate violations account for 3.2% of all traffic stops but are not a contributing factor in accidents. Lastly, window tint and windshield obstruction violations account for 1.4% of all traffic stops but is only identified as a contributing factor in less than 0.1% of accidents. The most common equipment issues reported that contributed to a motor vehicle accident were related to brakes, steering, power train, or tires.

Although there does not appear to be a strong relationship between equipment related traffic enforcement and motor vehicle accidents, other legitimate reasons may exist for statutes. For example, license plates are required to be clearly displayed on a vehicle to help identify cars that commit an offense. That being said, based on the tenuous relationship between equipment related traffic enforcement and motor vehicle accidents, we do not believe that making some offenses secondary would have a significant impact on the safety of the roadway. Select modifications should be considered, but must balance the racial impact of enforcement, roadway safety and general vehicle compliance.

### **Vehicle inspections as an alternative to equipment enforcement?**

There is a concern that making some traffic offenses secondary, specifically certain equipment or administrative offenses, might lead to higher rates of non-compliance with these laws. This concern is based on a belief that motorists might have no incentive to comply if the threat of police contact is not apparent to them. While there has been little empirical research on the rate of compliance for primary versus secondary offenses in general, NHTSA has examined compliance rates for seatbelt laws and found lower percentages of compliances in secondary law states. It is important to note that we classify seatbelt laws as safety-related and not as equipment or administrative offenses.

There has been some discussion about the supportive role that a vehicle safety inspection program might play to address concerns over non-compliance with equipment laws in a secondary enforcement system. Currently, most vehicles do not require any sort of periodic vehicle safety inspection. A limited number of vehicles require inspection including camp trailers, commercial vehicles over 18,000 lbs., driver education vehicles, school transport vehicles 10,000 lbs. and under, and taxis. Most personal use vehicles only need to complete an emission test every two years, with some exceptions.

According to an [August 2015 GAO report](#), 16 states require periodic motor vehicle inspections. In most of the states, annual inspections are required, and the inspection is conducted by a state-licensed third private inspection company. In the same report, states reported that vehicle inspection programs improved vehicle safety by identifying unsafe vehicles and either removing them from the road or requiring them to be fixed. However, the report also states that the research on the value of safety inspections “remains inconclusive.” The GAO also reviewed NHTSA data for police-reported motor vehicle crashes between 2009 and 2013 and found that vehicle component failure only occurred in about 2% of all crashes. The three most frequent vehicle component failures related to brakes, tires, and steering. The GAO did caution that the 2% figure may understate vehicle system or component failure because police do not conduct vehicle inspections at crash sites.

Connecticut has previously explored a more thorough vehicle inspection program, including most recently in 2013. The vehicle inspection bills were not reported favorably. The DMV Commissioner at the time referenced a lack of significant correlation between vehicle mechanical failure and accidents. There were also concerns over the financial burdens to state residents and to the DMV.

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## **Conclusion**

The Connecticut General Assembly has asked for an assessment on the merits and feasibility of a primary and secondary traffic law system. The development of such a system is certainly feasible, and we believe it has merit. Reforms need to be carefully considered and their impact should be studied to ensure that public safety is not jeopardized. The Connecticut Racial Profiling Prohibition Project advisory board plans to review specific statutes for consideration in a secondary traffic law system. We hope to share additional information with you in the coming months. That being said, we have highlighted some initial thoughts below.

- Any initial reforms should focus on select areas that have demonstrated statistically significant racial disparities but have a lesser impact on public safety.
  - There is general consensus that stops for cell phone, seatbelt, speed, stop sign, traffic control signal and other moving violations should remain unchanged at this time.
- Stops generally categorized as equipment-related and administrative have demonstrated statistically significant racial and ethnic disparities and should be reviewed for potential inclusion in a secondary traffic law system.
  - Equipment offenses include defective lights, display of plates, window tint and other general equipment violations. Administrative offenses include registration, unlicensed operation, uninsured operation and other general types of administrative violations.
  - Equipment or administrative offenses vary significantly in terms of their relationship to public safety. Some violations more directly impact the safety of a vehicle on the roadway. For example, a vehicle not displaying any headlights in darkness will logically impact roadway safety more significantly than a vehicle operating with one taillight not operating.
- Any initial reforms should be targeted to the areas with the greatest benefit for decreasing racial disparities and costs to public health, safety, and trust in police institutions with the least probable effect on overall highway safety. A full assessment of the impact of those reforms should be undertaken before additional broader changes are made.