DATA AND TRANSPARENCY

LOCAL PROGRESS

Policy Background

Typically, the types of data discussed in the context of police-community relations include reporting on use of force, pedestrian and traffic stops, complaints, and body-worn camera recording.[1] When reported, data consistently shows what Black and Brown communities have described for decades—that they face harsher outcomes in police interactions than white people, including being subjected more frequently to searches, arrests, and fines.[2] A recent analysis by the Stanford Open Policing Project, which tracked more than 60 million stops over a five-year period, found that police officers across the country are more likely to search and arrest Black and Latinx drivers than white drivers.[3]

As affirmed by the 21st Century Policing Task Force, robust data-collection and reporting policies are essential for tracking police-community interactions, and they can be a critical tool for shedding light on discriminatory policing and its impact on communities of color.[4] Armed with empirical evidence, community members and advocates can more powerfully make the case for increased accountability and departmental reform. For example, in New York City, the eventual release of stop-and-frisk data revealed that nearly 90 percent of those stopped were Black and Latinx, and that 88 percent of those stopped were innocent.[5] This analysis paved the way for the landmark 2013 decision in which a federal court found the New York Police Department's stop-and-frisk practices unconstitutional.[6]

Too often, however, data-collection and reporting policies are not robust enough to be useful to impacted communities. For data collection statutes to be effective, they should ensure that data points are comprehensive, disaggregated, regularly reported, and easily accessible to the public.

Assessing the Landscape

Before beginning the policy assessment, local elected officials should take stock of existing legislation, if any:

- Does your local jurisdiction have an existing data-collection and transparency statute?

- Do local executive agencies have general policies related to data collection and transparency?

- Does the police department have a specific data-collection and transparency policy?

Best Practices

Local elected officials can pass legislation to mandate that police departments have robust data-collection and reporting practices. Often, data collection statutes are state-level policies, but local elected officials can also advocate for the passage of stronger state data-collection statues. For example, local jurisdictions can pass resolutions in support of statewide policies to build momentum and make the case for the importance of data collection and transparency. The following recommendations for data collection statutes are informed by best practices presented in the Center for Popular Democracy and PolicyLink's Toolkit for Promoting Justice in Policing,[7] the Newark Police Department General Order,[8] Maryland State data-collection statutes,[9] and in conversations with policy experts at the New York Civil Liberties Union (NYCLU).

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:		Where to Look

• Data collection statutes should apply to vehicle and pedestrian stops, searches of residences, and faith institutions.	• Does the statute apply to:
	  • vehicle stops?
	  • pedestrian stops?
	  • searches of residences?
	  • faith institutions?
		Y N _____
		Y N _____
		Y N _____
		Y N _____
				• Data collection statute or administrative policy

• Data collection statues should require officers to collect key demographic data about the individual being stopped.
 	
• To capture bias that may have influenced the stop, demographic information should be reported by the officer.[i]
	• Does the statute require that the officer report an individual's:
	  • age (date of birth)?
	  • race or ethnicity?
	  • gender?
	• Is race/ethnicity and gender reported by the officer (as opposed to self-reported)?
		Y N _____
		Y N _____
		Y N _____
		Y N _____
				• Data collection statute or administrative policy

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[i] Some advocacy organizations argue that race and gender should be self-reported for accuracy while others argue it should be reported by the officer to capture officer perceptions of race.

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:		Where to Look
• Data collection statues should require officers to collect key information about the nature of the stop.	• Does the statute require the officer to report:			• Data collection statute or administrative policy
	• the date, location, and time of the stop?	Y N	_____	
	• the approximate duration of the stop?	Y N	_____	
	• an explanation of the reason for the stop?	Y N	_____	
	• whether a frisk of an individual took place and the legal justification for frisk?	Y N	_____	
	• if, in the case that a search's legal justification was the individual's consent, the officer advised the individual that consent was being voluntarily sought and the individual had the right to refuse?	Y N	_____	
	• whether a search beyond a frisk took place and its legal justification?	Y N	_____	
	• whether contraband was discovered or seized and the nature of contraband?	Y N	_____	
	• the disposition of the stop, such as a warning, a summons or an arrest?	Y N	_____	
	• if summons was issued or arrest made, the violations, offenses, or crimes charged?	Y N	_____	
	• whether any forced was used?	Y N	_____	
	• if force was used, the type or category of force?	Y N	_____	
	• if force was used, the basis for the use of force?	Y N	_____	

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:		Where to Look
• Data collection statutes should include identifying information about the officer(s) involved.	• Does the statute require the officer report the name and badge number of all officers involved?	Y N	_____	• Data collection statute or administrative policy
• Data transparency statutes (or underlying law) should cover accessibility and retention policies related to body camera footage.	• Does the statute require a third-party government agency—not the police department or corporate entity—be responsible for ownership, management, and control of footage?	Y N	_____	• Data collection statute or administrative policy
	• Does the statute mandate transparency and reporting related to the cost and budget for a body-worn-camera program—including equipment/software, storage, personnel, and training?	Y N	_____	
	• Does the statute demand footage not be retained indefinitely and address retention for video that has evidentiary value?	Y N	_____	
	• Does the statue require a transparent process governing public access to body-worn-camera footage generally, including for subjects of encounters, potential complainants, criminal defendants, and the press?	Y N	_____	

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
• Data transparency statutes (or underlying law) should require reporting on body camera use.	• Does the statute require reporting on: • the number of encounters recorded by body-worn cameras? • the number of incidents in which an encounter that was required to be recorded was not (and vice versa)? • if not recorded, a description as to why that encounter was/was not recorded (e.g., equipment malfunction, failure to follow policy, etc.)?	Y N _____ Y N _____ Y N _____	• Data collection statute or administrative policy
• All data, including historical data, should be made available on a public website.	• Is the following made available through a public website? • Stops • Frisks • Searches • Citations • Summonses • Arrests • Detentions • Use of force • Deaths in custody • Is data geo-mapped? • Is data updated quarterly? • Is the privacy of individuals protected?	Y N _____ Y N _____ Y N _____ Y N _____ Y N _____ Y N _____ Y N _____ Y N _____ Y N _____ Y N _____ Y N _____ Y N _____	• Data collection statute or administrative policy • Public website

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:		Where to Look
• Data should be publicly available in disaggregated form.	• Is data broken down by:			• Data collection statute or administrative policy
	• age?	Y	N _____	• Public website
	• race/ethnicity?	Y	N _____	
	• gender?	Y	N _____	
	• zip code or precinct?	Y	N _____	
	• Is data disaggregated by school and non-school interactions?	Y	N _____	
	• Is the data provided in a format that permits automated processing (e.g., not in PDF or scanned copies of original documents)?	Y	N _____	
• Data should include information about police accountability measures.	• Does the public have access to data on:			• Data collection statute or administrative policy
	• police departments' internal disciplinary processes?	Y	N _____	• Public website
	• the number of officers who have been charged with misconduct, and the outcome of the charge?	Y	N _____	
	• information on police killings?	Y	N _____	

Additional Considerations

- Jurisdictions should mandate data collection statutes are adequately funded.

- Jurisdictions should mandate a breakdown of the departmental (and, when available, officer's) history of stops.

- Police departments should post full patrol guides online.

- Police departments should post policies and data-reporting for their surveillance technologies.

- Jurisdictions should create mechanisms for public engagement around data collection policies (for example, a questionnaire or invitation for public comments).

- Jurisdictions should mandate consistent reporting of data to the public, the state government, and the federal government.

- Jurisdictions should mandate reporting of disaggregated (and de-identified) data on the outcomes of crimes or other offenses (at all levels) from courts and other relevant agencies.

Lessons from the Field

In Durham, NC, Mayor Pro Tempore Jillian Johnson and her council colleagues have relied on data to understand and address patterns of racial disparity in policing. As she explains, the Southern Coalition for Social Justice (SCSJ) has been at the frontline of efforts to push the city to correct racial disparities in policing, particularly around traffic stops. In 2013, following the release of a report by the University of North Carolina at Chapel Hill that revealed striking racial disparities in traffic stops by police,[10] the FADE coalition (Fostering Alternatives to Drug Enforcement), of which SCSJ is a member, presented a series of recommendations to the Durham City Council. Along with greater data transparency, these included establishing written consent for searches and making marijuana possession a low-level offense.

As part of this effort to increase data transparency, SCSJ launched the Open Data Policing website in 2015, which aggregates and visualizes public records of all known traffic stops that have occurred in North Carolina since 2002 (as well as in Maryland since 2013 and Illinois since 2005), broken down by race and ethnicity.[11] The website relies on data that is collected pursuant to existing state data-collection statutes.[12] While the data had been available since 1999, prior to the launch of the website, it was available only through the state Department of Justice website in a form that was difficult to interpret.[13]

In Durham, increased attention to data transparency has helped advocates and local elected officials determine the parameters for policy interventions and assess whether the policies have been successful. For example, after the Durham Police Department began a practice of issuing citations rather than making arrests for misdemeanor marijuana offenses in 2013 (at the urge of advocates), the data showed a steady decrease in misdemeanor marijuana charges.[14] In 2014, the city council passed a written-consent policy for searches,[15] resulting in a sharp decrease in consent searches—as well as a temporary spike in probable-cause searches, which advocates speculated was directly correlated. In 2017, traffic stop searches were down 22 percent from 2016 and 64 percent from 2010, and the overall rate of searches was at its lowest in eight years. However, the data also showed that while there was an overall reduction in the number of stops, racial disparities remained acute. Black residents were still two-and-a-half times more likely to be searched than white residents, which indicated that the consent-to-search policy was not having its intended impact in correcting racial disparities in searches.

In late 2018, driven by community concerns, Durham plans to launch a racial equity task force that will make recommendations to city and community institutions about how to best tackle issues of racial disparity citywide. The increased transparency and attention to Durham's policing data has contributed to the city's commitment to implement strategies that target racial disparities across a number of measures.

Resources

- See Maryland State Law for an example of a data collection statute requiring the collection and sharing of data for all traffic stops (ideally would also apply to pedestrian stops and searches of residences, businesses, and faith institutions): https://law.justia.com/codes/maryland/2005/gtr/25-113.html

- See Nashville's Ordinance for an example of requirements for an annual traffic stop report: http://www.nashville.gov/mc/ordinances/term_2015_2019/bl2016_483.htm

- See the U.S. Department of Justice's 2000 "Resource Guide on Racial Profiling Data Collection Systems": https://justice.utah.gov/Documents/Research/Race/DOJResourceGuide.pdf

- See the Newark Police Department's Order on Stop-and-Frisk for an example of a strong data-collection statute: https://www.aclu-nj.org/files/6513/7338/2486/2013_07_09_snf.pdf

- See the NYCLU's report, "Taking Cover: How New York Police Departments Resist Transparency": https://www.nyclu.org/sites/default/files/field_documents/taking_cover_20170918.pdf

- See North Carolina's public website for an example of robust public data that can be easily disaggregated: https://opendatapolicing.com/nc/

- See the Invisible Institute's Citizens Police Data Project, which collect and publishes information on police misconduct in Chicago: https://data.cpdp.co/data/AnXv22/citizens-police-data-project

NOTES

1. Ryan Sibley, Palmer Gibbs, and Emily Shaw, "The benefits of data in criminal justice: Improving police-community relations," The Sunlight Foundation, April 30, 2015, https://sunlightfoundation.com/2015/04/30/the-benefits-of-data-in-criminal-justice-improving-police-community-relations/.

2. See, for example: "A study suggests that black Americans are unfairly fined by the police," *The Economist*, July 27, 2017, https://www.economist.com/blogs/graphicdetail/2017/07/daily-chart-18; "Findings," The Stanford Open Policing Project, Accessed May 15, 2018, https://openpolicing.stanford.edu/findings/.

3. "Findings," The Stanford Open Policing Project.

4. "The President's Task Force on 21st Century Policing: Implementation Guide," 2015, http://noblenational.org/wp-content/uploads/2017/02/President-Barack-Obama-Task-Force-on-21st-Century-Policing-Implementation-Guide.pdf.

5. "Stop and Frisk Facts," New York Civil Liberties Union, Accessed May 15, 2018, https://www.nyclu.org/en/stop-and-frisk-facts.

6. "Landmark Decision: Judge Rules NY Stop and Frisk Practices Unconstitutional, Racially Discriminatory," Center for Constitutional Rights," August 21, 2014, https://ccrjustice.org/home/press-center/press-releases/landmark-decision-judge-rules-nypd-stop-and-frisk-practices.

7. "Building Momentum from the Ground Up: A Toolkit for Promoting Justice in Policing," The Center for Popular Democracy and PolicyLink, http://populardemocracy.org/sites/default/files/JusticeInPolicing-webfinal.pdf, 29.

8. Newark Police Department General Order, General Order No. 2013-03, https://www.aclu-nj.org/files/6513/7338/2486/2013_07_09_snf.pdf.

9. Maryland Transportation Section 25-113, https://law.justia.com/codes/maryland/2005/gtr/25-113.html.

10. "Final Report to the North Carolina Advocates for Justice Task Force on Racial and Ethnic," https://www.unc.edu/~fbaum/papers/Baumgartner-Traffic-Stops-Statistics-1-Feb-2012.pdf.

11. "Open Data Policing," Accessed May 30, 2018, https://opendatapolicing.com/.

12. Ibid.

13. Thomasi McDonald, "New website to offer data on police traffic stops in NC," *The News & Observer*, http://www.newsobserver.com/news/local/crime/article50145485.html.

14. Sarah Willets, "Misdemeanor Marijuana Arrests in Durham are Way Down, *Indy Week*, May 10, 2018, https://www.indyweek.com/news/archives/2018/05/10/misdemeanor-marijuana-arrests-in-durham-are-way-down.

15. Ray Gronberg, "Durham adopts written-consent policy for searches," Southern Coalition for Social Justice, September 16, 2014, https://www.southerncoalition.org/durham-adopts-written-consent-policy-for-searches/.