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ATTORNEY GENERAL



**SUBJECT:** Application of Neb. Rev. Stat. § 20-504(3)(b) (Cum. Supp. 2018) to the TraCS database system administered by the Nebraska State Patrol

**REQUESTED BY:** Colonel John A. Bolduc  
Superintendent of Law Enforcement  
Nebraska State Patrol

**WRITTEN BY:** Douglas J. Peterson, Attorney General  
Laura A. Nigro, Assistant Attorney General

### INTRODUCTION

You have requested an opinion from this office asking us to determine the application of Neb. Rev. Stat. § 20-504(3)(b) (Cum. Supp. 2018) to the TraCS database system, which is administered by the Nebraska State Patrol. Specifically, you ask whether auto populating the TraCS system with race information obtained from Department of Motor Vehicles issued license barcodes comports with § 20-504(3)(b). For the reasons set forth below, we conclude that auto population of the TraCS database with race information is consistent with § 20-504(3)(b).

### BACKGROUND

The TraCS database is a system administered by the Nebraska State Patrol ("NSP"). TraCS is a data collection, records management, and reporting software system. It is used by law enforcement agencies to collect information during motor vehicle stops for use in generating eCitations, violation and warning forms, accident forms, and

various other law enforcement specific forms. The system is currently being used by the NSP as well as twenty other agencies across the state. The NSP began using the TraCS system across the entire agency in 2012. Prior to 2012, only a portion of the agency used the system. During a motor vehicle stop, an officer scans a driver's Nebraska Department of Motor Vehicles issued license,<sup>1</sup> and the TraCS database is auto populated with certain information, including race, for use in generating eCitations and other documents. Prior to 2012, an officer manually entered information into the TraCS database or used a paper form to collect the race information. Starting in 2012, officers were able to begin scanning driver's licenses to auto populate the TraCS database. The NSP provides training to all users of the TraCS system. The training directs officers to change the race field if the officer's perception differs from that which was encoded on the license.

Race information is collected by law enforcement pursuant to Neb. Rev. Stat. § 20-504(3), which addresses what information must be obtained by an officer during a motor vehicle stop. Section 20-504(3) provides:

With respect to a motor vehicle stop, on and after January 1, 2002, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall record and retain the following information using the form developed and promulgated pursuant to section 20-505:

- (a) The number of motor vehicle stops;
- (b) The characteristics of race or ethnicity of the person stopped. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop and the information shall not be required to be provided by the person stopped;
- (c) If the stop is for a law violation, the nature of the alleged law violation that resulted in the motor vehicle stop;
- (d) Whether a warning or citation was issued, an arrest made, or a search conducted as a result of the motor vehicle stop. Search does not include a search incident to arrest or an inventory search; and
- (e) Any additional information that the Nebraska State Patrol, the county sheriffs, all city and village police departments, or any other law enforcement agency in this state, as the case may be, deems appropriate.

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<sup>1</sup> Officers also scan out-of-state driver's licenses. If the state does not collect race information and therefore the race field is not auto populated, then the officer manually enters the data.

It is our understanding that a disagreement has arisen between the NSP and the Nebraska Commission on Law Enforcement and Criminal Justice ("Crime Commission") regarding the application of § 20-504(3)(b) to the TraCS system. Your letter states that the NSP's position is that the TraCS system comports with § 20-504(3)(b) because officers are trained to change the race category if their observation and perception differs from that which is encoded on the driver's license. The Crime Commission believes that using information obtained from the Department of Motor Vehicles is in conflict with § 20-504(3)(b) because it requires the driver to provide his or her own race information, and thus is not based on an officer's perception.

There are two phrases in § 20-504(3)(b) which must be addressed here:

- (1) "the identification of such characteristics shall be based on the observation and perception of the law enforcement officer"; and
- (2) "the information shall not be required to be provided by the person stopped."

"In construing a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense." *Piska v. Nebraska Dep't of Social Services*, 252 Neb. 589, 594, 567 N.W.2d 544, 547 (1997). "[A]n appellate court must look to the statute's purpose and give to the statute a reasonable construction which best achieves that purpose, rather than a construction which would defeat it." *Henery v. City of Omaha*, 263 Neb. 700, 705, 641 N.W.2d 644, 648 (2002). "Statutory language is to be given its plain and ordinary meaning in the absence of anything indicating to the contrary." *PSB Credit Services, Inc. v. Rich*, 251 Neb. 474, 477, 558 N.W.2d 295, 297 (1997).

The plain language of the first phrase indicates that the race information collected must be based on an officer's observation and perception. While the TraCS database auto populates race information collected by the Department of Motor Vehicles, the officer also makes a race determination and checks it against the auto populated information. The NSP's training directs officers to change the race field if they disagree with the auto populated information. Although the race field is initially auto populated, the final decision is made based on an officer's observation and perception. Accordingly, it appears the NSP's practice complies with this portion of the statute.

Section 20-504(3)(b) also directs that race information shall not be required to be provided by the driver of the vehicle. It is our understanding that the position of the Crime Commission is that drivers are required to give race information since data is being pulled from the Department of Motor Vehicles that the driver provided at some time in the past.

Neb. Rev. Stat. § 20-504 was passed in 2001 by LB 593 in an effort to prevent racial profiling by police during motor vehicle stops. In 2001, the technology did not exist that would allow officers to scan driver's licenses. From 2001 through 2012, officers manually entered race information into the TraCS system based upon their observation and perception or recorded it using a paper form. It was not until 2012 that officers began to scan driver's licenses to auto populate the TraCS system. Accordingly, at the time the Legislature passed LB 593, it could have only contemplated officers obtaining the information by observation and manually entering it into a system, or recording it on a written form. This indicates that the intent of the statute was to ensure that officers were not asking drivers to state their race at the time of a motor vehicle stop. The Legislature would not have contemplated officers obtaining race information that was provided by a driver at some time in the past since that technology did not exist at the time.

As § 20-504 discusses obtaining race information by an officer at the time of a stop, it is reasonable to conclude that the Legislature's intent was that a driver not be asked about their race during the motor vehicle stop as opposed to some time in the past. We do not believe that scanning a driver's license is requiring the person stopped to provide racial information at the time of the stop to the officer. This information was provided at some time in the past to the Department of Motor Vehicles. As a result, the auto population of racial information and alteration by the officer does not appear to violate Neb. Rev. Stat. § 20-504(3)(b).

Further, law enforcement agencies have been granted the authority to access information acquired from an operator's license, so long as it is obtained for a statutorily authorized purpose. See Neb. Rev. Stat. § 60-4,111.01(1) (Cum. Supp. 2018). An applicant for an operator's license must provide race or ethnicity information, and all licenses are required to contain certain encoded, machine-readable information, to include race or ethnicity. See Neb. Rev. Stat. §§ 60-484(3), 60-4,117(3) (Cum. Supp. 2018). Because law enforcement is statutorily required to collect a driver's race or ethnicity information during a motor vehicle stop under § 20-504(3)(b), it appears law enforcement does have the authority pursuant to § 60-4,111.01(1) to collect information from an operator's license, which would include race or ethnicity information.

### CONCLUSION

Based on the above discussion, it is our opinion that the current practices by the NSP regarding the auto population of the TraCS system with race information are in compliance with Neb. Rev. Stat. § 20-504(3)(b). However, § 20-504(3)(b) seems to be somewhat outdated since new technology is now available. In light of this new technology, the NSP may wish to consider seeking clarifying legislation.

Sincerely,

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Attorney General

  
Laura A. Nigro  
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Approved by:

  
Attorney General