

Discriminatory Intent in the Creation of the North Carolina Traffic Code

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Abstract

In 1936, Victor H. Green, an African American mailman from New York City, published *The Negro Motorist Green Book*, which served as a guide for the growing number of African Americans who had access to an automobile and were traveling on the hostile roads of the United States. The hostility came from both businesses that catered to motorists and law enforcement charged with enforcing traffic laws, particularly in the Jim Crow South. Many scholars have documented the disparate racial impact of the traffic and vehicles codes as they operate today. We focus on the historical development of the traffic code itself, and we ask whether it was designed from the beginning to allow a focus on black drivers. We begin by confirming that the traffic code does indeed have a disparate racial impact. We then identify the years when traffic laws were enacted and amended. We identify 1937 as a period of great expansion in North Carolina's traffic laws. Why 1937? We present archival research from hundreds of historical newspapers and government reports and demonstrate that the discussion surrounding the expansion of the traffic code was not isolated to the need to keep drivers safe. Instead, we find an explicit intention to target the increasing Black driving population of the state.

Keywords: Criminal Justice, Race and Politics, Discriminatory Intent, Disparate Impact, Traffic, Policing, Automobiles

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Introduction

Most accounts of inequality of the traffic code focus on the disproportionate impact of those laws on various demographic groups, particularly the focus on younger men of color. Few of those accounts look at the question of whether these disparate impacts were the intended effects, or unintended consequences, of the laws. It is this gap that we wish to fill. When the traffic code was created, did the legislature intend for it to be applied disproportionately against minority drivers?

We focus on the case of North Carolina because our paper is a part of a larger book-length project in which we assess various elements of the criminal code, seeking to move from an analysis only of disparate impact to discover whether there was discriminatory intent in various parts of the law. The traffic code is of course an important part of the criminal code because it affects such large numbers of people. Nationwide, approximately 20 million traffic stops occur each year, making traffic enforcement the most common form of interaction between individuals and the police (see Seo 2019). North Carolina is no outlier in this regard; approximately 1 to 1.7 million traffic stops occur each year in the state, which has a population of approximately 10 million. Black drivers are significantly over-represented in these traffic stops, and they see much higher rates of intrusive behavior such as searches and arrest following from such stops (see Baumgartner et al. 2018). So, while we focus on a single state, we believe our findings will be relevant to other states. We ask: Did the legislature intend for the police to focus on black drivers when it enacted the major elements of the traffic code?

Moving from Offense Codes to the Date of Legislative Action

We begin our study of the criminal code by examining the Administrative Office of the Courts (AOC) Criminal Records database, which includes every arrest-charge in North Carolina from

January 1st, 2013 to December 31st, 2019 with more than 300 variables pertaining to the individual, the charges, and other sentencing information. The total database includes 13,539,271 charges affecting more than 4 million individuals. Note that a single incident may include multiple charges (e.g., someone arrested for misdemeanor larceny could also be arrested for possession of stolen goods and our database would count this as two charges). Similarly, a person may be arrested on more than one occasion. For this paper, we are interested in the initial charges.

When a person is charged with an offence in North Carolina, they are charged with an offense code authorized under a state general statute. For example, there are at least five different offense codes relating to general larceny (2318: aid and abet larceny misdemeanor; 2319: aid and abet larceny felony; 2320 felony larceny > \$400; 2321: felony larceny; and 2322 misdemeanor larceny) all of which are defined within the statute subsection 14-72(A), statute 14-72. For the purposes of this section, we are concerned with the year that the statute (e.g. 14-72) was codified, rather than the individual offense codes that are associated with the charge.

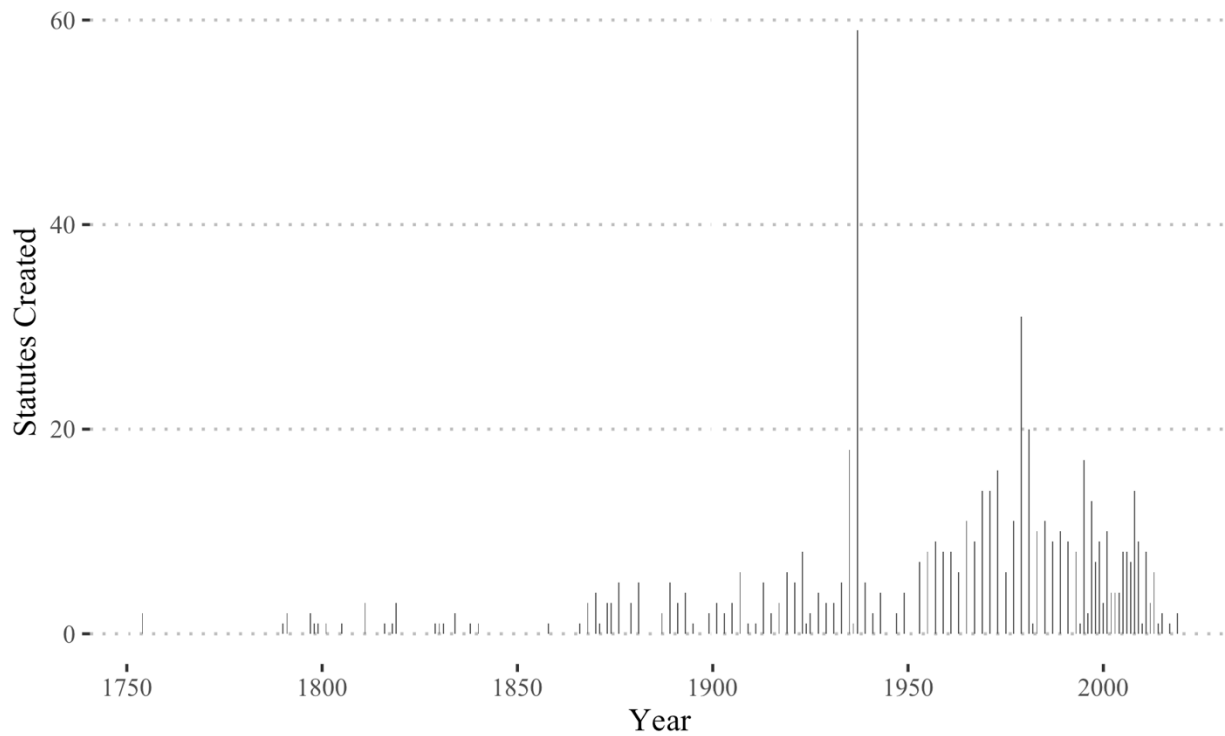
The first step in our analysis is to collapse the data to the statute number, not the offense code, under which the person was charged. With this, we can identify the year that the statute was codified. For each statute and section in the North Carolina General Statutes (NC GS), the year of passage or revision of the statute is listed (see <https://www.ncleg.gov/Laws/GeneralStatutes>). Appendix A provides an example of the NC GS entry for the crimes of larceny. Each crime is defined and is associated with an offense-level (e.g., Felony Class H, or Misdemeanor Class 1), which determines the level of punishment. Our interest comes at the very end of the statute listing, where notes indicate the timing of initial passage of the law as well as its major revisions. Larceny was first established as a crime in 1895

and was amended in 1913, 1941, 1949, and many other times up until its most recent change in 2012. While it may be unusual for a single section of the code to be amended so many times, the fact that the NC GS lists the date of initial passage and amendment is key to our analysis. This allows us to understand, in the context of who is currently being arrested for which crimes, just when the General Assembly was paying attention to that part of the Code. With that, we can go to historical records to help understand the motivation of the legislature, the social problems it was seeking to solve, and assess its intent. Of course, our ability to determine intent may vary with the quality of historical sources that are available. In any case, we start with an assessment of the dates of passage of the various laws.

As of December 31, 2021, North Carolina listed 2,184 offense codes, and these derived from 1,084 statutes and subsections. When aggregated to the chapter and section number, there were 647 statute sections in total, 559 of which appeared in the AOC database. Figure 1 shows the number of current statutes by the year that they were passed.¹

¹ Figure 1 excludes 38 statutes without an origin year listed; 23 of those have been repealed, 14 have no date listed, and two are broadly defined as local ordinances.

Figure 1. Year of Passage for all NC Statutes in the Criminal Code as of December 31, 2021.



A few laws, such as that prohibiting larceny, date back to the 19th or even the 18th century. The Figure allows us to assess the dates when various laws still being enforced were entered into the criminal code.

Laws Differentially Affecting Black and White People

Our database includes extensive demographic information about each individual charged with a crime. Therefore, for any offense code, we can assess the demographic profile of those charged with that particular crime. That allows us to assess, as a purely statistical matter, whether a given part of the criminal code has a “disparate impact” on any demographic group. In the legal community, there is a long and ongoing discussion surrounding the ways in which one might prove that disparate impact has occurred under a specific law or policy. There are parts of the law that do not consider statistical evidence at all (Gross 2012), and some that have accepted statistical evidence of disparate impact but have not provided a concrete threshold for what

constitutes disparate impact.² Although there has been no formal guideline provided through the Fair Housing Act, (under which a 2013 rule from the Fair Housing Administration states that a “discriminatory effect’ occurs where a facially neutral practice actually or predictably results in a discriminatory effect on a group of persons protected by the Act (that is, has a disparate impact)” (*Federal Register*, vol 78, issue 32, Feb. 15, 2013, p. 11479). Some commentators have suggested that a policy with disparate impact under the Fair Housing Act is one that has a 20 percent difference between the relevant groups (e.g, if a given group is say 10 percent of the population but more than 12 percent of those charged under a given statute, then there is a 20 percent over-representation of the group among those arrested). Others have said that this difference must also be statistically significant at a probability level of at least 0.05 (see for example Weeks 2012). A similar rule, known as “four-fifths rule” has been applied by the Equal Opportunity Employment Commission; this also refers to a 20 percent difference in rates between different groups (see for example Secunda and Hirsch 2018). Other legal scholars have argued that, absent a clear statistical definition, there must be a “meaningful difference” between groups.

While there is some subjectivity surrounding thresholds in establishing disparate impact, we take a conservative estimate and set the bar at 140 percent of a group’s population share. Using this criterion, we find that there are 380 statutes that are currently on the books that result in a disparate impact on either black or white people. Black people are affected disproportionately by 364 statutes whites by 16 statutes. Appendix B shows, for each of four race-gender groups (white and black males and females) the offense codes associate with the highest share of each being charged. For example, 93 percent of all those arrested under code

² Definitions within the Fair Housing Act focus more on which party the burden should fall on to prove that a policy has a disparate impact, see <https://www.hud.gov/sites/documents/DISCRIMINATORYEFFECTRULE.PDF>.

6259, dog fighting, are black males, as are 83 percent of those arrested for selling cocaine (code 3441). Top charges for white males revolve around wildlife and fishing violations; for black females, public assistance fraud and larceny; and for white females, corporate malfeasance, embezzlement, and drug-related crimes (see Appendix B). The detailed list of codes in Appendix B relates to offence codes, but as explained above each code is associated with a Chapter and Section of the NC General Statutes.

Using our 140 percent definition for disparate impact, we seek to find whether the laws generating these disparate impacts were passed during certain historical periods. Figures 2 and 3 show when these disparate impact statutes were passed, by race.

Figure 1. Timing of Passage of Laws Disproportionately affecting Blacks.

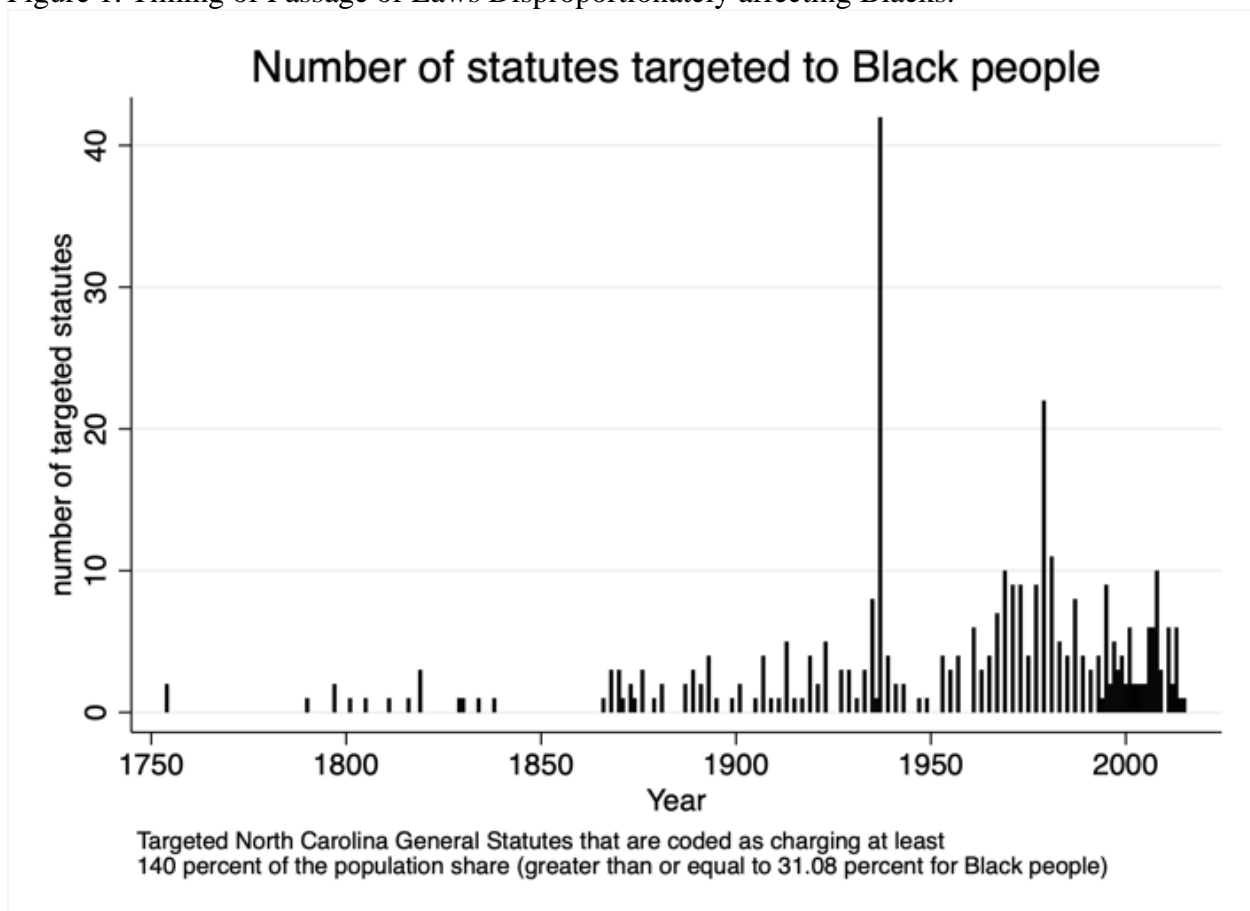
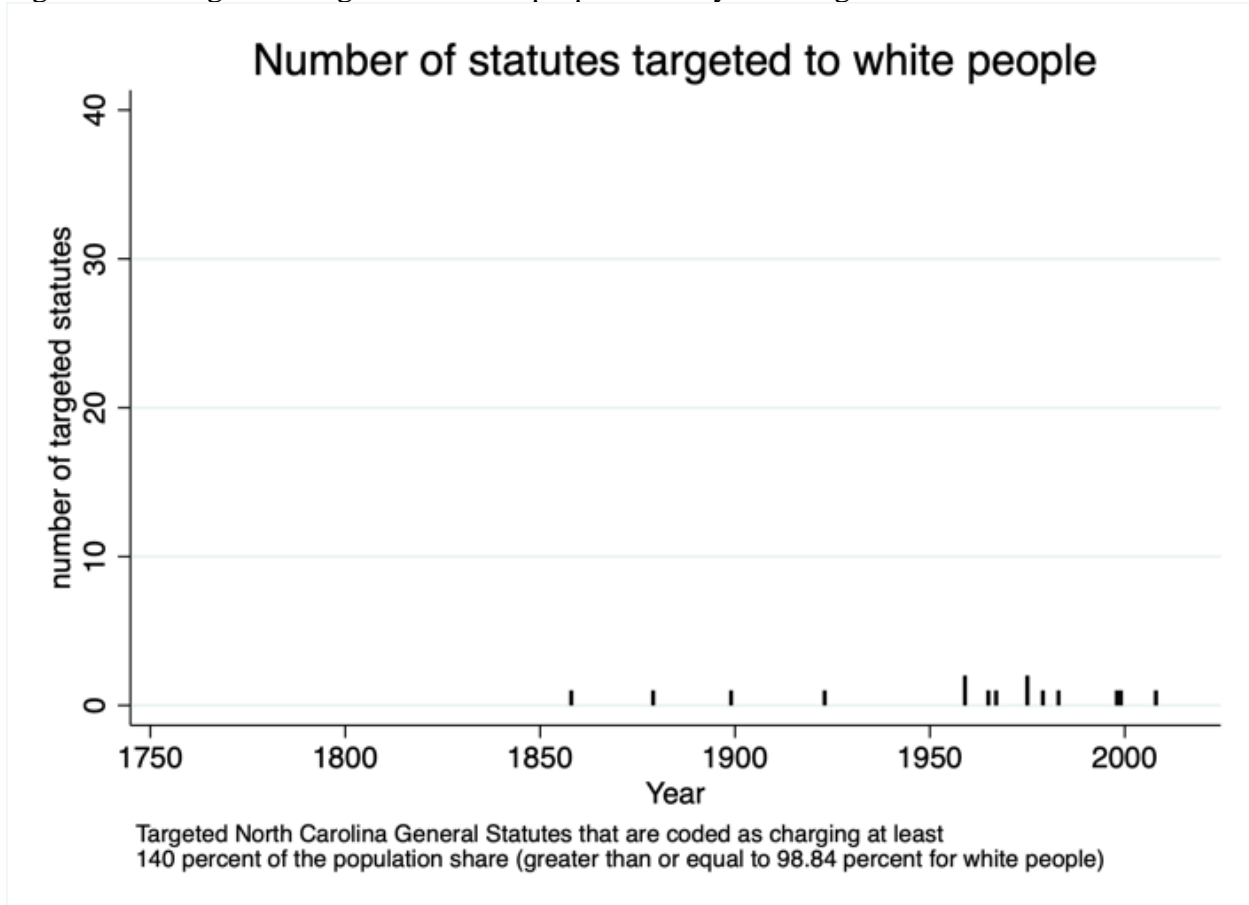


Figure 1 makes clear that there have been many periods of passage of laws currently having a disproportionate impact on Black individuals, but the greatest peaks were in the 1930s and again in the 1980s. Figure 2 shows the equivalent data for laws affecting whites.

Figure 2. Timing of Passage of Laws Disproportionately affecting Whites.



We find that most the statutes enacted that have disparate impact are attributable to statutes passed which ultimately had a disparate impact on Black people; the mid-1930s, the late 1960s to 1970s and the late 1990s. Identifying disparate impact alone does not necessarily mean that there is an intention to target a given group. However, given that there were very distinct periods that passed laws that ultimately had a disparate impact gives us a road-map for investigation.

Moving from Disparate Impact to Discriminatory Intent

To demonstrate that a policy or law has a discriminatory intent requires us to move beyond showing that there are statistical differences in outcomes. Several methods have been adopted within the legal and academic contexts to determine discriminatory intent. For cases where discriminatory intent is fairly clear, the plain meaning of the words and definitions of terms used at time of passage (*Caminetti v. United States* 1917). When the wording of a statute seems neutral at face value, better insight might be found by examining either legislative and committee reports surrounding the law or policy in question or establishing what the public opinion on the given topic was during the time of passage. Of course, law makers may not always be so forthcoming in their reasoning for supporting or endorsing a given law (see for example McCubbins, Noll, and Weingast 1994).

In previous works we have relied on the method of examining legislative and committee reports to uncover any possibly discriminatory motivations surrounding statutes related to public protest in North Carolina (Johnson, Baumgartner, and Davidson 2022). In this paper, we use the method of examining public opinion and media coverage at the time of passage to ascertain whether there was discriminatory motivations in the passage of the traffic code. Given the fact that the code was developed in 1937, at a time when many other laws currently having disparate impacts on the black community were also passed, what can we infer about the intent of the legislature? What problems were they attempting to solve when they passed these laws?

There are, of course, statutes and elements of the criminal code that are applied in a representative manner or fall below the 140 percent threshold we establish. There are also likely many instances where there is a disparate impact on a demographic group when there was no original intention to target that group, but rather, because there is a difference in behaviors or where there is a public safety concern. Here, we might think of wildlife violations as an example.

It has been estimated that non-Hispanic whites are the largest racial group that engages with recreational fishing (Finn and Loomis 1998). While white men are the primary group accountable for most wildlife offenses, there is no indication that those behaviors were sought to be controlled because of racial motivations when those laws were established.

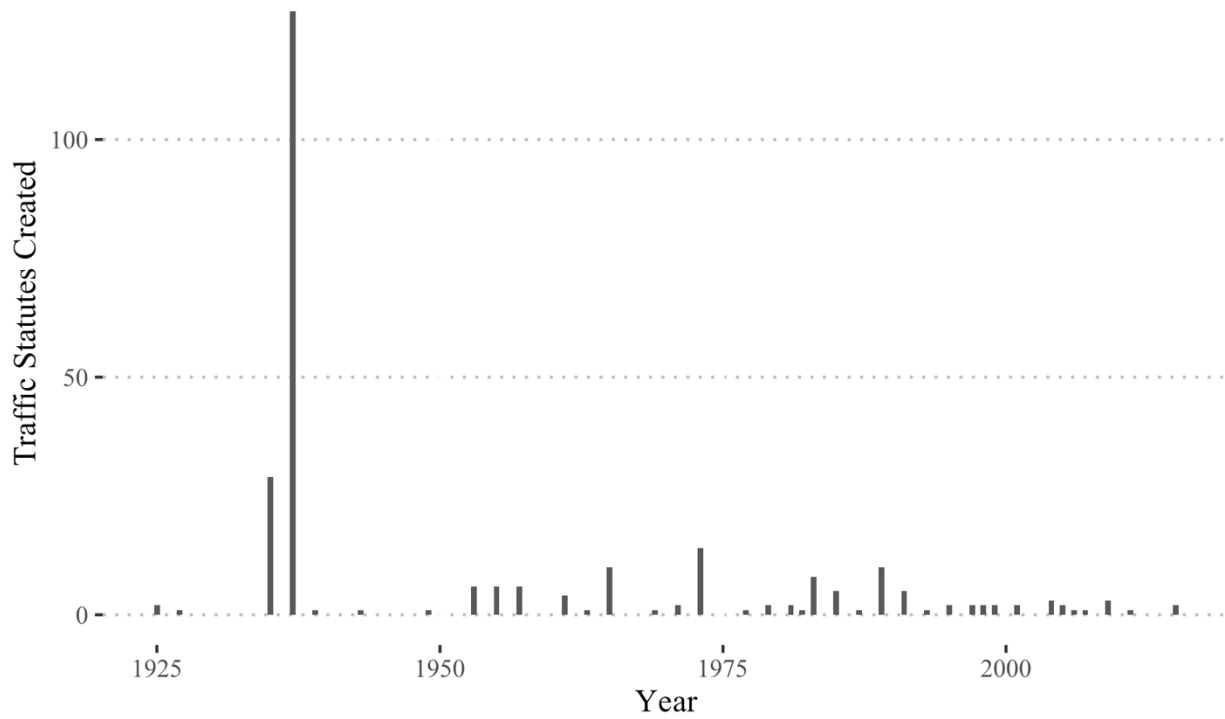
Additionally, while we are able to establish that a large percent of the North Carolina criminal code has a disparate impact on racial groups, particularly Black people, using this identification process alone does not give much insight of whether there is a disparate impact because there are differences in behavior, whether there was no original intention to target a particular group but discretion in law enforcement has led to the observed trends, or whether there was an original intention to discriminate against a certain demographic group and the practice is still imposed in that way. While we do not examine the entire criminal code in this paper, we focus instead on one area of the law; statutes that seek to punish drivers.³

The Creation of the Traffic Code

Of all statutes appearing in the database, 278 were traffic related and the majority of these were passed in the mid- to late-1930s. Figure 4 shows when traffic statutes were enacted.

³ In other parts of our project, currently in progress, we also assess gang-related charges, protesting and rioting, and drug-related charges, all of which have a strong disparate impact on black individuals.

Figure 4. Year of Passage of NC Traffic Laws.



The passage of certain road and traffic laws in North Carolina was not an isolated case and was indicative of laws being passed across the country. Table 1 shows the years that each state passed their first driver license and driver examination laws. The earliest state to pass a driver license law was Massachusetts in 1903, though they would not pass a driver license examination law until 1920. The last state to enact a driver license law was South Dakota in 1954. There was a great deal of legislative attention to these matters in the 1920s and 1930s, consistent with North Carolina’s 1935 enactments.

Table 2. Time of Passage of Driver License and License Examination Laws

State	Driver License Law	Driver License Examination Law
Massachusetts	1903	1920
Missouri	1903	1952
New Hampshire	1905	1912
Vermont	1905	1926

New Jersey	1906	1913
Connecticut	1907	1914
Rhode Island	1908	1908
Delaware	1909	1924
Pennsylvania	1909	1924
Maryland	1910	1910
California	1913	1927
Hawaii	1915	1921
West Virginia	1917	1931
Michigan	1919	1931
Oregon	1920	1931
Washington	1921	1937
New York	1924	1924
D.C.	1925	1925
Arizona	1927	1951
New Mexico	1927	1927
Indiana	1929	1929
Nebraska	1929	1937
Wisconsin	1929	1956
South Carolina	1930	1933
Colorado	1931	1936
Iowa	1931	1932
Kansas	1931	1949
Virginia	1932	1933
Minnesota	1933	1948
Utah	1933	1936
Kentucky	1934	1939
Alabama	1935	1939
Arkansas	1935	1937
Idaho	1935	1951
Montana	1935	1947
North Carolina	1935	1935
North Dakota	1935	1947
Ohio	1936	1936
Texas	1936	1937
Georgia	1937	1939
Maine	1937	1937
Oklahoma	1937	1938
Tennessee	1937	1938
Mississippi	1938	1946
Florida	1939	1941
Illinois	1939	1953
Alaska	1941	1956
Nevada	1941	1941
Louisiana	1946	1947
Wyoming	1947	1947

Source: <https://www.fhwa.dot.gov/ohim/summary95/dl230.pdf>.

Calculating the Disparate Impact of Traffic Laws

Table 2 shows 20 of the most common traffic statutes in the criminal code, the total number of charges under each statute, and the percent of charges for each racial group. The most common traffic statute is 20-141(J1), which is broadly concerned with speeding: “A person who drives a vehicle on a highway at a speed that is either more than 15 miles per hour more than the speed limit established by law for the highway where the offense occurred or over 80 miles per hour is guilty of a Class 3 misdemeanor.”

(https://www.ncleg.gov/enactedlegislation/statutes/html/bysection/chapter_20/gs_20-141.html)

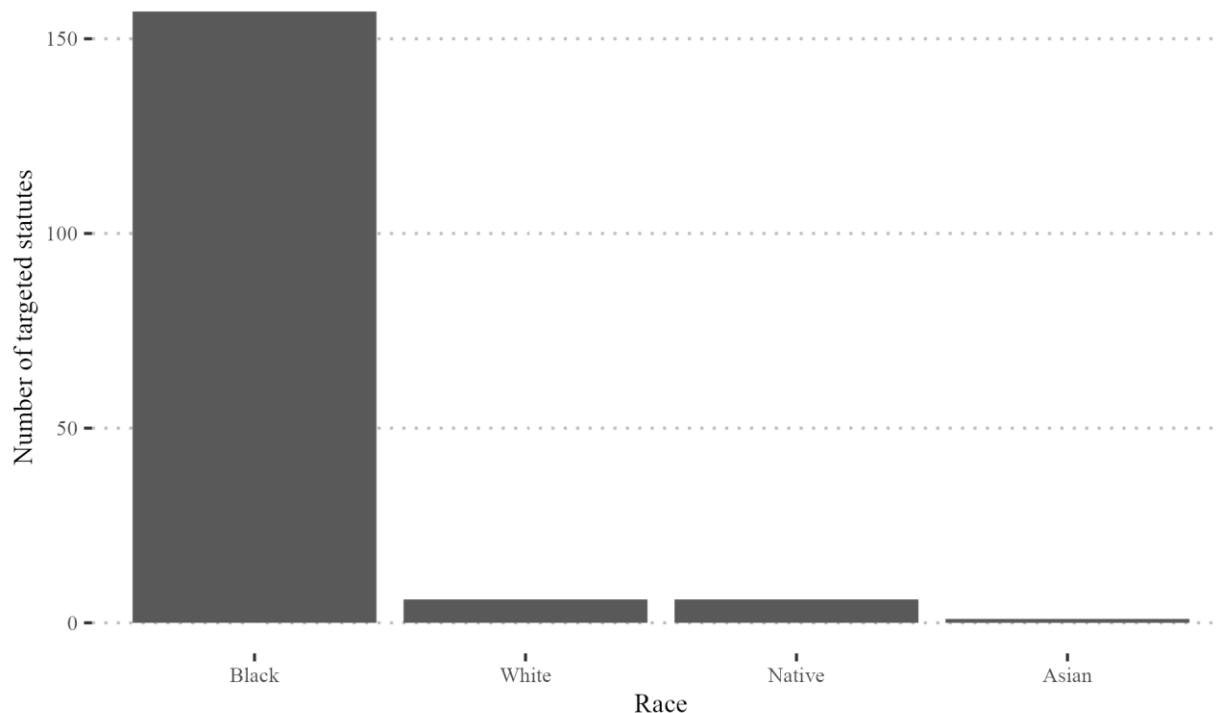
Other elements of the Code that are most commonly enforced relate to registration tags, inspection, and other documentation requirements. Moving violations include speeding, impaired driving, reckless driving, aggressive driving, running a red light (traffic signal violation), and lane change violations (e.g., changing lanes without signaling).

Table 2. Elements of the Traffic Code Leading to the Most Arrests, with Demographics of those Arrested.

NCGS	Charges	Charge	Percents				
			Asian	Black	Hispanic	Native	White
20-141(J1)	1,706,870	Speeding	1.50	32.45	7.61	0.76	53.70
20-111(2)	1,444,786	Exp. Registration	0.48	38.06	4.49	0.85	54.24
20-28(A)	954,939	License Revoked	0.22	53.37	6.47	1.40	37.03
20-7(A)	735,060	No License	0.32	24.70	44.32	0.76	26.89
20-183.8(A)(1)	424,594	No Inspection	0.44	31.67	4.55	0.73	60.77
20-313(A)	289,755	No Insurance	0.35	41.18	5.22	1.33	50.30
20-138.1	253,750	Impaired Driving	0.64	27.82	8.92	0.84	59.45
20-16.5	176,727	Impaired Driving	0.71	29.56	10.37	0.53	56.14
20-140(B)	146,138	Reckless Driving	1.11	33.05	8.56	0.78	52.87
20-111(1)	142,736	No Registration	0.36	33.20	6.77	1.34	56.54
20-141(B)	134,179	Speeding	0.55	38.69	18.66	0.69	38.81
20-135.2A	98,506	Seat Belt	0.22	39.76	10.31	1.09	46.65
20-140(A)	88,212	Reckless Driving License Rev.,	1.13	31.25	9.07	0.83	54.06
20-28(A1)	72,605	Impaired	0.30	36.12	9.29	0.99	51.47
20-127(D)	62,366	Window Tint	0.42	31.95	9.73	1.50	53.94
20-146(D)(1)	39,981	Lane Change	0.65	27.61	15.81	0.63	52.81
20-158(B)(1)(3)	38,227	Traffic Signal	0.55	44.23	16.52	0.55	36.00
20-309	37,966	Proof Insurance Aggressive	0.32	45.67	6.26	0.70	45.26
20-141(M)	36,197	Driving	0.54	29.58	19.94	0.49	47.14

Table 2 gives a sense of our analysis but focuses on only the most commonly enforced parts of the traffic code; many of these have hundreds of thousands of charges across the seven years of our database. When we look at all 278 distinct traffic laws, we find that 157 of them disproportionately impact black people, 6 whites, 6 native people, and one statute disproportionately targets Asians. Recall that “disproportionate effect” means that that demographic group represents more than 140 percent of its population share. Figure 5 summarizes the relative degree of disproportionality by racial group.

Figure 5. Number of Disparate Impact Traffic Statutes, by Race.



From this analysis it seems clear that many parts of the traffic code disproportionately affect Blacks, but few traffic laws disproportionately affect other racial groups. Indeed, fully half of all traffic statutes in the entire code have a disproportionate impact on African-Americans.

Now we ask, is this a coincidence, or was the traffic code designed with this in mind?

Assessing Discriminatory Intent in the NC Traffic Code

In order to answer the question of whether the state had a discriminatory purpose in mind, and in the absence of a clear statement to that effect, we must look for various cues and indicators and also evaluate plausible rival explanations. After all, every state and nation has some kind of traffic rules and regulations, and many of these are indeed necessary for the maintenance of public safety. We look at several questions in turn: the general context of race relations in the 1930s, in particular as it relates to roads, race, and criminal law; increased traffic and resulting crashes (which could be a counter-argument); and racialized framing of traffic safety in

newspapers during the 1920s and 1930s. While our results are not yet definitive, the point clearly in the direction of racialized intent.

The Context of Race Relations in the 1920s and 1930s

As we noted in the first page, the 1930s saw a surge of driving among African-Americans, so much so that Victor Green saw a commercial opportunity (and was successful) in publishing guidebooks targeting the black driving community. In the period of Jim Crow, transportation by train or bus was humiliating to blacks as they were forced into substandard accommodations. Compared to whites of similar economic situations, blacks flocked to the automobile as it afforded a welcome break from the Jim Crow buses and trains which were their only alternatives. While the numbers of blacks owning cars and driving was not large in the early years, it grew substantially. Gretchen Sorin (2020) describes the development of a “car culture” among blacks, particularly in the South. Families preferred larger cars because of the possible need to eat and sleep in the car as hotels and restaurants often remained hostile to black travelers. Black automobilists were visible on the roads.

A second element that Sorin describes requires a historical appreciation of the realities of race relations in the Jim Crow South and how disruptive the automobile was to some established patterns. Without going into all the codes of behavior associated with that time and place, it is clear that blacks were expected to acknowledge their lower status when interacting with whites: not looking in the eye, addressing whites as Mr. or Mrs., stepping out of the way on sidewalks, and so on (see Sorin 2020). But a car did not allow these expected forms of performative submission. Pulling up at a red light or a stop sign, a black driver may have had no option but to pull up equal to a white driver. But in the context of that time, whites could claim that such behavior was unacceptable. As we will review below, there was indeed considerable discussion

in the press about the “problem” of black drivers behaving inappropriately. In any case, the automobile upset some of the most powerful norms of the de jure segregation system. The traffic code was a part of the state response. For public officials of the time, blacks were indeed connected to the newly expanding automobile; prisoners (largely black) built the roads we use today.

The Established Connection between Prisons and Roads

Prisoners made North Carolina’s roads. As in many Southern states, prison chain gangs literally built the roads. In the period just before the large expansion of the traffic code, in fact, the state transferred control of the state’s prisons to the Highways Department. In 1931, the NC General Assembly transferred all prisoners sentenced to county jails for terms of 60 days or longer to the state highway commission. The 1931 order gave the commission control over roughly 5,000 people and a similar 1933 order nearly 8,000. In 1933 the North Carolina General Assembly passed Senate Bill 96, Chapter 172 which consolidated the state prison department and the state highway commission. Section 3 of the Bill read:

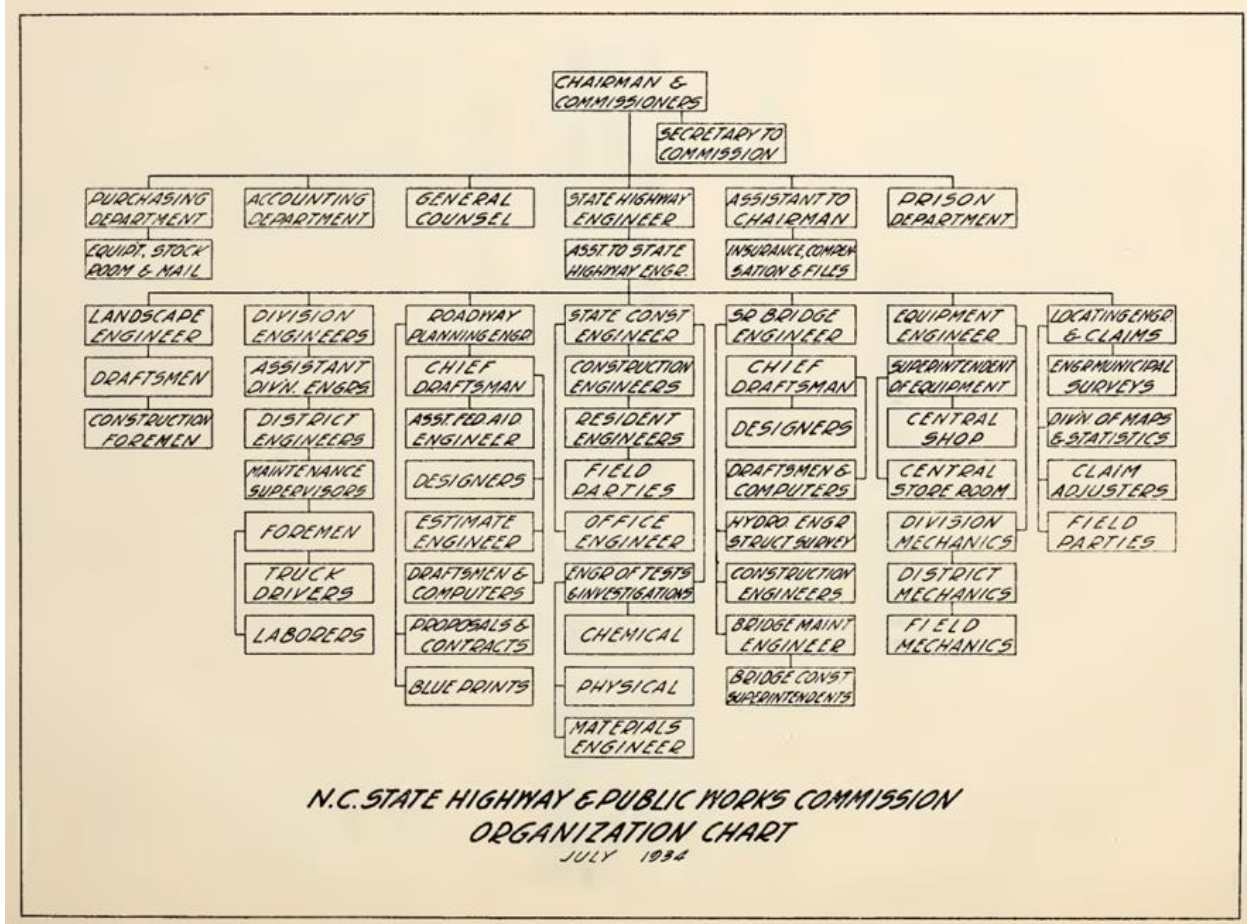
[I]t shall be the duty of the superintendent of the state’s prison and the director of the present state prison department, and of the chairman and commissioners of the present state highway commission, to turn over and deliver the state highway and public works commission, created by this act, immediately upon its organization, all their respective books, accounts, records and property of every kind and description; and to facilitate the transfer of said books, records, accounts, and property state highway and public works commission is authorized and empowered to adopt and enforce such rules and regulations as it may deem necessary.⁴

4

https://www.carolana.com/NC/Legislators/Documents/Public_Laws_and_Resolutions_of_the_State_of_North_Carolina_Passed_by_the_General_Assembly_1933.pdf. See pages 179-180

Figure 6 shows the resulting organizational chart for the NC State Highway and Public Works Commission as of 1934. The Chairman and the Commissioners directly oversee the office of the State Highway Engineer as well as the Prison Department.

Figure 6. Organizational Chart of the NC State Highway and Public Works Commission, 1934

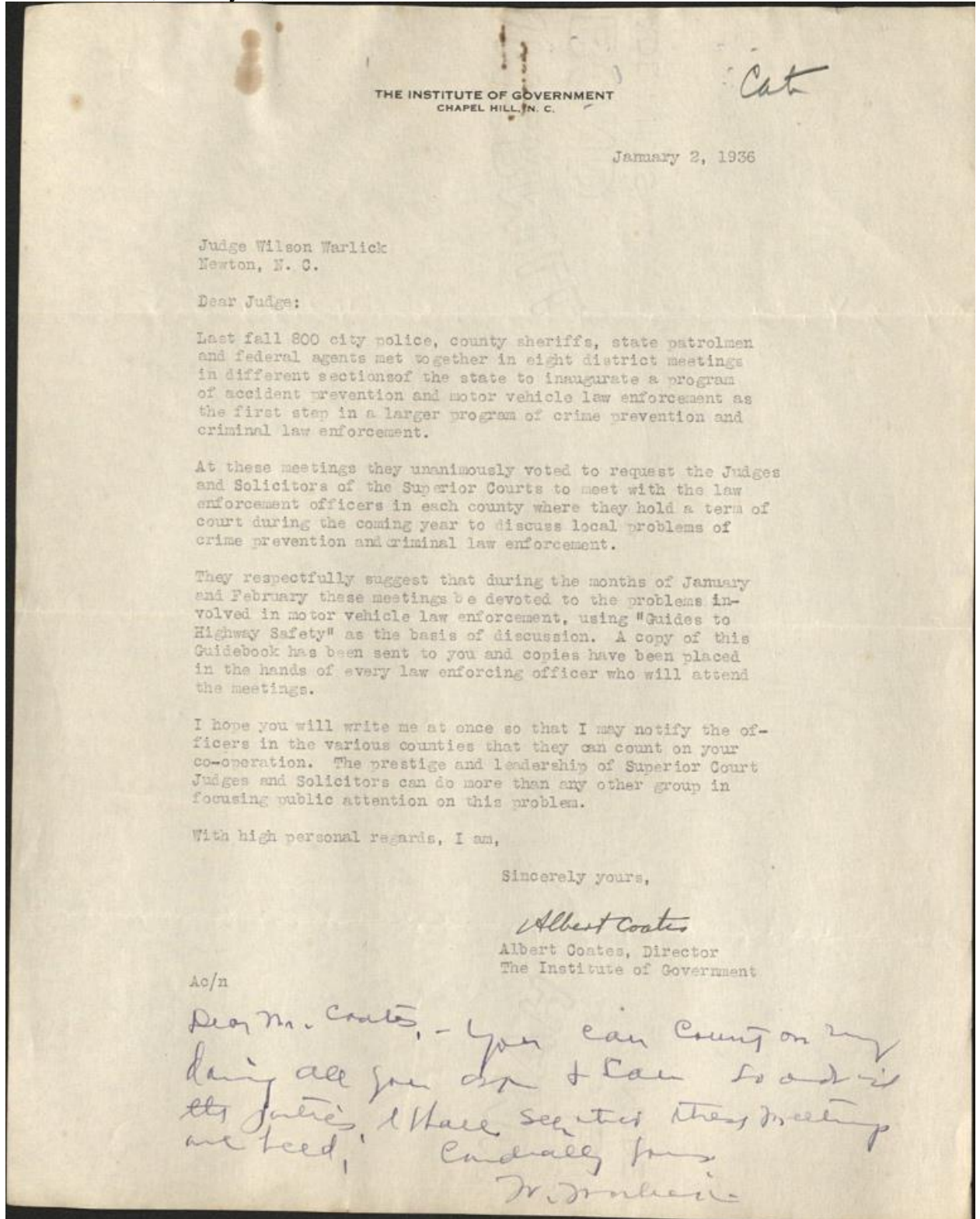


With public officials focused on building an ever-expanding road and highway system, and largely reliant on black prison labor (chain gangs) to do so, the idea of controlling black drivers and ensuring their continued following of the social norms and practices of the Jim Crow South would have been a clear expectation.

Indeed, as law enforcement on the roads expanded (as we document immediately below), the use of the traffic code as a tool for more expansive law enforcement generally became standard practice. Of course, today’s police practices nationwide are deeply imbued with the

notion that the traffic code provides a police officer with the opportunity to detain any person at all (since anyone driving a car is violating some element of the traffic code). These short interactions can be used for informal investigations at the discretion of the officer (see Harris 1997 or Seo 2019 for a sampling of a large literature). Figure 7 reproduces a letter sent by Prof. Albert Coates, Director of the UNC Institute of Government (now School), referring to meetings between law enforcement and judicial officials throughout the state in order to coordinate the more efficient use of the highway patrol and traffic safety function as a means to conduct law enforcement more generally. As Sarah Seo (2019) also reminds us, the expansion of the automobile coincided with prohibition, and the illicit transport of alcohol was an item of concern for law enforcement generally. In the state where Nascar was first formed, the links between fast cars and illegal activities were clearly established (see Klein 2017). Whereas law enforcement may have seen the need to enforce the laws concerning moonshine and prohibition during their highway safety activities, it stands to reason that they would also have been concerned with maintaining the Jim Crow racial order as well.

Figure 7. Letter from Albert Coates to judicial Officials about Coordination of Highway Safety and Law Enforcement, January 2, 1936.

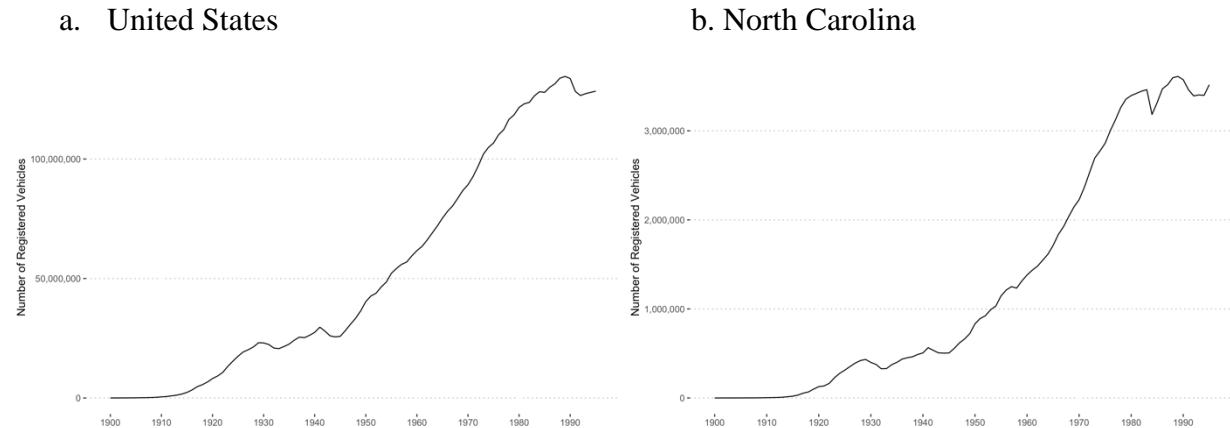


We can gain some further insights by looking at evidence concerning the timing of growth in driving, traffic accidents, and law enforcement activities on the highways; the next section addresses these issues.

Increase in Road Activity and Road Safety Concerns

A common argument that might be raised to explain the rise in traffic laws might be that this specific period coincided with an explosion in the number of cars on the roads. This is partially correct. Automobiles began first appearing on the roads in North Carolina in the late 1800s, though it wasn't until the early 1900s that there was a sizeable expansion of cars on the roads. Using data provided from the United States Federal Highway Administration, we track the number of registered vehicles across the United States and within North Carolina from 1900 to 1995, these data are provided in Figure 8a and 8b.

Figure 8. Number of Registered Cars, 1900-1995

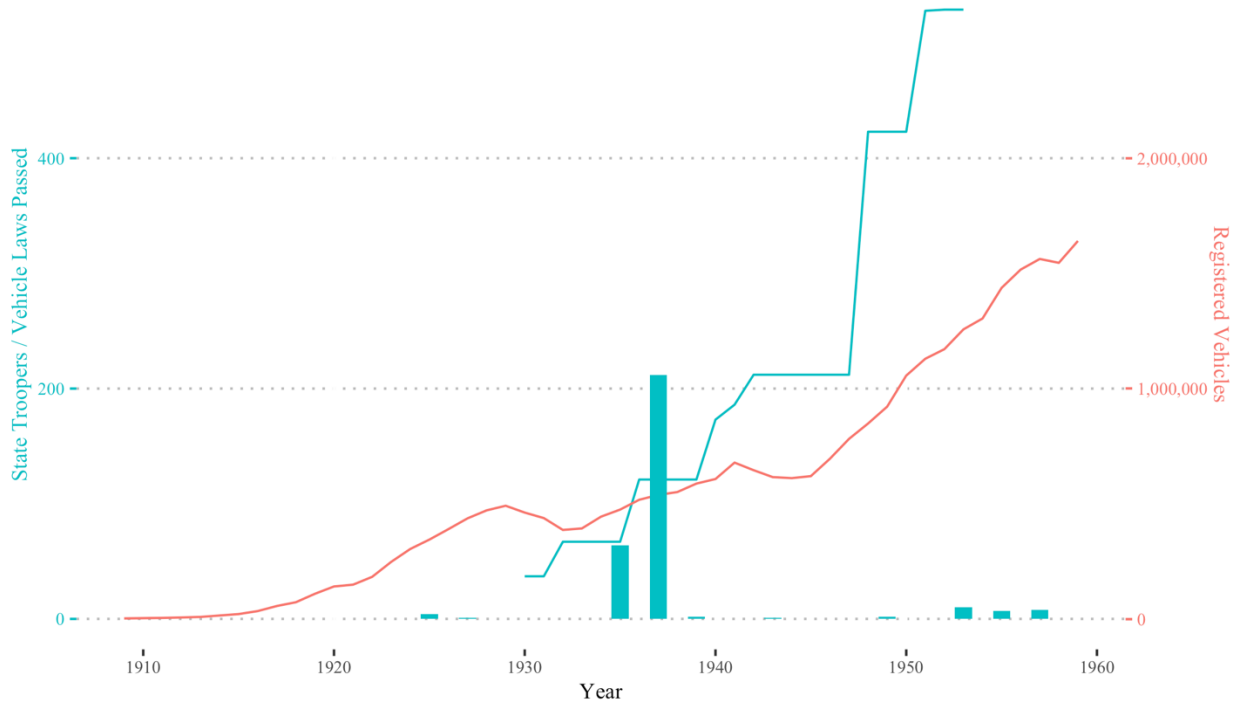


Source: US Federal Highway Administration.

Figure 8 shows three distinct periods in the growth of cars on the road. Prior to 1915 there were virtually no cars on the road, then there was a steady increase until the mid-1920s, a slight plateau until the mid-1940s and a steady increase until the mid-1980s. Figure 9 shows the number of registered cars in North Carolina (red line on the right y-axis), the number of state

troopers (green line, measured on the left-axis), and a reminder of the timing of the various vehicle laws (these are shown with vertical bars).

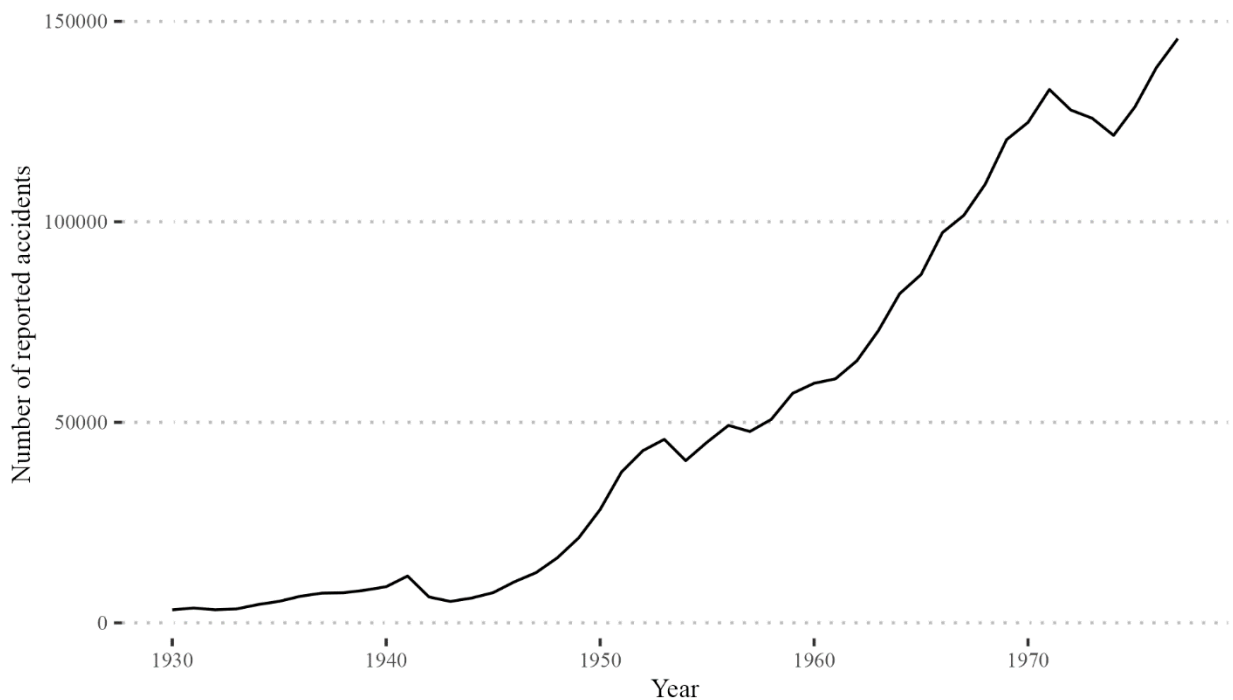
Figure 9. Numbers of Registered Cars, State Troopers, and Vehicle Laws.



The number of cars registered in North Carolina expanded in the 1920s, reversed direction after the Depression and World War Two, and grew dramatically after the War's end. State troopers numbered only in the dozens during the 1920s and expanded most dramatically in the 1940s, just as driving began to expand most dramatically. The laws preceded these dramatic increases.

Another reasonable argument that might be made for the passage of extensive road laws was that there were legitimate concerns over the safety of those on the road and the passage of more laws in combination with the increased presence of law enforcement could mitigate those potential harms. To see whether this claim was an overwhelming concern at the time, we can turn to archival documents from the highway patrol. In 1977, the North Carolina Division of Motor Vehicles issued a report outlining traffic accidents facts from 1930 to 1977. Figure 10 shows these trends.

Figure 10. Traffic Accidents, 1930 to 1977.



Source:

<https://connect.ncdot.gov/resources/safety/Crash%20Data%20and%20TEAAS%20System/Crash%20Data%20and%20Information/1977.pdf>

Figure 10 makes clear that traffic accidents expanded dramatically with the growth in driving after World War Two. No great surge in crashes or fatalities can explain the sudden interest of the legislature in enacting hundreds of traffic laws in 1936 and 1937.

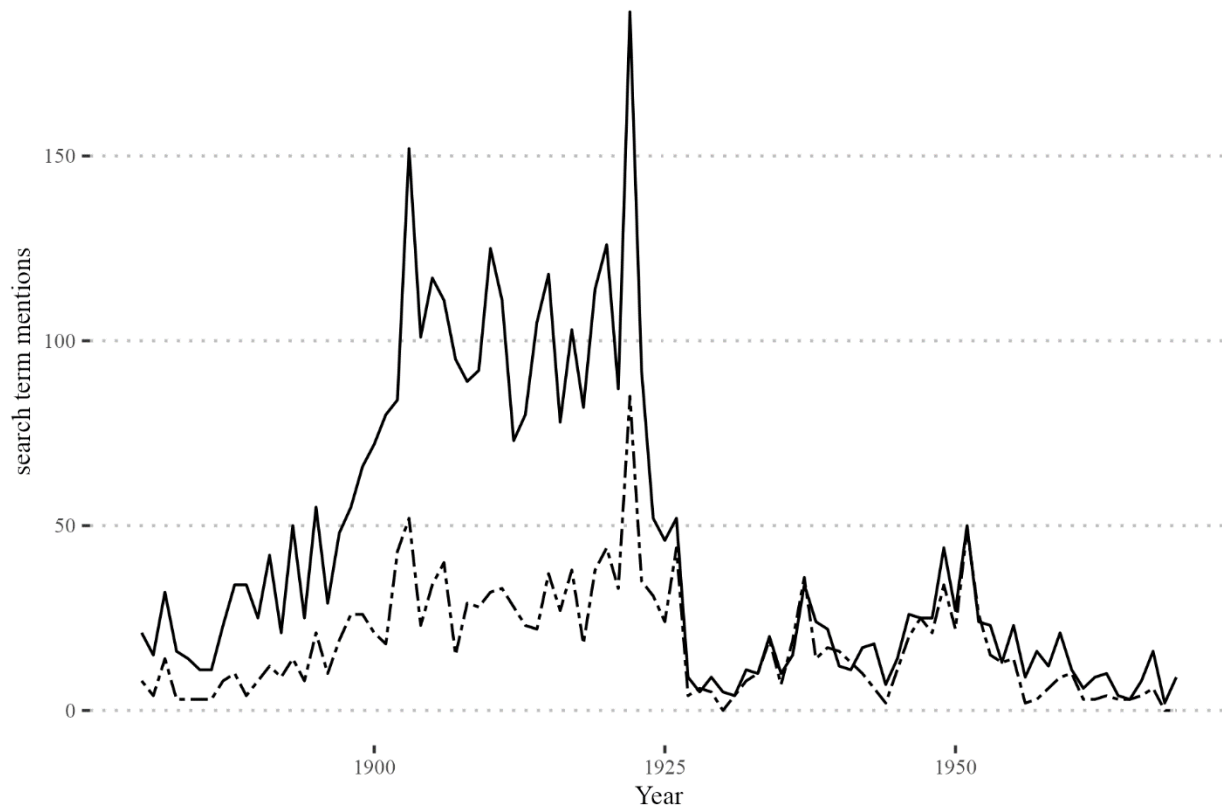
Racialized Framing of Driving in the News

To better understand the public discussion in the years leading up to the passage of traffic and road laws, we examined newspaper coverage in North Carolina from 1880 to 1960 using online newspaper archives⁵. We began by conducting a search on the general discussion of drivers and then black drivers specifically. With the assistance of several undergraduate students, we were able to determine some of the main frames of the Black driver in North Carolina newspapers. The most dominant framing identified in this process included the “dangerous” black driver and the “danger to white woman”. We then created a search term to track how frequently these arguments appeared in newspapers over time. For comparison, we also searched the number of times dangerous drivers were mentioned to gauge what percentage of those articles invoked a racialized framing. Our search terms are explained in Appendix C.

Using those terms, we first tracked the number of mentions of black drivers using the “black driver” and “dangerous black driver” search terms. Figure 11 shows the results. The solid line shows the number of general black driver matches and the dashed line shows the number of dangerous black driver matches.

⁵ For this paper, we rely both on Newspapers.com for the trends in terms and the Library of Congress *Chronicling America* for broader themes.

Figure 11. “Black Driver” and “Dangerous Black Driver” Stories in the News.



As displayed in Figure 11, the discussion of the Black driver ramped up in the early 1900s and the framing of the Black driver gained traction in the early 1900s and again in the mid-1920s. Appendix D reproduces four short articles referencing Two such articles that invoked this framing appearing in the early 1920s made a direct call for stricter law enforcement on the roads to curtail the “dangerous” negro driver, particularly in their interactions with white women on the roads. It is hard to overstate the cultural significance of such a complaint.

An additional set of concerns related to economic competition in the new category of jobs as drivers of heavy equipment and trucks. Blacks were routinely hired by trucking companies, but this became controversial as whites demanded those jobs and the media promoted an idea that black drivers were unqualified or dangerous.

Conclusion

We have provided a first cut here of some on-going research in which we seek to isolate those areas of the North Carolina criminal code that currently have dramatically disparate impacts across racial groups and then explore the genesis of the laws that made these behaviors illegal. Our focus here has been on the traffic laws. While we have not come close to completing our assessment of the media coverage preceding them, we believe we are on the path to demonstrate that these laws, disparate in their impact today, were designed to produce outcomes exactly in keeping with what we see. The disparate racial impact of many parts of the criminal justice system is not a flaw or a coincidence; it is a system working as intended.

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Appendix A. Example of the NC General Statutes (Larceny)

§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.

(a) Larceny of goods of the value of more than one thousand dollars (\$1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than one thousand dollars (\$1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than one thousand dollars (\$1,000), is a Class 1 misdemeanor. In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.

(b) The crime of larceny is a felony, without regard to the value of the property in question, if the larceny is any of the following:

(1) From the person.

(2) Committed pursuant to a violation of G.S. 14-51, 14-53, 14-54, 14-54.1, or 14-57.

(3) Of any explosive or incendiary device or substance. As used in this section, the phrase "explosive or incendiary device or substance" shall include any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen.

(4) Of any firearm. As used in this section, the term "firearm" shall include any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A "firearm," which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.

(5) Of any record or paper in the custody of the North Carolina State Archives as defined by G.S. 121-2(7) and G.S. 121-2(8).

(6) Committed after the defendant has been convicted in this State or in another jurisdiction for any offense of larceny under this section, or any offense deemed or punishable as larceny under this section, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies, or a combination thereof, at least four times. A conviction shall not be included in the four prior convictions required under this

subdivision unless the defendant was represented by counsel or waived counsel at first appearance or otherwise prior to trial or plea. If a person is convicted of more than one offense of misdemeanor larceny in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used as a prior conviction under this subdivision; except that convictions based upon offenses which occurred in separate counties shall each count as a separate prior conviction under this subdivision.

(c) The crime of possessing stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony or the crime of receiving stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony, without regard to the value of the property in question.

(d) Where the larceny or receiving or possession of stolen goods as described in subsection (a) of this section involves the merchandise of any store, a merchant, a merchant's agent, a merchant's employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, when such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, the merchant's agent, the merchant's employee, or the peace officer had, at the time of the detention or arrest, probable cause to believe that the person committed an offense under subsection (a) of this section. If the person being detained by the merchant, the merchant's agent, or the merchant's employee, is a minor under the age of 18 years, the merchant, the merchant's agent, or the merchant's employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, a merchant's agent, or a merchant's employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor. (1895, c. 285; Rev., s. 3506; 1913, c. 118, s. 1; C.S., s. 4251; 1941, c. 178, s. 1; 1949, c. 145, s. 2; 1959, c. 1285; 1961, c. 39, s. 1; 1965, c. 621, s. 5; 1969, c. 522, s. 2; 1973, c. 238, ss. 1, 2; 1975, c. 163, s. 2; c. 696, s. 4; 1977, c. 978, ss. 2, 3; 1979, c. 408, s. 1; c. 760, s. 5; 1979, 2nd Sess., c. 1316, ss. 11, 47; 1981, c. 63, s. 1; c. 179, s. 14; 1991, c. 523, s. 2; 1993, c. 539, s. 34; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 185, s. 2; 2006-259, s. 4(a); 2012-154, s. 1.)

Source: https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_14/gs_14-72.html.

Appendix B. List of Offense Codes with the Highest Disparate Impact on Four Race-Gender Categories.

The tables below show the offense codes with the highest percentage of each demographic group among those arrested for that particular offense. Table B1 shows the codes associated with the highest shares of black males; Table B2, white males; Table B3, black females; and Table B4, white females.

Table B1. Black Males Charged as a Percent of Each Offense Code

Offense Code	Offense Description	Offense Category	Percent of Offense Black Males
6259	DOG FIGHTING	Wildlife	93
3441	SELL COCAINE	Drug Offenses	83
3456	DELIVER COCAINE	Drug Offenses	82
5219	DIS WEAP OCC PROP SER BOD INJ	Weapons Offenses	82
3435	SELL/DELIVER COCAINE	Drug Offenses	80
5220	DISCHARGE WEAPON OCCUPIED PROP	Weapons Offenses	80
3555	PWISD COCAINE	Drug Offenses	80
3552	MANUFACTURE COCAINE	Drug Offenses	79
3489	M/S/D/P CS W/N 1000FT OF PARK	Drug Offenses	78
5204	POSSESS HANDGUN BY MINOR	Weapons Offenses	77
5242	CARRYING CONCEALED GUN(F)	Weapons Offenses	76
5243	POSS PHONE/COMM DEV BY INMATE		76
0951	ATTEMPTED FIRST DEGREE MURDER	Homicide Related	76
3556	PWIMSD COCAINE	Drug Offenses	75
1221	CONSP ROBBERY DANGRS WEAPON ROBBERY WITH DANGEROUS	Robbery	75
1222	WEAPON	Robbery	74
1228	CONSP ARMED ROBBERY BUS/PERS	Robbery	74
5218	DIS WEAP OCC DWELL/MOVING VEH	Weapons Offenses	74
1202	ATT ROBBERY-DANGEROUS WEAPON	Robbery	73
3491	CONSPIRE DELIVER COCAINE	Drug Offenses	73
3440	SELL MARIJUANA	Drug Offenses	71
		Local Ordinance	
8529	FAIL PROVIDE PROOF PROPER FARE	Violations	71
0999	HOMICIDE - FREE TEXT	Homicide Related	71
3455	DELIVER MARIJUANA	Drug Offenses	71
	ALTER/REMOVE GUN SERIAL		
5211	NUMBER	Weapons Offenses	70
3481	CONSPIRE SELL COCAINE	Drug Offenses	70
		Local Ordinance	
8517	FAIL PROVIDE PROOF FARE PAY	Violations	69
1150	HUMAN TRAFFICKING ADULT VICTIM	Sex Crimes	69
3544	PWISD MARIJUANA	Drug Offenses	68

Table B2. White Males Charged as a Percent of Each Offense Code

Offense Code	Offense Description	Offense Category	Percent of Offense White Males
6312	GILL NET/EQUIP/OPER VIOLATIONS UNLAWFULLY TAKE MIG GAME	Wildlife	94
6219	BIRD	Wildlife	93
6246	FAIL REPORT/TAG BIG GAME	Wildlife	93
6226	POSS DEER TAKEN CLOSED SEASON	Wildlife	92
6374	TAKE MIG WATERFOWL W/O LIC	Wildlife	91
2223	BREAK/ENTER BOAT	Breaking & Entering / Burglary	90
6223	OPER MOTORVESSEL INVALID NUM	Wildlife	89
6230	DWI - MOTOR BOAT/VESSEL	Wildlife	89
6225	USE UNPLUGGED SHOTGUN TAKE GAME DURING CLOSED	Wildlife	88
6221	SEASON	Wildlife	88
6252	HUNT FROM MOTOR VEHICLE	Wildlife	86
3611	SECOND DEG SEX EXPLOIT MINOR FISH TROUT WATER CLOSED	Sex Crimes	85
6264	SEASON	Wildlife	85
2217	BREAK COIN/CURRENCY MACH (F)	Breaking & Entering / Burglary	84
5345	FALSE BOMB REPORT	Public Peace	83
6215	NO BIG GAME LICENSE	Wildlife	83
3612	THIRD DEG SEX EXPLOIT MINOR MOTORVESSEL W/O LIFESAVING	Sex Crimes	83
6216	DEV	Wildlife	82
6203	HUNTING WITHOUT A LICENSE-NR	Wildlife	81
6208	HUNTING WITHOUT A LICENSE SPOTLIGHT DEER/NIGHT DEER	Wildlife	80
6240	HUNT	Wildlife	80
2944	INJURING UTILITY WIRES/FIXTURE OPERATE BOAT RECKLESS	Property Damage	80
9978	MANNER	Vehicle	80
6242	SHINE/SWEEP LIGHT FOR DEER HUNT/FISH/TRAP-NO GAME	Wildlife	77
6217	LICENSE	Wildlife	77
2219	DAMAGE COIN/CURRENCY MACHINE	Breaking & Entering / Burglary	76
5720	DISTURB CASKET/GRAVE MARKER	Vehicle	76
4486	IMPROPER MUFFLER	Vehicle	76
3638	SOLICIT BY COMPUTER/ APPEAR	Sex Crimes	75
6299	WILDLIFE - FREE TEXT	Wildlife	75

Table B3. Black Females Charged as a Percent of Each Offense Code

Offense Code	Offense Description	Offense Category	Percent of Offense Black Females
2619	PUBLIC ASSISTANCE FRAUD (F)	Fraud, False Pretense, & Cheats	60
2354	THEFT OF CABLE TV SERVICE	Larcenies & Related	49
2649	FAIL RETN PROP RENTD PUR OPT	Fraud, False Pretense, & Cheats	43
2615	FOOD STAMP FRAUD (F)	Fraud, False Pretense, & Cheats	42
4414	CHILD NOT IN REAR SEAT FAIL TO RETURN RENTAL		41
2646	PROPERTY FAIL TO SECURE PASSEN UNDER	Fraud, False Pretense, & Cheats	39
4472	16	Vehicle	35
2665	EMPL SEC LAW VIOLATION	Fraud, False Pretense, & Cheats	35
2603	INSURANCE FRAUD	Fraud, False Pretense, & Cheats	34
4531	LIC/PERMIT SEAT BELT VIOL <18	Vehicle	33
2676	FAIL RETURN HIRED MV >\$4000	Fraud, False Pretense, & Cheats	31
2678	MED ASSIST RECEIPIENT FRAUD-F	Fraud, False Pretense, & Cheats	31
9963	TRESPASS/IMPEDE SCHOOL BUS	Vehicle	30
8535	CURFEW VIOLATION	Local Ordinance Violations	30
2637	TRAFFICKING STOLEN IDENTITIES MISREP TO OBTAIN ESC BENEFIT-	Fraud, False Pretense, & Cheats	29
2663	M	Fraud, False Pretense, & Cheats	29
2654	SECRETING LIEN PROPERTY	Fraud, False Pretense, & Cheats	29
1368	SIMPLE ASSAULT	Assaults	29
4018	SOLICIT CRIME AGAINST NATURE	Prostitution	28
5531	AID AND ABET DWLR	Vehicle	28
4718	A&A DWLR NOT IMPAIRED REV	Vehicle	27
1357	SIMPLE AFFRAY	Assaults	27
4011	PROSTITUTION LEARNERS PERMIT VIOLATION	Prostitution	26
5630	>18	Vehicle	26
4013	SOLICIT FOR PROSTITUTION	Prostitution	26
5407	NO REGISTRATION CARD	Vehicle	26
8530	DEFRAUDING TAXI DRIVER	Local Ordinance Violations	26
1318	ASSAULT SCHOOL EMPL/VOLUNT	Assaults	25
2602	ILLEG POSS/USE FOOD STAMPS(M)	Fraud, False Pretense, & Cheats	25
1336	ASSAULT AND BATTERY	Assaults	25

Table B4. White Females Charged as a Percent of Each Offense Code

Offense Code	Offense Description	Offense Category	Percent of Offense White Females
9924	CORPORATE MALFEASANCE EMBEZZLE CS BY EMPLOYEE OF	Other	69
3430	REG	Drug Offenses	66
3597	PROVIDING DRUGS TO INMATE EMBEZZLEMENT-PUB	Drug Offenses	55
2722	OFF/TRUSTEES	Embezzlement	54
3822	SCHOOL ATTENDANCE LAW VIOL	Child Abuse	52
4011	PROSTITUTION	Prostitution	51
2719	EMBEZZLEMENT >=\$100,000 OBT CS PRESCRIP	Embezzlement	51
3345	MISREP/WITHHLD	Drug Offenses	49
4719	AID&ABET DWLR IMPAIRED REV	Vehicle	49
4728	AID&ABET DWLR IMPAIRED REV OBTAIN CS BY FRAUD/FORGERY (F)	Vehicle	48
2658	MED ASSIST RECEIPIENT FRAUD-F	Fraud, False Pretense, & Cheats	48
2678	EXPLOIT DISABLE/ELDER CAPACITY	Fraud, False Pretense, & Cheats	47
1378	HARBORING FUGITIVE	Assaults	47
4904	DELIVER SCH III CS	Escaping	45
3461	OBT/ATT OBT ALC OTHER DL	Drug Offenses	43
2661	CONSP SELL/DELIVER SCH III CS	Fraud, False Pretense, & Cheats	42
3432	LARCENY BY CHANGING PRICE TAG	Drug Offenses	42
2330	OBT/ATT OBT ALC FALSE ID	Larcenies & Related	41
2660	OBT/ATT OBT ALC FALSE DL	Fraud, False Pretense, & Cheats	40
2662	A&A DWLR NOT IMPAIRED REV	Fraud, False Pretense, & Cheats	40
4718	AID AND ABET DWLR	Vehicle	40
5531	A&A DWLR NOT IMPAIRED REV	Vehicle	40
4727	SELL SCH III CS	Vehicle	38
3446	SELL/DELIVER SCH IV CS	Drug Offenses	38
3406	COMMERCIAL SEX - FREE TEXT	Drug Offenses	37
4099	SOLICIT FOR PROSTITUTION	Prostitution	37
4013	ABANDONMENT OF AN ANIMAL	Prostitution	37
6211	EMBEZZLEMENT	Wildlife	37
2718	NEG CHILD ABUSE-SER PHYS INJ	Embezzlement	36
3842		Child Abuse	36

Appendix C. Newspaper Search Terms.

<i>Category</i>	<i>Search term</i>	<i>Matches</i>	
		<i>Newspapers.com</i>	<i>Library of Congress</i>
Black Drivers	("negro driver" OR "black driver" OR "colored driver")	3,926	4,996
“Dangerous” Black Drivers	("negro driver" OR "black driver" OR "colored driver") AND (dangerous OR reckless OR menace OR crash)	1,609	1,733
“Dangerous” driver	(driver) AND (dangerous OR reckless OR menace OR crash)		3,905

Appendix D. Selected Newspaper Clippings.

**COURTESIES AND RIGHTS
OF THE ROADS.**

We are in receipt of complaints from some ladies who drive their cars that when they are alone both the ordinary courtesies and rights of the road are denied them. The chief offenders are negro drivers, both chauffeurs for white people and users of their own machines. It is complained that when these negro drivers see an unattended lady behind them they block the road and refuse to give way. When in the rear these same negroes cut by as close as it is possible to do so without collision and then turn to laugh at the lady they have passed.

The enforcement of traffic regulations is certainly out of joint if any and every lady can not drive through the streets and highways of this section in perfect safety. They have absolute vehicular rights and anyone who attempts to violate them should be punished. The safety of pedestrians and drivers should be protected against those who refuse to extend the rights of the road. A few arrests and a few fines that will stick ought to prove effective in the case of these latter miscreants. Selected.

Washington, 1920

DRIVERS SHOULD BE LICENSED.

The road-hog is a constant menace to the safety of automobilists. Especially objectionable are the number of irresponsible negro drivers who seem to become obsessed with their importance when they get at the wheel and who proceed to drive without regard for the safety or rights of others. The action of E. V. Webb, chairman of the County Highway Commission, in apprehending one of these offenders Sunday will meet with general commendation. The negro should be taught a lesson that he will not soon forget and that will be a deterring influence to others of his kind.

The great trouble is the lack of proper restrictions for drivers. The State and County should have laws governing those who operate cars. The meeting of certain qualifications should be required of all who are licensed to drive. Character should be one of the chief requisites. And it should be understood that licenses would be cancelled where essential rules of driving and disregard of the rights of others were shown to be wilfully violated. Such withdrawal of license should be permanent or until such times as the offender could again qualify for another chance. It wouldn't take many cancellations accompanied by full publicity to put a stop to the dangerous hoggishness.

Kinston Daily News, June 1922

Driving a Truck, Collides With Vehicle Killing Youth, Fatally Injuring Woman.

(By the Associated Press.)

Kinston, N. C., June 26. — Elijah Dunn, negro, driver of a West Construction company material truck, which left the roadway one mile from Deep Run, this county, late Saturday, collided with a horse drawn vehicle parked in the yard of the home of Tom Hill, a farmer, killed James Hill aged 12, perhaps fatally injured Mrs. Julia Ann Smith and a one year old infant, surrendered to the local police today and asked to be kept in a safe place pending an inquiry into the accident.

The negro claims the accident was due to a broken steering gear, but reports that he had been drinking and was driving the truck at an excessive rate of speed has caused much feeling against him. The truck was loaded with negro laborers, several of whom were injured.

The officials of the construction company, as the result of alleged threats from citizens in the Deep Run section, have replaced all negro drivers of material trucks with white drivers.

Durham Morning Herald, 1927

Only White Drivers Now.

White drivers were today reported to have replaced the last negro on the Kinston-Pink Hill highway operations of the West Construction Company, road-builders with temporary headquarters here. The company advertised for white drivers after a fatal accident near Deep Run last Saturday when a truck out of control of a negro driver left the road and crashed into a group of persons in a yard. A message was said to have been sent here from Deep Run that negro drivers on the work in that section would not be acceptable to residents any longer. The machine figuring in the accident was claimed to have been running at a fast speed. Experienced truck men came here from a number of points to take the negroes' places. The word to "drive careful-these when they were placed in charge of the heavy machines.

Kinston Daily News, June 1928