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Strengthening Racial Profiling Laws: Data Collection and Consent Searches

Throughout the 1990s, civil rights organizations, community groups and activists sought a tool that could quantify what they knew to be true: police officers were profiling and pulling over people of color at alarming rates, often with little or no evidence to support their actions. By 1999, the first state policies to ban racial profiling by police officers and mandate racial data collection for police stops started to appear. In 1999-2000, the national American Civil Liberties Union launched a racial profiling project that worked in conjunction with local, state and other national organizations to pass anti-racial profiling and data collection legislation. This resulted in a blossoming of these laws in many states during 2000 and 2001, including Texas and Missouri, which are considered amongst the strongest laws in the country.

The trend of passing anti-racial profiling and data collection laws continues, and presently 28 states have laws that ban racial profiling and/or mandate data collection on police stops.¹ However, activists in states where these laws have been on the books for several years have had time to reflect on their accomplishments and discover new strategies to reduce racial profiling.

In Los Angeles, city officials and community activists remain frustrated by a recent study that clearly demonstrates Black and Latino drivers are much more likely to be stopped by police, asked to leave their vehicles and submit to searches – but cannot identify a cause behind these numbers.² Data collection is working, but only tells part of the story. “The debate is moving forward because data collection gave us factual evidence that racial profiling is happening. The next question is why?” states Scott Henson, Director of the ACLU Texas Police Accountability Project.

In an attempt to answer why, activists in Texas recently advanced state legislation that would have modified the types of data collected on police stops and put in place a written or recorded consent prior to a police officer requesting to search a vehicle. “We need to probe more deeply into the actions of police officers, and realized that the data we currently collect doesn’t tell us what we really need to know,” points out Molly Totman from the Texas Criminal Justice Coalition. “Racial profiling data that is demanded by the civil rights community is not used the same way by police supervisors, who actually have the authority to use the data as a management tool to reduce discrimination and profiling,” adds Mr. Henson. “Supervisors and police administrators that have access to data from individual officers are the only ones who can answer the why question, so we need different data to put more pressure on them to answer this question.”

The changes that would have been made to Texas’ racial profiling law were proposed as two pieces of complementary legislation, House Bill 3430 and Senate Bill 1503, during the 2005 legislative session. These changes include:

- Establishing an independent, statewide central repository for racial profiling data collection

- Creating a standardized form for police departments to report racial profiling data
- Establishing a civil fine penalty for departments that do not comply with the law and fail to submit racial profiling data (\$1000 for each failure)
- Adding additional elements of data collection, including all search data (consent searches, probable cause, arrest searches, and inventory searches), contraband collection data, and non-citation data (warning and release data)

House Bill 3430 and Senate Bill 1503 both died in the legislature.

The second change to Texas law specifically dealt with consent searches, which are requested by police officers that otherwise have no probable cause to search a vehicle. Another set of complementary legislation, House Bill 2418 and Senate Bill 1195, would have made the following provisions:

- Request written or recorded consent prior to being searched at a traffic stop
- Ensure that drivers were advised of their right to say “no” when a police officer asks to search their vehicle
- Provide written and recorded evidence for drivers who opted to waive their right to refuse a vehicle search

Although House Bill 2418 and Senate Bill 1195 were vetoed by Governor Perry, there is evidence from Austin, Texas that singling out consent searches as a strategy to reduce racial profiling works. Currently, consent searches are banned entirely in Minnesota, New Jersey, Rhode Island and by the California Highway Patrol. But the story of Austin illustrates the dramatic consequences of when people are informed of their civil rights, police officers are compelled to re-affirm the right to refuse being searched and police officers have written and/or video documentation of their decisions to request searches.

In 2004, a coalition of community groups called upon the Austin Police Department (APD) to ban consent searches. A recent racial profiling report had found that in 2003 Austin police stopped Black and Latino drivers approximately twice as often as whites. Blacks were asked for consent searches five times more often than whites after vehicles were stopped; yet APD was twice as likely to find contraband on whites. Latinos were also significantly over-searched.³ In response, APD changed its policy regarding consent searches to require officers to get written or video recorded consent to search a vehicle if they didn't have probable cause.

When APD released its racial profiling data for 2004, there was a 63% decline in consent searches – from 2,141 searches in 2003 to 804 searches in 2004. Consent searches as a percentage of all searches also changed. In 2004, APD searched 2,755 Blacks, of which 8.2% (226) were consent searches; 3,377 whites, of which 7.1% (240) were consent searches; and 5,047 Latinos, of which 6.6% (333) were consent searches. The Austin NAACP and the ACLU of Texas praised this decline while still calling on APD to halt consent searches completely.⁴

“The experience in Austin demonstrates why anti-racial profiling laws need to also collect information on search types and whether or not contraband was found,” notes Ms. Totman. “In Austin about 88% of all consent searches don't find anything. Police administrators were fine

with the written consent to search because there's a cost-benefit analysis about how officers are using their time. Fewer searches means less wasted time," adds Mr. Henson.

The form used by the Austin Police Department is a simple one-page document that, in addition to listing identifying information from both the vehicle driver and police officer, states:

- "I have been advised and fully understand that I have the right to refuse to give consent to search."
- "I have also been advised that I may withdraw my consent at any time."
- "I freely and voluntarily consent to the requested search, and indicate consent by my signature below."

"Drivers have a right to say no to consent searches, and are less likely to consent to a search when informed that they can say no. In Austin, officers are now less likely to pull weapons to search and less willing to conduct ambiguous searches," observes Will Harrell, Executive Director of the Texas ACLU. The implication is that many drivers are intimidated into consent searches because they are unaware of their right to say no.

In lieu of banning consent searches all together, the concept of advising drivers that they have the right to refuse a consent search is not new. The Texas legislature considered a bill in 2001 that would have required exactly this. Nor is requiring written or video consent to search a magic bullet: even though the number of consent searches in Austin substantially declined, Austin police officers still search drivers at traffic stops more frequently than in other cities such as Dallas and Houston.⁵ However, information obtained through racial profiling data collection, especially if it includes search information, opens the possibility to re-examine informed consent searches as another strategy to mitigate racial profiling.

¹ National Racial Profiling Data Collection Resource Center at Northeastern University, 2006.

² McGreevy, Patrick. "Question of Race Profiling Unanswered." Los Angeles Times, 12 July 2006.

³ Henson, Scott. "Austin: Drivers Refuse Searches When They Know They Can." Grits for Breakfast, 3 March 2005.

⁴ Plohetski, Tony. "Austin police conducting fewer consent searches." Austin-American Statesman, 3 March 2005.

⁵ Op. cit. Henson, Scott.