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May I search your vehicle?

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Group: Consent searches overused in Texas

EDINBURG — Several law enforcement agencies across the state, including the Edinburg Police Department, still overuse consent searches during traffic stops, according to the Texas Criminal Justice Coalition's Campaign to End Racial Profiling.

Its third annual report, released in mid-February, indicates consent searches — which take place when an officer does not have probable cause to search either an individual or a vehicle but still asks to do so — rarely uncover contraband and are more likely to target minorities.

Racial disparities in consent searching have declined in Texas since the Legislature mandated that departments track racial profiling data, but two out of three departments still report consensually searching blacks and Latinos more frequently than Anglos, says the report, *Searching for Consent: An Analysis of Racial Profiling Data in Texas*.

In Hidalgo County, the only two departments analyzed were the McAllen and Edinburg police departments. The coalition requested information for its report from the 233 departments that issued more than 3,000 traffic citations in 2003. It received usable data from 201 departments.

The McAllen Police Department did not have a consent search frequency higher than the statewide average of 30 percent. McAllen also reported having no racial disparities in 2004, bettering itself from 2003 when blacks and Latinos were searched more than three times as often as Anglos.

Edinburg police, on the other hand, conducted a total of 502 searches in 2004 during traffic stops or on pedestrians — consent searches made up 65.5 percent of the total searches, which is much higher than the statewide average of 30 percent. Total searches include consent and probable cause searches.

Though consent searches were seen as overused in Edinburg, race biases were less prevalent there in 2004 than in 2003. In fact, Latinos and Anglos were consensually searched at nearly the same frequency in 2004, the most recent year the campaign has analyzed data on. (Only one African-American was searched, making that group's data statistically insignificant).

Edinburg Police Chief Quirino Muñoz said consent searches have their place.

"It is established known info that some highways for a long time have been corridors for transporting illegal narcotics," Muñoz said.

The prevalence of drugs in the border region could be one reason why Edinburg police initiate consent searches more often than officers in other parts of the state. However, Edinburg police do not collect data on the results of consent searches. Therefore, whether Edinburg police are finding what they say they are looking for can not be verified by statistical data.

The Texas Criminal Justice Coalition is trying to get legislation passed at the state level that would require all law enforcement agencies to keep this additional data. But ideally, the coalition's platform is to prohibit consent searches altogether, said Molly Totman, a policy analyst and one of the principal authors of the report.

"The biggest problem with consent searches is many people don't realize they have the right to say no," she said. "But nothing requires law enforcement to tell you (that) you have the right to say no."

Most people don't refuse. Sometimes it's because they are intimidated. Other times it's because people don't know their rights, Totman said. She said she has received letters from people saying that when they tried to refuse, the policeman told them that their refusal gave him probable cause to search anyway.

If there is no probable cause — meaning an officer has more than a feeling, a reason that can actually be articulated — and someone says no to a consent search, Edinburg police let them go, Muñoz said.

To safeguard the department in court and to notify individuals of their rights, Edinburg police use written consent, he said.

Traffic officers in Edinburg carry "consent to search" forms, and it is recommended that officers use them, Muñoz said.

As such, the high frequency of consent searches does not bother the chief.

Not all traffic stops result in a search or an arrest, he said. The department is not racial profiling. And it gets written consent, off of which the form reads that the person can refuse.

"It would bother me if they weren't consensual," Muñoz said.

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