



Press Release from the *Texas Criminal Justice Coalition*

Immediate Release

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Continued Use of Race, Over-Use of Consent Searches Reported

Sweeping report reveals some improvement, continued problems in the way agencies use consent searches.

(Austin)// Many Texas law enforcement agencies continue to use consent searches inconsistently and inappropriately, according to a report released today by the Texas Criminal Justice Coalition titled *Searching for Consent: An Analysis of Racial Profiling Data in Texas*. As a result, many Texans, regardless of race, are subjected to over-searching. The report warns that these over-searching policies ultimately diminish public safety, and it urges departments to use more efficient policing practices.

“The over-use and inconsistent use of consent searches in Texas is not just a minority issue or civil rights issue, but also a public safety issue,” said Ana Yáñez-Correa, Executive Director of the Texas Criminal Justice Coalition. “Consent searches divert resources from crime-fighting tasks that improve public safety. Our officers’ time and energy should be spent on productive techniques, not on a hit or miss tactic that is diminishing the community’s faith in law enforcement.”

Report data indicate that 2.3 percent all drivers (103,705) statewide were subjected to consent searches at traffic stops in 2004. The report found that some departments conducted consent searches of all races much more frequently than the statewide average. In addition, departments that consent searched minorities at higher rates also tended to consent search Anglos more often.

“We hope this report can be used as a tool by law enforcement across the state to take a look at their disparities and make policy changes that will improve the way they conduct searches and protect the public,” said Yáñez-Correa.

The Texas Criminal Justice Coalition’s report did reveal some encouraging news. From 2003 to 2004, about half of departments reported that they decreased the size of the racial disparity in consent searches they conducted, according to their own self-reported data.

Nevertheless, the report revealed that consent searches rarely uncover wrongdoing and are more likely to target minorities. Approximately two out of three departments still use race as a factor in conducting consent searches, and Blacks and Latinos continue to be searched more frequently than Anglos.

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“If the law is colorblind, then race-based searches need to go,” said Mary Ramos, State Deputy Director for the League of United Latin American Citizens of Texas. “This report shows that Texas still has miles to go before all law enforcement agencies start looking for what’s in the trunk and not at the color of the person behind the wheel.”

Gary Bledsoe, President of the Texas State Conference of branches of the National Association for the Advancement of Colored People, agreed: “The sad truth for people of color in Texas is that even if you are as innocent as the driven snow, the color of your skin dictates that you are much more likely to be stopped and then searched by police. However, the positive side is that there is now empirical proof of this, so hopefully Texas lawmakers will decide that people of color should be treated with dignity like all other citizens, and actually pass some laws to curb this behavior.”

In addition to the inefficiency of and ongoing racial disparities produced by consent searches, another concern lies in the constitutionality of this police practice. “The Fourth Amendment guarantees the right to be free from unreasonable searches. Law enforcement shouldn’t be allowed to force people into giving up their rights at traffic stops through trickery or intimidation. The practice violates fundamental principles of protected liberty,” said Will Harrell, Executive Director of the American Civil Liberties Union of Texas.

To address the problems with consent searches and better assist law enforcement in implementing policies that serve the public’s best interests, the report makes several recommendations to the Texas Legislature based on its findings, including: 1) Texas should adopt the search policy used by New Jersey, Minnesota, Rhode Island, and the California Highway Patrol, which stipulates that a “legal basis” be required for conducting searches; and 2) law enforcement agencies should be required to collect and report some additional data elements that will aid them in identifying and implementing new and effective practices consistent with their mission to protect and serve all Texans.

This year’s report is the third by the Texas Criminal Justice Coalition on behalf of the Campaign to End Racial Profiling, members of which include the Texas State Conference of branches of the National Association for the Advancement of Colored People, League of United Latin American Citizens of Texas, American Civil Liberties Union of Texas, and the Texas Criminal Justice Coalition. The Campaign was instrumental in passing legislation against racial profiling in 2001, making racial profiling data available for the first time in Texas.

The entire report, including agency breakdowns, may be viewed, online, at:

http://www.criminaljusticecoalition.org/end_racial_profiling

For information on the Texas Criminal Justice Coalition’s work to end racial profiling, see

www.criminaljusticecoalition.org/end_racial_profiling

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The Texas Criminal Justice Coalition is committed to identifying and working towards real solutions to the problems facing Texas’ criminal justice system. We do this by identifying and educating supporters using cost-effective and innovative tools, partnering with organizations who share our core beliefs, and promoting evidence-based criminal justice solutions that embody the principles of effective management, accountability, public safety, and human and civil rights.

Racial Profiling Facts

- **Racial disparities continue in consent searches.** For the third year in a row, Texas law enforcement agencies' own self-reported data shows racial disparities in consent search rates. Approximately two out of three departments reported consent searching Blacks and Latinos more frequently than Anglos per stop, according to the Texas Criminal Justice Coalition's report.

- **Consent searches have little or no impact on fighting crime.** A consent search takes place when there is no legal authority for police to conduct a search (no existing warrant, no probable cause, etc.), but the officer chooses to ask for a search anyway. Previous findings suggest that consent searches rarely find contraband and thus are an inefficient and ineffective use of police resources.

- **Prosecutors prefer written approval for consent searches to solidify their case.** Page 57 of the Texas District and County Attorneys Association manual *Traffic Stops*, advises that, "Although oral consent is sufficient, written consent is definitely preferred to oral consent because it reduces the likelihood of a swearing match in court later."

- **The Texas Legislature has already taken steps to address the problem of over-use of consent searches.** During the 79th Texas Legislative Session in 2005, the legislature passed Senate Bill 1195 by Senator Juan Hinojosa, which required officers to obtain written or recorded consent prior to conducting a "no-cause" search at traffic stops. According to the Texas Criminal Justice Coalition's report, about 30 percent of all searches at traffic stops in Texas are consent searches. The bill was backed by the ACLU of Texas, National Rifle Association, Texas NAACP and Texas LULAC. However, S.B. 1195 was vetoed by Governor Rick Perry.