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Austin Police Adopt Stricter Rules for Searches, But Enforcement Is Key

The Austin Police Department has instituted a new written-consent policy for consent searches. Photo by Natalie Krebs.

**By Margaret Nicklas
For Reporting Texas**

It's all about accountability.

The Austin Police Department gets good marks from local critics and independent observers for recent policy changes aimed at reducing vehicle searches that tend to target – and anger – minorities. Officers now need supervisory approval to search a vehicle along with written consent from the driver. They must also explain that drivers can decline the request and can withdraw consent even if the search is under way.

But everyone, even APD officials, agrees these measures will not change police behavior and community perceptions unless department leaders keep track of officers' searches and insist they follow the new rules or face the consequences. The policy took effect in October.

"In any good management system, the supervisor should have liability for what happened on his watch or her watch," said Jim Harrington, founder of the [Texas Civil Rights Project](#). "But the question is, if it's really happening."

While the Fourth Amendment to the U.S. Constitution provides security against unreasonable searches and seizures, courts have upheld the right of law enforcement to perform vehicle searches as long as drivers agree. These "consent searches" have become a staple for many law enforcement organizations because they sometimes yield results but don't demand the effort involved in obtaining a judge's warrant or otherwise justifying the search.

"From the perspective of the police officer, the government broadly, the easiest way to legitimate a search is to get consent of the party involved," said [Jerry Dowling](#), a professor in the College of Criminal Justice at Sam Houston State University. But many people agree to searches to appear cooperative or because they don't know they can decline, he said.

In Austin and elsewhere, consent searches have frustrated black and Hispanic communities that already perceive racial disparity in how policing is conducted. Searches, whether done with consent or not, can be humiliating, time consuming and damaging to property.

In 2011, black and Hispanic area drivers were searched with and without consent disproportionately, an [Austin Police Monitor](#) report showed. Yet they were no more likely to have illegal items in their vehicles.

Using the police department's data, Police Monitor Margot Frasier showed that for white drivers, just one in 28 stops included vehicle searches, compared with one in eight for black drivers and one in 10 for Hispanic drivers. Yet the rate at which contraband was found was about 20 percent across the board.

Consent searches have increased in recent years. Austin police reported 694 consent searches resulting from vehicle stops in 2011, down from 1,118 reported in 2010 but an increase from 473 consent searches reported in 2009. And blacks have been overrepresented in consent searches as well. In 2011, whites, Hispanics and blacks each represented roughly one third of the number of searches performed even though blacks represent about 8 percent of the area population.

While the department had previously required officers to obtain consent for searches that did not meet the test for probable cause — for instance, when they have evidence that a crime is occurring — consent was often obtained by video recording, Frasier said. But officers did not make it clear that drivers could decline, which caused her office to push for a requirement of written consent. "It truly needed to be an informed, written consent," she added.

History of Complaints

In 2004, Harrington represented the Austin NAACP when it filed a federal complaint over concerns that Austin police were violating citizens' civil rights. In 2011, the Department of Justice closed its four-year investigation of the complaint. Officials did not find that Austin police had violated laws, but recommended improvements, including a better system for identifying, training and disciplining officers with "a tendency to violate APD policy."

In late June, Harrington and Nelson Linder, president of the [Austin NAACP](#), filed a follow-up complaint saying that, despite changes "on paper" the department had made, the same problems — primarily related to use of force against blacks and Hispanics — persisted.

"If APD does not start holding its supervisors accountable for officers' conduct, the officers will continue to hurt minority individuals and the public will continue to distrust APD," the complaint stated.

The department announced the new consent-to-search policy in early July.

Linder credits the new policy with making a difference in Austin's black community. "In our office we have had less complaints about being stopped at random or being racially profiled," he said. "We've seen less over the past three months."

He said that while some officers will find a way around the new policy, getting supervisors involved will definitely decrease stops.

At the same time, Harrington questions whether Police Chief Art Acevedo will hold supervisors accountable when rules are violated. He viewed a recent shooting on Sixth Street as a clear violation of the department's new use of force policy.

"Acevedo's first response that very night was to support the officer, and not say, 'We're sorry this happened, let us check into it according to our new policy,'" he said.

Frasier's concerns are more pointed.

"You continue to have officers who stop people, who, I question whether they contact the supervisor, I question whether or not the supervisor takes that role seriously," Frasier said. And she's not sure officers who violate the policy will face consequences.

Frasier says an external audit function is needed to make sure that policies are being implemented. She said she doesn't trust the organization to police itself and doesn't think reliance on outside complaints is a good check and balance.

"I don't think that you can leave the enforcement of that [new policy] to the happenstance that a citizen or a resident of this community will file a complaint with our office," she said.

Veterans of the department say it's serious about reining in unnecessary searches. The requirement for supervisory approval was designed to identify training needs and ensure officers get feedback when asking to perform needless searches, said Lt. Darryl Jamail, cadet and field training director for Austin police.

And Assistant Chief Brian Manley emphasized the importance of the new policy for community relations.

“One or two folks might get away because we chose not to do a consent search, and you just have to weigh whether that’s better than having 15 or 20 exposed to an unnecessary consent search,” Manley said. “And as a department we’ve made the decision that we want a supervisor involved in that decision.”

But he also defended the need for consent searches, saying they are successful in bringing in important evidence about 30 percent of the time.

Asked if Austin’s is a good rate, Dowling compared it to a batting average in baseball but said there is no empirical data against which to evaluate what is good.

“I don’t know whether hitting .300 is good in police work or hitting .600 is good in police work — there’s just no data,” he said.

Frasier called consent searches a crutch, a sign of lazy policing and a time-waster. She said some officers target drivers who play loud music, stop them on minor traffic offenses, and then spend an hour searching their car. When such a search yields no contraband, as is most often the case, time has been wasted for both the driver and the officer, and community relations have likely been harmed.

Of 1,718 authorized commissioned officers in the department, more than 1,200 had taken training on the new policy, Manley said in early November. Supervisors will follow up with officers who have not taken the training by year’s end, he said.

And Frasier said she would continue to analyze and report on how searches are conducted. The office plans to publish a new report by July 2013.

The APD does not collect data on how many people refuse searches or how often supervisors decline to approve a requested search, information that might help department management know whether the new policies are working.

And even simple data is not readily available in the short term. Austin police could not provide numbers of consent searches performed in recent months or other data that might show the impact of new policy.

“It’s really too early to tell what the impact is,” Manley said. He expects the department to have some “meaningful” data at about “the six-month mark.”

Frasier was troubled by holes in the data she found when compiling her 2011 report and said she does not think the department is good at collecting accurate data. As the report explains, Austin police reported performing nearly 12,000 vehicle searches in 2011. While the majority of these were classified as non-consent searches by the department and only about 6 percent as “consent searches,” nearly 26 percent were considered “unknown.” The department later tracked down the missing data, Manley said, and has made improvements to the data collection system. As a result, Manley said, he now believes the department performed 837 consent searches in 2011, instead of the 694 originally reported.

Working With Communities

Harrington believes the department has made positive changes as a result of the federal investigation and that community relations have improved during [Acevedo’s tenure](#).

“Things are better. There’s no doubt about that,” he said.

The NAACP’s Linder also praised Acevedo’s leadership, calling it open and engaging to the public. And he cited the Justice Department’s review as a factor in the changes he’s seen.

“I think clearly, based on data and also reality, things have improved,” he said.

At a recent event held by Austin police, cadets reported findings that a certain level of distrust persists among black and Hispanic communities toward police and discussed strategies to overcome it.

Sergeant Zac Pruett, who oversees part of the cadet training program, said he was surprised by the issues reported by the police monitor but is glad they are being addressed. The low “find rate” on consent searches means officers are taking too many liberties on getting consent, which can lessen the bond between the department and the community, he said. But Pruett also said he believes racial issues are isolated and that overall, the department is where it needs to be, especially with the

influx of a new generation of officers.

“Generally, across the board, the theme is, treat everybody with respect,” Cadet Bryce Sakamoto said.

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Martin

August 1, 2013 at 10:04 pm

Having worked in law enforcement for almost 15 years at the municipal level, this scenario almost sounds like APD is instituting a broad and far reaching policy to address the behavior and tactics of a few officers versus the entire department. I completely agree with the idea to treat everyone equally and fairly, but my contention would be that 95% of law enforcement officers across the US adhere to that approach already, while the much smaller 5% are the real problem.

Understanding that citizens tend to generalize one bad experience with law enforcement to the entire department, why not address the issue of the 5% instead of creating such a broad policy. Having a supervisor be required to co-sign or validate a signed consent form is taking away the decision making process from the first line officers, which negatively impacts moral and performance.

Again, address the issue directly instead. Just my .02 cents on the subject.

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