



POLICE DEPARTMENT

TO: Michael Morrison, City Manager

FROM: Tom Wibert, Chief of Police

REF: Racial Profiling Report - 2010

DATE: February 25, 2011

On September 1, 2001, the racial profiling law became effective as found in the Texas Code of Criminal Procedure (CCP) beginning with Article 2.131. The law mandated that law enforcement agencies begin collecting certain data in connection to traffic or pedestrian stops beginning on January 1, 2002. Based on that data, the law mandated law enforcement agencies to submit a report to the law enforcement agency's governing body beginning March 1, 2003 and each year thereafter no later than March 1.

Attached is a compilation and analysis report of information collected pursuant to the requirements mandated in CCP Art. 2.134 in connection to the subject matter of racial profiling.

Given the totality of the aforementioned information provided in the report, it can be established that there is no prevalence of racial profiling by peace officers employed by this agency. In addition and pursuant to reporting requirements, the New Braunfels Police Department did not receive any formal complaint(s) alleging any New Braunfels police officer to be engaging in racial profiling for the year 2010.

For the purposes of convenience, the 2010 Racial Profiling Report will be posted on the New Braunfels Police Department website making it readily available to the public.

**The New Braunfels Police Department
Annual Contact Report
(2010)**



(I) Introduction

Opening Statement

February 25, 2011

New Braunfels City Council
New Braunfels, Texas

Dear Distinguished Mayor and Members of the City Council,

In 2001 and 2009, the Texas legislature passed the Texas Racial Profiling Laws (S.B. 1074 and H.B.3389). Since becoming effective, the New Braunfels Police Department, in accordance with the law, has collected citation-based contact data for the purpose of identifying and addressing concerns regarding racial profiling practices by police officers.

In this report, you will encounter three sections that present information on citation-based contact data along with documentation which aims at supporting the fact that the New Braunfels Police Department has complied with The Texas Racial Profiling Law. Section 1 contains the table of contents, the Texas Law on Racial Profiling and the list of requirements relevant to the Racial Profiling Law as interpreted by TCLEOSE (Texas Commission on Law Enforcement Officer Standards and Education).

In sections 2 and 3, you will find documentation which demonstrates compliance of the New Braunfels Police Department with the Texas Racial Profiling Law. Specifically, documents relevant to the implementation of an institutional policy banning racial profiling, the racial profiling complaint process and the training administered to all law enforcement personnel.

This report also contains statistical data relevant to public contacts, made during the course of traffic stops, between January 1, 2010 and December 31, 2010. This information has been analyzed and compared to data derived from the U.S. Census Bureau in the form of the Fair Roads Standard, and to the citation-based contact data collected in 2010. The final analysis and recommendations are also included.

The findings presented in this report support that the New Braunfels Police Department is committed to the identification and resolution of all issues relevant to racial profiling according to the state law.

Sincerely,

Tom Wibert
Chief of Police

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Texas Racial Profiling Law Requirements

Guidelines for Compiling and Reporting Data under S.B.1074 and H.B.3389

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an "agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties."

The article further defines race or ethnicity as being of "a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern." The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002 (January 1, 2010 for HB3389).

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person's race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer's best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.
- whether the officer knew the race or ethnicity of the person prior to the stop.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, "the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose."

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide an analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.
- 4) whether the officer knew the race or ethnicity of the person prior to the stop.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the Texas Commission on Law Enforcement Officers Standards, as well as the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a) (2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

Additional requirements under House Bill 3389

House Bill 3389 changed several portions of the Code of Criminal Procedures Article 2.131 – 2.138. The major change that is now in the law is that all agencies must report racial profiling data to TCLEOSE as well as their governing body.

The law changes required reporting beginning in 2011 reporting data collected beginning calendar year 2010.

These options are:

- 1) Law enforcement agencies that do not routinely make motor vehicle stops can be fully exempt from reporting.
- 2) Law enforcement agencies that routinely perform traffic stops or motor vehicle stops and who have their vehicles that routinely perform these stops equipped with video and audio equipment can report under CCP 2.135. (This is called Tier 1 Reporting)

3) Law enforcement agencies that routinely perform traffic stops or motor vehicle stops and who do not equip their vehicles with video or audio equipment must report under CCP 2.133 and perform a analysis as required by CCP 2.134.

The Texas Law on Racial Profiling

Texas Law on Racial Profiling, S.B. 1074, as amended by Acts 2009, 81st Legislature

Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING.

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:

(a) the race or ethnicity of the individual detained;

(b) whether a search was conducted and, if so, whether the individual detained consented to the search; and

(c) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(a) the Commission on Law Enforcement Officer Standards and Education; and

(b) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 25, eff. September 1, 2009.

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS.

- (a) In this article, "race or ethnicity" has the meaning assigned by Article 2.132(a).
- (b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:
 - (1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:
 - (A) the person's gender; and
 - (B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;
 - (2) the initial reason for the stop;
 - (3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;
 - (4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;
 - (5) the reason for the search, including whether:
 - (A) any contraband or other evidence was in plain view;
 - (B) any probable cause or reasonable suspicion existed to perform the search; or
 - (C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;
 - (6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
 - (7) the street address or approximate location of the stop; and
 - (8) whether the officer issued a written warning or a citation as a result of the stop.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 26, eff. September 1, 2009.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article:

(1) "Motor vehicle stop" has the meaning assigned by Article 2.132(a).

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency.

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; and

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 27, eff. September 1, 2009.

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT.

(a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle stops is equipped with video camera and transmitter activated equipment and each law enforcement motorcycle regularly used to make motor vehicle stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer

employed by the agency has engaged in racial profiling with respect to a motor vehicle stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 28, eff. September 1, 2009.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the

governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 2, eff. Sept. 1, 2001.

CHAPTER 96, Section 96.641, Education Code, is amended by adding Subsection (k) to read as follows:

(k) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

- (1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;
- (2) implementing laws and internal agency policies relating to preventing racial profiling;
and
- (3) analyzing and reporting collected information.

Acts 2007, 80th Leg., R.S., Ch. 278, Sec. 1, eff. June 15, 2007.

CHAPTER 1701, Section 1701.253, Occupations Code, is amended by adding Subsection (h) to read as follows:

(h) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 12, eff. September 1, 2009.

CHAPTER 1701, Section 1701.402, Occupations Code, is amended by adding

Subsection (e) to read as follows:

(e) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(h).

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 1002

CHAPTER 543, Section 543.202, Transportation Code, is amended to read as follows;

Sec. 543.202. FORM OF RECORD.

(a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, whether the individual was adjudicated under Article 45.0511, Code of Criminal Procedure, and whether bail was forfeited;

(8) the date of conviction; and

(9) the amount of the fine or forfeiture.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 947, Sec. 6, eff.

Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1325, Sec. 8.04, eff. June. 1, 2005.

S.B. 1074, Sections 7 through 12

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001.

(II) Responding to the Law

Institutional Policy on Racial Profiling

New Braunfels Police Department

RACIAL PROFILING

POLICY

Annual Review Date: February 2011

I PURPOSE

The purpose of the policy is to reaffirm the New Braunfels Police Department's commitment to unbiased policing in all its encounters between officer and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

II POLICY

It is the policy of this department to police in a proactive manner and, to aggressively investigate suspected violations of law. Officers shall actively enforce state and federal laws in a responsible and professional manner, without regard to race, ethnicity or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in this policy. This policy shall be applicable to all persons, whether drivers, passengers or pedestrians.

Officers shall conduct themselves in a dignified and respectful manner at all times when dealing with the public. Two of the fundamental rights guaranteed by both the United States and Texas constitutions are equal protection under the law and freedom from unreasonable searches and seizures by government agents. The right of all persons to be treated equally and to be free from unreasonable searches and seizures must be respected. Racial profiling is an unacceptable patrol tactic and will not be condoned.

This policy shall not preclude officers from offering assistance, such as upon observing a substance leaking from a vehicle, a flat tire, or someone who appears to be ill, lost or confused. Nor does this policy prohibit stopping someone suspected of a crime based upon observed actions and/or information received about the person.

III DEFINITIONS

Racial Profiling: A law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants or other citizen contacts.

The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision. Race, ethnicity or national origin may be legitimate factors in a detention decision when used as part of an actual description of a specific suspect for whom an officer is searching. Detaining an individual and conducting

an inquiry into that person's activities simply because of that individual's race, ethnicity or national origin is racial profiling. Examples of racial profiling include but are not limited to the following:

- Citing a driver who is speeding in a stream of traffic where most other drivers are speeding because of the cited driver's race, ethnicity or national origin.
- Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess that specific make or model of vehicle.
- Detaining an individual based upon the determination that a person of that race, ethnicity or national origin does not belong in a specific part of town or a specific place.
- A law enforcement agency can derive two principles from the adoption of this definition of racial profiling:
 - Police may not use racial or ethnic stereotypes as factors in selecting whom to stop and search, while police may use race in conjunction with other known factors of the suspect.
 - Law enforcement officers may not use racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling is not relevant as it pertains to witnesses, etc.

Race or Ethnicity : Of a particular decent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern.

Pedestrian Stop : An interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

Traffic Stop: A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic.

IV PROCEDURES

A. TRAINING

Officers are responsible to adhere to all Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law.

All officers shall complete a TCLEOSE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. A person who on September 1, 2001, held a TCLEOSE intermediate proficiency certificate, or who had held a peace officer license issued by TCLEOSE for at least two years, shall complete a TCLEOSE training and education program on racial profiling not later than September 1, 2003.

B. COMPLAINT INVESTIGATION

1. The department shall accept complaints from any person who believes he or she has been stopped or searched based on racial, ethnic or national origin profiling. No person shall be discouraged, intimidated or coerced from filing a complaint, nor discriminated against because he or she filed such a complaint.
2. Any employee who receives an allegation of racial profiling, including the officer who initiated the stop, shall record the person's name, address and telephone number, and forward the complaint through the appropriate channel or direct the individual(s) as to the proper manner in which to file a complaint. Any employee contacted shall provide to that person a copy of a complaint form or the department process for filing a complaint. All employees will report any allegation of racial profiling to their superior before the end of their shift.
3. Investigation of a complaint shall be conducted in a thorough and timely manner. All complaints will be acknowledged in writing to the initiator who will receive disposition regarding said complaint within a reasonable period of time. The investigation shall be reduced to writing and any reviewer's comments or conclusions shall be filed with the chief. When applicable, findings and/or suggestions for disciplinary action, retraining, or changes in policy shall be filed with the Chief.
4. If a racial profiling complaint is sustained against an officer, it will result in appropriate corrective and/or disciplinary action, up to and including termination.
5. If there is a departmental video or audio recording of the events upon which a complaint of racial profiling is based, upon commencement of an investigation by this department into the complaint and written request of the officer made the subject of the complaint, this department shall promptly provide a copy of the recording to that officer.

C. PUBLIC EDUCATION

This department will inform the public of its policy against racial profiling and the complaint process. Methods that may be utilized to inform the public are the news media, radio, service or civic presentations the Internet, as well as governing board meetings. Additionally, information will be made available as appropriate in languages other than English.

D. CITATION DATA COLLECTION & REPORTING

An officer is required to collect information relating to traffic stops in which a citation is issued.

On the citation officers must include

1. the violators race or ethnicity;
2. whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual pursuant to any vehicle stop.
3. whether a search was conducted;
4. was the search consensual; and
5. arrest for this cited violation or any other violation.

By March of each year, the department shall submit a report to the Texas Commission on Law Enforcement Officers Standards, as well as their governing board that includes the information gathered by the citations. The report will include:

1. a breakdown of citations by race or ethnicity;
2. number of citations that resulted in a search;
3. number of searches that were consensual; and
4. number of citations that resulted in custodial arrest for this cited violation or any other violation.

Not later than March 1st of each year, this department shall submit a report to TCLEOSE, as well as our governing body containing this information from the preceding calendar year.

E. USE OF VIDEO AND AUDIO EQUIPMENT

Each motor vehicle regularly used by this department to make traffic and pedestrian stops is equipped with a video camera and transmitter-activated equipment, and each motorcycle regularly used by this department to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

Each traffic and pedestrian stop made by an officer of this department that is capable of being recorded by video and audio, or audio, as appropriate, is recorded.

This department shall retain the video and audiotapes, or the audiotape of each traffic and pedestrian stop for at least ninety (90) days after the date of the stop. If a complaint is filed with this department alleging that one of our officers has engaged in racial profiling with respect to traffic or pedestrian stop, this department shall retain the video and audiotapes, or the audiotape of the stop until final disposition of the complaint.

Supervisors will ensure officers of this department are recording their traffic and pedestrian stops. A recording of each officer will be reviewed at least once every ninety (90) days.

* If the equipment used to record audio and/or video of traffic or pedestrian stops is malfunctioning or otherwise not operable, the officer making the stop may properly record and report the information as required in Section F.

F. COLLECTION AND REPORTING INFORMATION GATHERED FROM TRAFFIC AND PEDESTRIAN STOPS

An officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense, shall record and report the following information:

1. A physical description of each person detained as a result of the stop, including:
 - a. The person's gender;
 - b. The person's race or ethnicity, as stated by the person or as determined by the officer to the best of his/her ability.
2. If the officer knew the race or ethnicity of the individual detained before detaining that individual pursuant to any vehicle stop.
3. The street address or approximate location of the stop. The suspected offense or the traffic law or ordinance alleged to have been violated.
4. Whether the officer conducted a search as a result of the stop and, if so, whether

the person detained consented to the search.

5. Whether probable cause to search existed and, if so, the fact(s) supporting the existence of that probable cause.

6. Whether any contraband was discovered in the course of the search and, if so, the type of contraband discovered.

7. Whether the officer made an arrest as a result of the stop and/or search, and, if so, a statement of the offense charged.

8. Whether the officer issued a warning or a citation as a result of the stop and, if so, a statement of the offense charged.

This department shall compile and analyze the information contained in these individual reports. Not later than March 1st of each year, this department shall submit a report to TCLEOSE, as well as our governing body containing the information compiled from the preceding calendar year in a manner they approve.

This report will include:

1. A comparative analysis of the information contained in the individual reports in order to:

a. Determine the prevalence of racial profiling by officers in this department;

and

b. Examine the disposition of traffic and pedestrian stops made by this department's officers, including searches resulting from stops.

2. Information relating to each complaint filed with this department alleging racial profiling.

This report will not include identifying information about a peace officer who makes a stop or about an individual who is stopped or arrested by a peace officer.

Complaint Process: Informing the Public and Addressing Allegations of Racial Profiling Practices

Informing the Public on the Process of Filing a Racial Profiling Complaint with the New Braunfels Police Department

Since January 1, 2002, the New Braunfels Police Department, in accordance to The Texas Racial Profiling law, launched an educational campaign aimed at informing the public on issues relevant to the complaint process. The police department made available, in electronic form through the City of New Braunfels website, and posted in the department public lobby, information relevant to filing a complaint on a racial profiling violation by a New Braunfels police officer.

The New Braunfels Police Department included language in its current complaint process pertaining to the manner in which citizens can file a complaint as a consequence of a racial profiling incident. It is believed, through these efforts, that the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

Racial Profiling Training

Racial Profiling Training

Since 2002, all New Braunfels police officers were instructed, as specified in S.B. 1074, to adhere to all Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the New Braunfels Police Department have completed the TCLEOSE basic training. The main outline used to train the officers of New Braunfels has been included in this report. The satisfactory completion of the racial profiling training by the sworn personnel of the New Braunfels Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

**Racial Profiling
Course Number 3256
Texas Commission on Law Enforcement
September 2009**

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074 and 81R-HB3389.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued
8. Race or Ethnicity known prior to stop

G. Compilation and analysis of data

H. Exemption from reporting – audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs

2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074

1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)

1. Motor vehicle search exemption

2. Traffic violation acceptable as pretext for further investigation

3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

1. Stop & Frisk doctrine

2. Stopping and briefly detaining a person

3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)

2. Maryland v. Wilson, 117 S.Ct. 882 (1997)

3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)

4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)

5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)

6. New York v. Belton, 453 U.S. 454 (1981)

2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism

B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole

C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers

D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop

E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling

1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers

2. The driver and passengers are questioned about things that do not relate to the traffic violation

3. The driver and passengers are ordered out of the vehicle
4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)

3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

- A. Drug courier profile (adapted from a profile developed by the DEA)
1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
 2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
 3. Vehicle is rented
 4. Driver is a young male, 20-35
 5. No visible luggage, even though driver is traveling
 6. Driver was over-reckless or over-cautious in driving and responding to signals
 7. Use of air fresheners
- B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

- A. Thinking about the totality of circumstances in a vehicle stop
- B. Vehicle exterior
1. Non-standard repainting (esp. on a new vehicle)
 2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
 3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
 4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)
- C. Pre-stop indicators
1. Not consistent with traffic flow
 2. Driver is overly cautious, or driver/passengers repeatedly look at police car
 3. Driver begins using a car- or cell-phone when signaled to stop
 4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)

D. Vehicle interior

1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074:

<http://www.utdallas.edu/legal/documents/SB1074Enrolled.pdf>

Web Address for requirements under 81R-HB3389:

<http://www.tcleose.state.tx.us/documents/licensing/Racial%20Profiling%20Sample.pdf>

Report on Complaints

Report on Racial Profiling Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 01/01/2010 to 12/31/2010, based on allegations related to possible violations of the Texas Racial Profiling Law. The final disposition of the case is also included.

A check above indicates that the New Braunfels Police Department has not received any complaints, as outlined in the law, on any members of its police force, for having violated the Texas Racial Profiling Law during the time period of 01/01/2010 to 12/31/2010.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law.

Complaint No.	Alleged Violation			Disposition of the Case

Additional Comments:

Tables Illustrating Traffic Contacts

Tier 1 Data

(I) Tier 1 Data

Traffic-Related Contact Information (01/01/2010—12/31/2010)

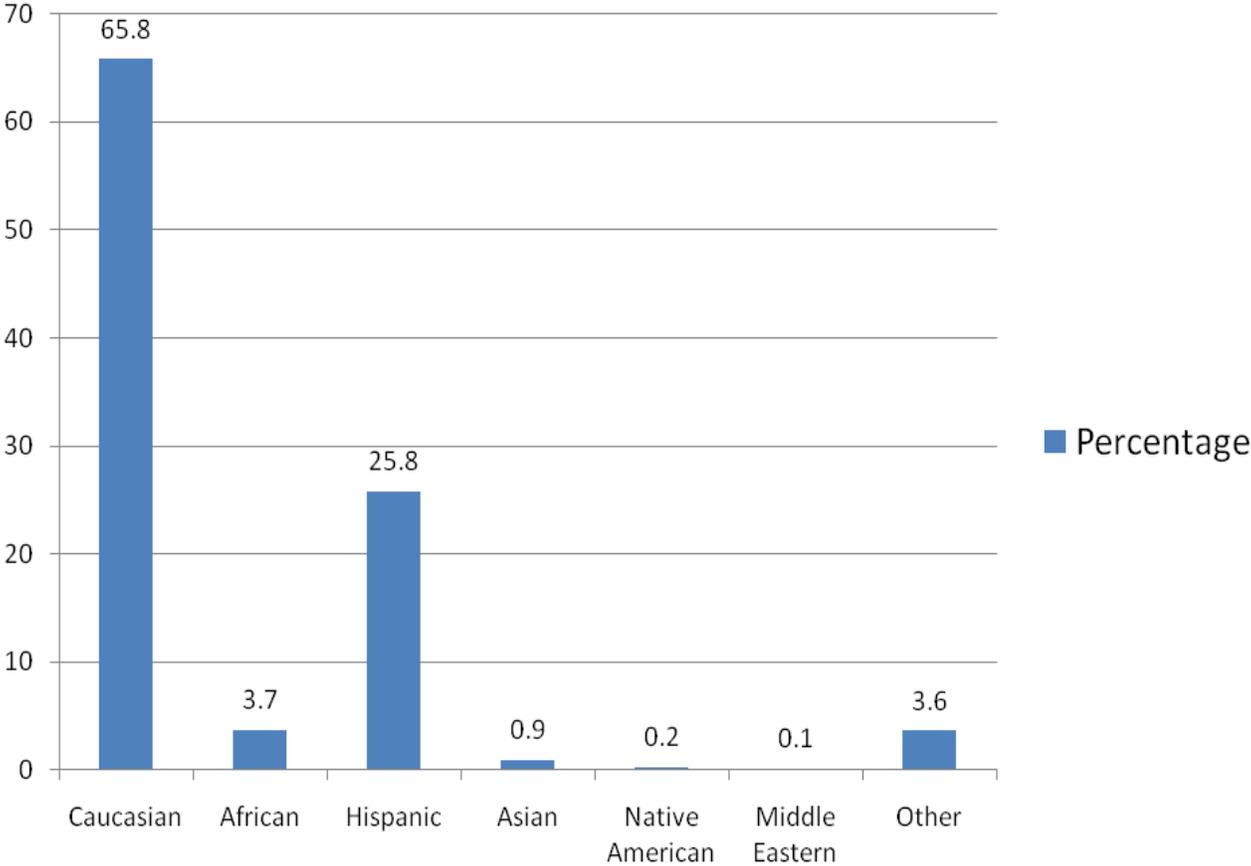
Race/Ethnicity*	Contacts		Searches		Consensual Searches		PC Searches		Custody Arrests	
	N	%	N	%	N	%	N	%	N	%
Caucasian	7659	65.8	20	60.6	76	44.2	83	51.9	751	56.3
African	431	3.7	3	9.1	8	4.7	5	3.1	56	4.2
Hispanic	2999	25.8	10	30.3	84	48.8	70	43.8	516	38.7
Asian	107	0.9	0	0	0	0	0	0	3	0.2
Native American	20	0.2	0	0	0	0	0	0	2	0.1
Middle Eastern	10	0.1	0	0	0	0	0	0	2	0.1
Other/Unknown	414	3.6	0	0	2	1.2	2	0.1	4	0.3
Total**	11640	100	33	100	172	100	160	100	1334	100

“N” represents “number” of traffic-related contacts

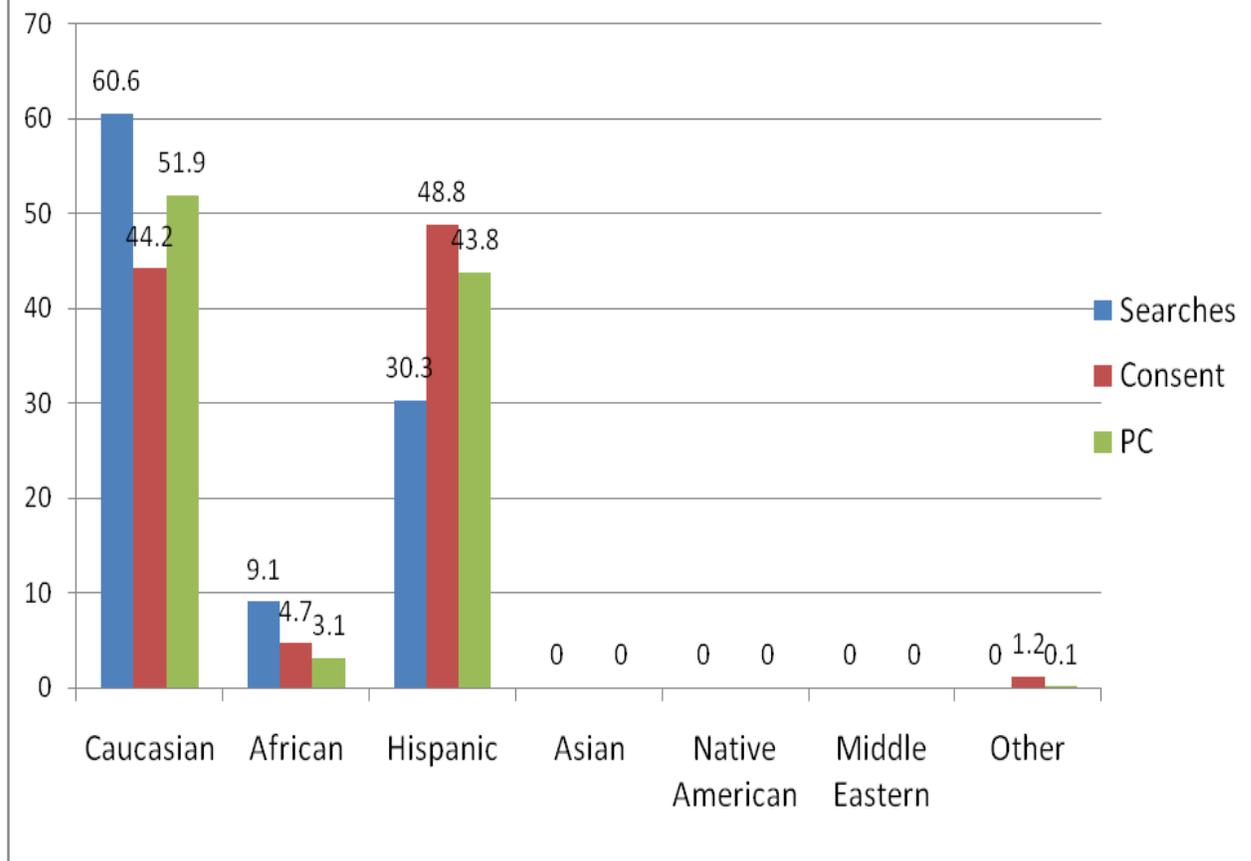
* Race/Ethnicity is defined by Senate Bill 1074 and House Bill 3389 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern”.

**Figure has been rounded

Tier 1 Data (Contacts)

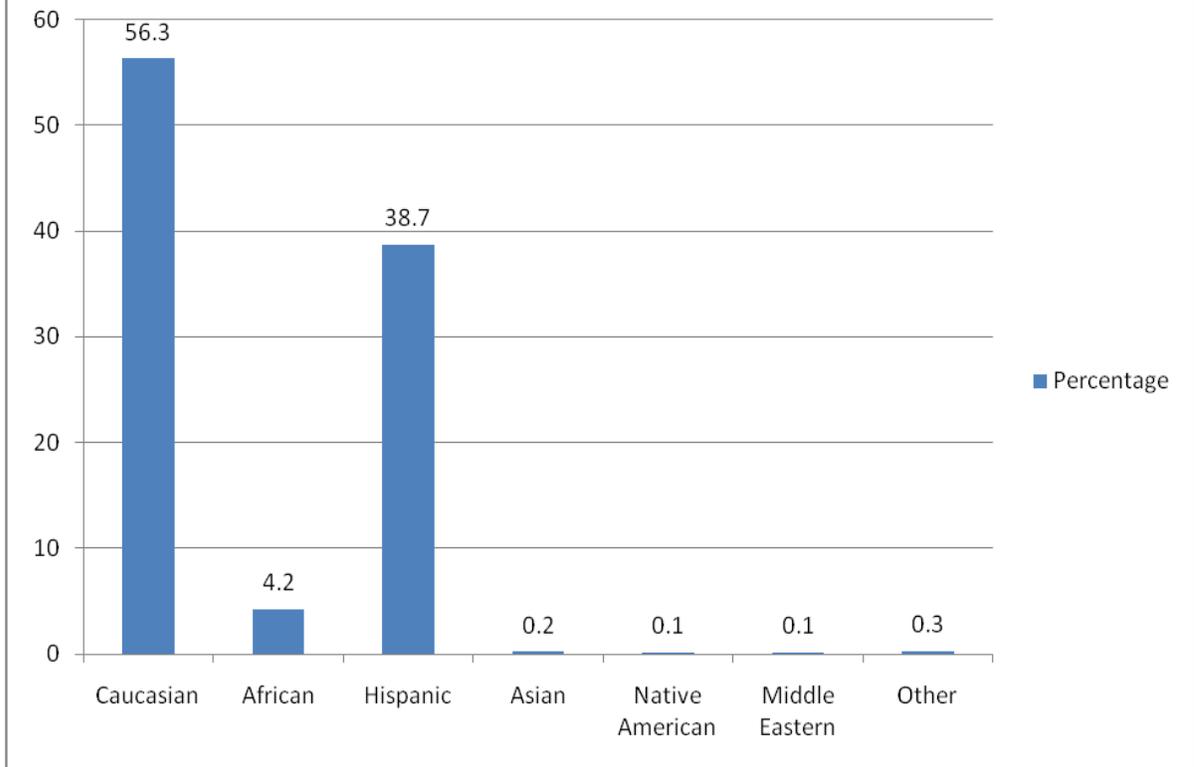


Tier 1 Data (Searches)



(Percentages)

Tier 1 Data (Arrests)



Tier 1 Baseline Comparison (Fair Roads Standard)

(II) Traffic-Contacts and Fair Roads Standard Comparison

Comparison of traffic-related contacts with households in the City of New Braunfels, Texas, that have vehicle access (in percentages).

(01/01/2010—12/31/2010)

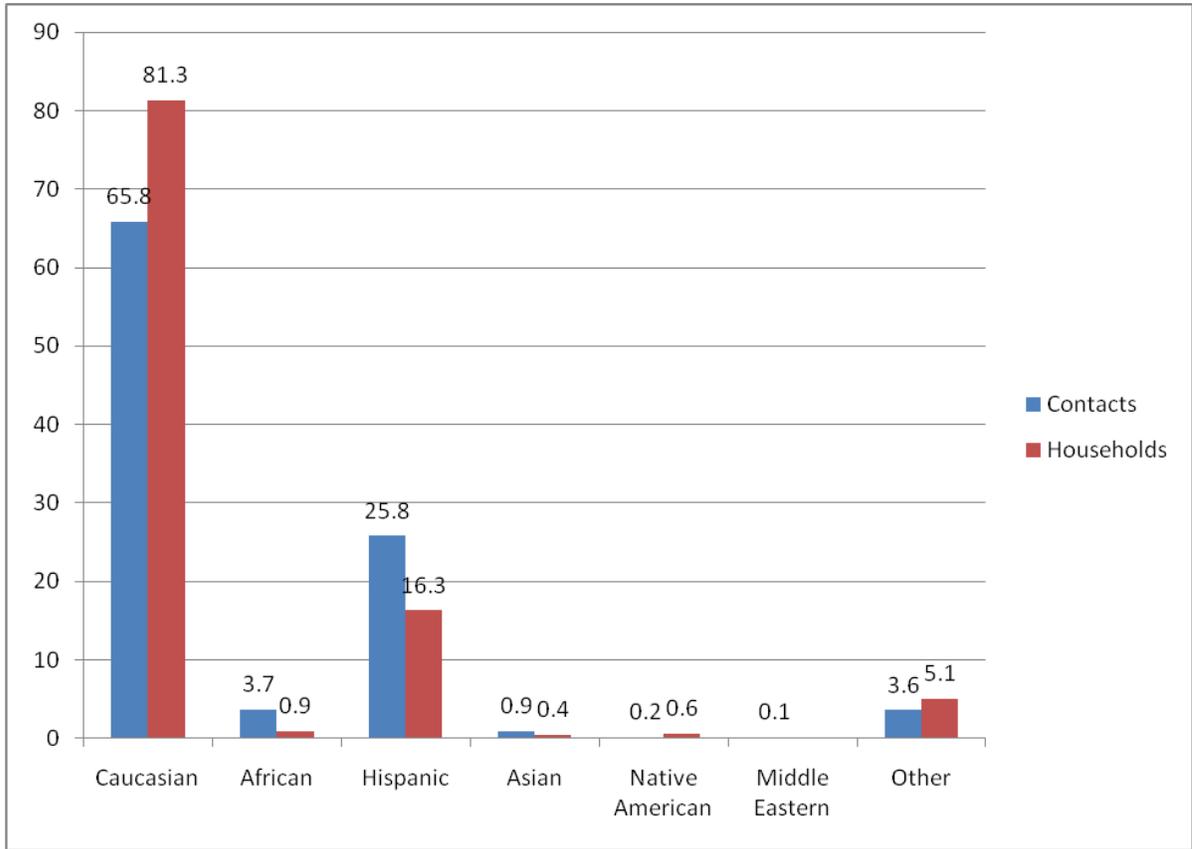
Race/Ethnicity*	Contacts (in percentages)	Households with vehicle access (in percentages)
Caucasian	65.8	81.3
African	3.7	0.9
Hispanic	25.8	16.3
Asian	0.9	0.4
Native American	0.2	0.6
Middle Eastern	0.1	n/a **
Other	3.6	5.1
Total***	100	100

* Race/Ethnicity is defined by Senate Bill 1074 and House Bill 3389 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern”.

** Data not available through 2000 census

***Represents rounded figure

Tier 1 Data Comparison (%)



Tier 1 Data
(Seven-Year Comparative Analysis)
(2004—2010)

(III) Seven-Year Tier 1 Data Comparison

**Comparison of Seven-Year Traffic-Related Contact Information
(01/01/2004 - 12/31/2010)**

Race/Ethnicity*	Traffic-Related Contacts (in percentages)						
	(04)	(05)	(06)	(07)	(08)	(09)	(10)
Caucasian	70.9%	71.0%	70.7%	71.4%	66.3%	74.5%	65.8%
African	1.7%	1.6%	2.0%	2.0%	2.7%	2.8%	3.7%
Hispanic	27.1%	27.0%	26.7%	26.2%	21.1%	16.6%	25.8%
Asian	0.3%	0.3%	0.5%	0.4%	0.7%	0.7%	0.9%
Native American	0.0%	0.0%	0.1%	0.0%	0.1%	0.1%	0.2%
Middle Eastern							0.1%
Other	0.0%	0.0%	0.0%	0.0%	9.0%	5.3%	3.6%
Total**	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

* Race/Ethnicity is defined by Texas Senate Bill 1074 and House Bill 3389 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern”.

** Figure has been rounded.

**Comparison of Seven-Year Traffic-Related Search Information
(01/01/2004 - 12/31/2010)**

Race/Ethnicity*	Traffic-Related Searches (in percentages)						
	(04)	(05)	(06)	(07)	(08)	(09)	(10)
Caucasian	70.8%	70.5%	70.2%	70.7%	57.6%	63.5%	60.6%
African	1.8%	1.6%	2.1%	2.0%	5.0%	3.8%	9.1%
Hispanic	27.2%	27.5%	27.2%	26.8%	33.9%	31.0%	30.3%
Asian	0.3%	0.3%	0.5%	0.4%	0.0%	0.3%	0.0%
Native American	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%
Middle Eastern							0.0%
Other	0.0%	0.0%	0.0%	0.0%	03.4%	1.1%	0.0%
Total**	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

* Race/Ethnicity is defined by Texas Senate Bill 1074 and House Bill 3389 as being of a “particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern”.

** Figure has been rounded.

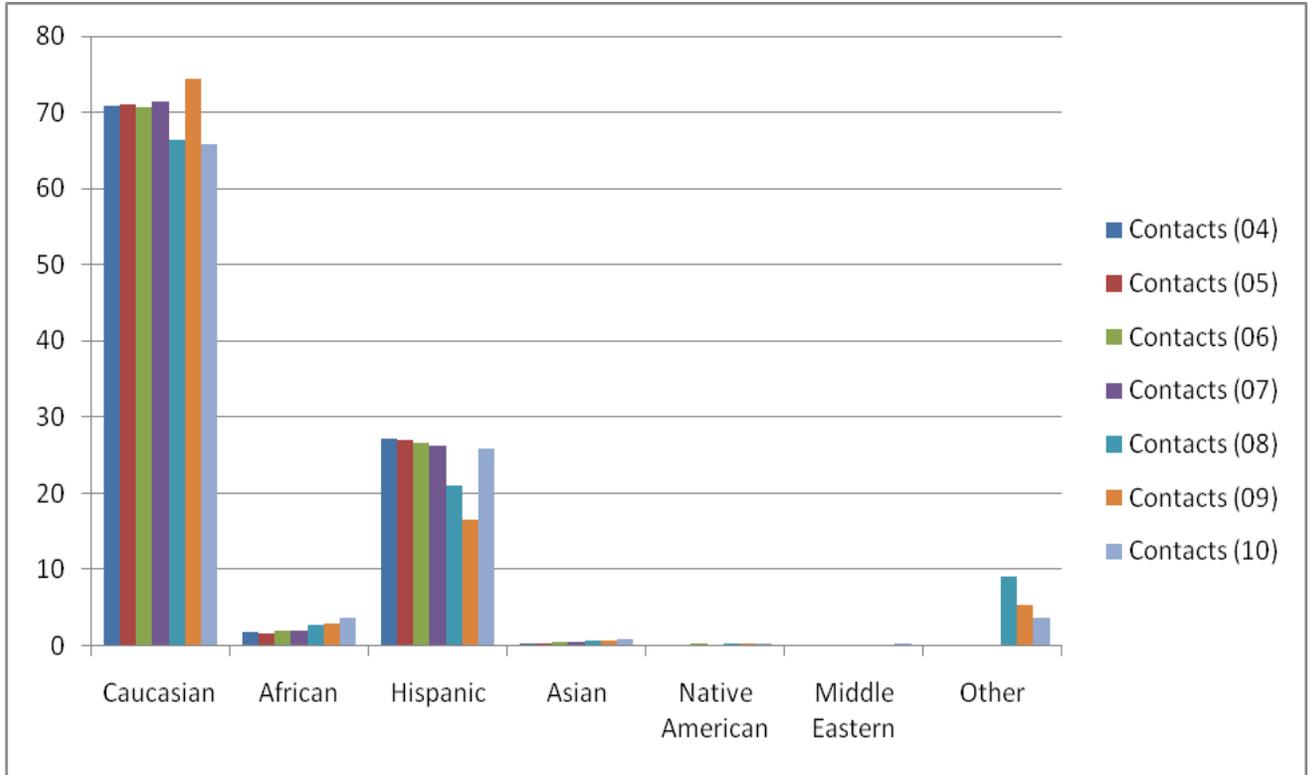
**Comparison of Seven-Year Traffic-Related Arrest Information
(01/01/2004 - 12/31/2010)**

Race/Ethnicity*	Traffic-Related Arrests (in percentages)						
	(04)	(05)	(06)	(07)	(08)	(09)	(10)
Caucasian	66.5%	61.4%	61.1%	57.7%	80.6%	96.4%	56.3%
African	0.9%	1.2%	2.1%	5.2%	1.8%	2.3%	4.2%
Hispanic	32.7%	37.3%	36.8%	37.1%	10.8%	0.8%	38.7%
Asian	0.0%	0.0%	0.0%	0.0%	0.2%	0.2%	0.2%
Native American	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
Middle Eastern	N/A	N/A	N/A	N/A	N/A	N/A	0.1%
Other	0.0%	0.0%	0.0%	0.0%	6.6%	0.3%	0.3%
Total**	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

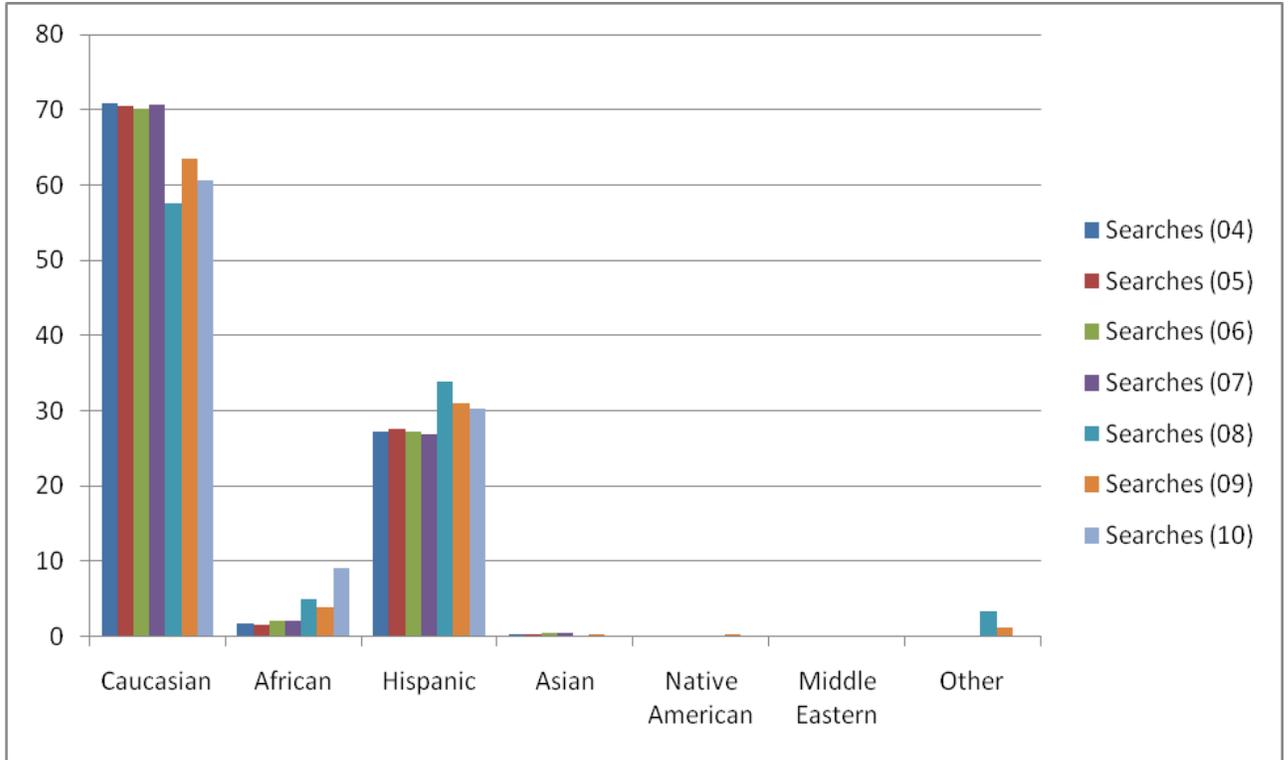
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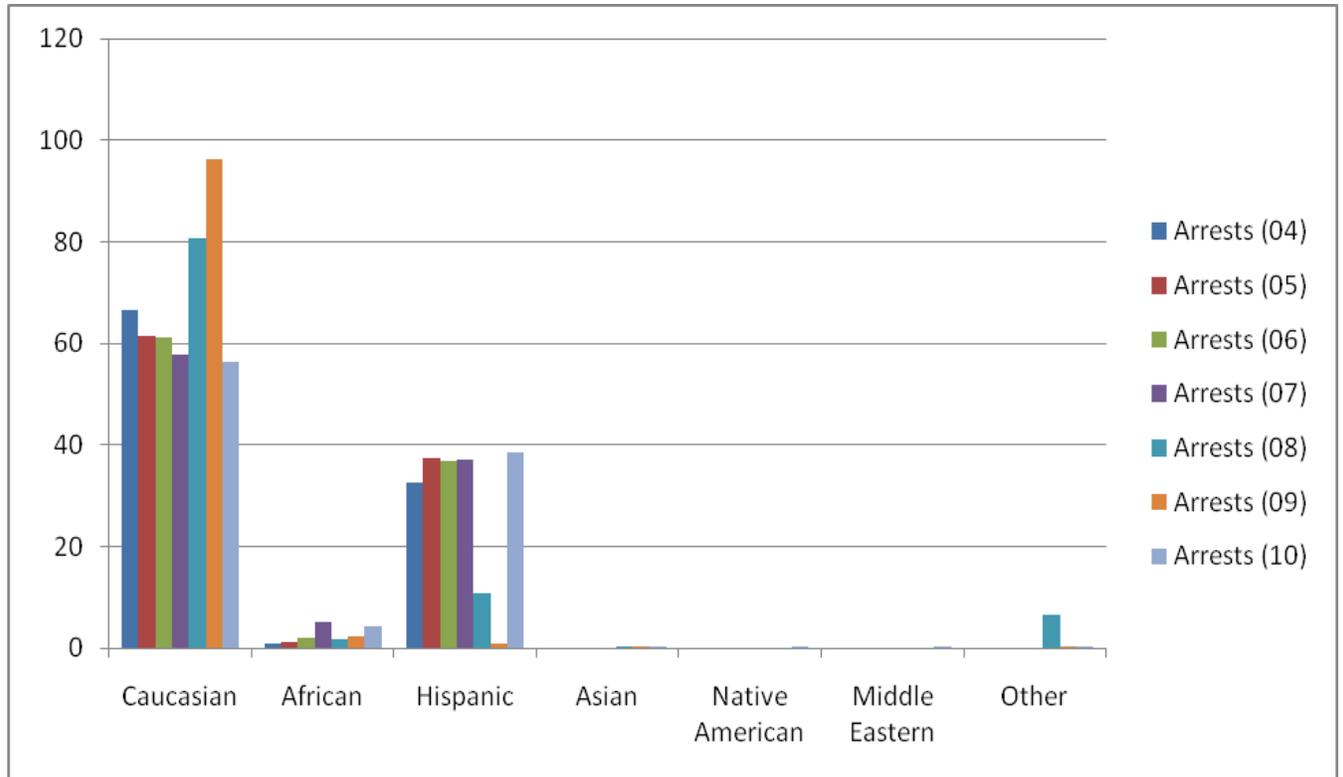
Tier 1 Data - Contacts 2004-10 (%)



Tier 1 Data - Searches 2004-10 (%)



Tier 1 Data - Arrests 2004-10 (%)



Analysis and Interpretation of Data

Analysis

The Texas Racial Profiling Law requires that all police departments in Texas collect data when a traffic-related citation is issued or an arrest is made. In addition, the law requires that agencies report this information to the Texas Commission of Law Enforcement Officers Standards, as well as their local governing authority, once a year by March 1. The purpose in collecting and presenting this information is to determine if a particular police officer is engaging in the practice of profiling minority motorists. Despite the fact most agree that it is good practice for police departments to be accountable to their community, it is very difficult to determine, from the review of aggregate data, if police departments are engaging in racial profiling. That is, it is challenging to detect specific “individual” racist behavior from the study and analysis of aggregate-level “institutional” data on traffic-related contacts.

Despite this, the New Braunfels Police Department, in response to the requirements of The Texas Racial Profiling Laws (S.B. 1074 and H.B. 3389), reported and analyzed its 2010 traffic contact data. Thus, three different types of analyses were conducted. The first of these involved a careful evaluation of the 2010 traffic contact data. This particular analysis measured, as required by the Texas Racial Profiling Law, the number and percentage of Caucasians, African Americans, Hispanics, Asians, Native Americans, Middle Eastern, and individuals belonging to the “other/unknown” category, that came in contact with the police and were issued a traffic-related citation or arrested in 2010. In addition, the analysis included information relevant to the number and percentage of searches (table 1) while indicating the type of search (i.e., consensual or probable cause) conducted. Finally, the data analysis highlighted the number and percentage of individuals who, after they were issued a citation, were subsequently arrested.

The second type of analysis included in this report, related to the comparison of the 2010 traffic contact data with an appropriate baseline. It should be noted that there is also a great deal of disagreement, in the academic literature, over the type/form of baseline to be used when analyzing traffic-related contact information. Of all the baseline measures available, the New Braunfels Police Department decided to adopt, as a baseline measure, the Fair Roads Standard. This particular baseline is based on data obtained through the U.S. Census Bureau (2000) relevant to the number of households in a particular jurisdiction that have access to vehicles while controlling for race and ethnicity. It should be noted that census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. In other words, census data contains information on all residents of a particular community, regardless of the fact they may or may not be among the driving population.

The New Braunfels Police Department opted to use this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “transparency” before the community. The Fair Roads Standard data obtained is relevant to the city of New Braunfels.

Finally, a third type of analysis was conducted while using the 2004 to 2010 traffic contact data. Specifically, all traffic-related contacts made in 2010 were compared to similar figures reported from 2004 to 2009. When considering this analysis, it was determined that comparing seven years of traffic contact data may highlight possible areas of consistency with regards to traffic-related contacts. In other words, the seven-year comparison has the potential of revealing indicators that a trend of police-initiated contacts with regards to members of a specific minority group, is in fact, developing. The overall analysis of data indicates that over the course of the last seven years, traffic related contacts have been consistent, with the number of Caucasian drivers contacted by police being the highest. This was followed by Hispanic, African American, Asian, Native American, and Middle Eastern drivers respectively. Furthermore, the percentages of drivers in each category have been relatively consistent over the course of the last seven years.

Tier 1 (2010) Traffic-Related Contact Analysis

The Tier 1 data collected in 2010 showed that most traffic-related contacts were made with Caucasian drivers. This was followed by Hispanic and African American drivers. With respect to searches, most of them were performed on Caucasian drivers. This was followed by Hispanics and African Americans, respectively. It is important to note that the arrest data revealed that Caucasian drivers were arrested the most in traffic related contacts; this was followed by Hispanics, African Americans, Other/Unknown, Asians, and Native Americans/Middle Eastern, respectively. It should also be noted that the information compiled specifically for the purposes of arrests prior to 2010 was somewhat limited. This was based on the choice selections for officers at the time booking information was completed. At the time of arrest the forms utilized by the two county confinement facilities only provided for responses to race information using White, Black or Asian, with Hispanic being categorized as White. Additional information was then entered under the ethnicity of the arrestee. Information compiled for the purposes of Racial Profile reporting was based solely on the race entered at the time that the booking information was completed. As a result, previous year data for categories such as Hispanic, which showed arrests in approximately the 30(%) percentile range (2008) was shown to be less than 1% (2009). As a measure to more accurately reflect the actual race percentages for arrests officers began utilizing all of the state recognized race categories when completing the race portion for all booking information (A – Asian, B – Black, H- Hispanic, I – Indian, M – Middle Eastern, W – White, U – Unknown and O – Other). As a result of these changes the data for the 2010 report appears to be much more accurate.

Fair Roads Standard Analysis

When comparing traffic contacts to the census data relevant to the number of “households” in New Braunfels who indicated, in the 2000 census, that they had access to vehicles, the analysis produced the following findings:

The percentages of individuals of African American, Hispanic and Asian descent who came in contact with police in 2010 was lower than the percentage of households of corresponding descent in New Braunfels that claimed, in the 2000 census, to have access to vehicles. With respect to Caucasian, Native Americans and Other/Unknown that came into contact with the police in 2010, this percentage was higher than the percentage of households of corresponding descent in New Braunfels that claimed, in the 2000 census, to have access to vehicles. Note that the required comparison data for individuals of Middle Eastern descent was not available from the 2000 census.

Seven-Year Comparison

The seven-year comparison (04-10) showed similarities with respect to the traffic-related contacts. As evident in table 3, the percentage of drivers of Caucasian descent that were contacted by the police was consistently the highest. This was followed by Hispanic, African American, Other/Unknown, Asian, Native American drivers and Middle Eastern respectively. Furthermore, the percentages of drivers in each category that have been contacted by the police have been consistent over the course of the last seven years.

Summary

The Fair Roads Standard analysis showed that the New Braunfels Police Department came in contact (in traffic-related incidents) with Caucasian drivers the highest percentage. This was followed by Hispanic, African American, Other/Unknown, Asian, Native American drivers and Middle Eastern respectively.

(III) Summary

Checklist

Checklist

The following requirements **were** met by the New Braunfels Police Department in accordance with Senate Bill 1074 and House Bill 3389:

- Clearly defined act or actions that constitute racial profiling
- Statement indicating prohibition of any peace officer employed by the New Braunfels Police Department from engaging in racial profiling
- Implement a process by which an individual may file a complaint regarding racial profiling violations
- Provide public education related to the complaint process
- Implement disciplinary guidelines for officer found in violation of the Texas Racial Profiling Law
- Collect data (Tier 1) that includes information on
 - a) Race and ethnicity of individual detained
 - b) Whether a search was conducted
 - c) If there was a search, whether it was a consent search or a probable cause search
 - d) Whether a custody arrest took place
 - e) Whether the officer knew the race or ethnicity prior to any vehicle stop.
- Produce an annual report on police contacts (Tier 1) and present this to the Texas Commission of Law Enforcement Officers Standards and the local governing body by March 1, 2011.
- Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.

Contact Information

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For additional questions regarding the information presented in this report, please contact:

New Braunfels Police Department
1488 S. Seguin Ave.
New Braunfels, TX 78130
(830)221-4100

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