

SUBJECT: Requiring written, oral permission for police to conduct consent searches

COMMITTEE: Law Enforcement — committee substitute recommended

VOTE: 6 ayes — Driver, Burnam, Frost, Hegar, Hupp, Veasey

1 nay — Jackson

SENATE VOTE: On final passage, April 28 — 29-2 (Estes, Staples), on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Law enforcement officers can search vehicles if they have a search warrant, if they have probable cause, or if they have consent. While a search warrant is based on probable cause, an officer can make a warrantless search if the officer has probable cause. Searches done with only the authorization of the vehicle's driver are often called "consent searches."

DIGEST: CSSB 1195 would prohibit peace officers who stopped motor vehicles for alleged violations of the law from searching the vehicle unless the officer:

- had probable cause or another legal basis for the search;
- obtained the written consent of the vehicle's operator on a form that complied with provisions of the bill; or
- obtained the oral consent of the vehicle's operator and ensured that the oral consent was recorded in compliance with the bill.

DPS would establish requirements for the form to obtain the written consent and for the audio and video recordings. CSSB 1195 would establish minimum requirements for the written form and for the audio and video recording. The written form and the recording would have to include a statement that the driver fully understood that the driver could refuse to give consent and a statement that the driver was freely and voluntarily giving consent to search the vehicle.

DPS would have to adopt the required rules by December 1, 2005. The bill

would take effect September 1, 2005, except that the new requirements for searches would take effect January 1, 2006.

**SUPPORTERS
SAY:**

CSSB 1195 is necessary to help stop a law enforcement practice that could be used to inflict injustices or unfairly target minorities and that is unproductive. Rather than ban all consent searches, CSSB 1195 would take the reasonable approach of allowing these searches as long as drivers gave their written or oral permission. This would strike a balance between the needs of law enforcement officers and the rights of drivers.

Many people agree to consent searches because they do not understand their right to decline a search. In some cases this results in people being harassed by law enforcement officers with no justification. CSSB 1195 would help protect people's right to be free from intrusion and potential intimidation by law enforcement officers who ask for consent searches by ensuring that drivers knew they could refuse a search. CSSB 1195 is about educating drivers about their rights.

The fact that most people do not know that they have the right to refuse a request for a consent search is illustrated by the experiences of law enforcement agencies that require written permission for consent searches. For example, the number of people agreeing to consent searches declined about 60 percent in the year after the Austin Police Department required written permission for the searches.

Consent searches sometimes are used for racial profiling by disproportionately targeting minority drivers' vehicles. CSSB 1195 would help ensure that minority drivers were clear about their right to refuse a search.

CSSB 1195 would not harm law enforcement efforts because the tactic is ineffective and a waste of time in the vast majority of cases. Studies have shown that in some jurisdictions consent searches result in nothing being seized about 88 percent of the time. Law enforcement efforts would be better used in other ways. Four states and the California Highway Patrol have outlawed consent searches without seeing an increase in crime.

CSSB 1195 would not prevent law enforcement officers from doing their jobs, and far from impeding law enforcement efforts, the bill would help them. It is much more difficult for a person to contest a vehicle search when an officer has written permission. This makes prosecution easier in

cases where illegal items were found.

CSSB 1195 would give law enforcement agencies the flexibility to obtain either written or taped consent. DPS would develop a form that could be carried by all officers and simply signed by a driver, or if a patrol car had a camera, the consent could be taped.

**OPPONENTS
SAY:**

Consent searches are a valuable law enforcement tool, and the Legislature should not enact laws that would result in fewer searches. Fewer consent searches would hamper law enforcement agencies' efforts at crime control.

Requiring law enforcement officers to gain written or oral permission for searches would limit officers' discretion during traffic stops. In the vast majority of cases, consent searches are used as a law enforcement tool, not as a tool for harassment or racial profiling. If problems with harassment or racial profiling exist, they should be dealt with directly and not be the basis for a broad requirement with respect to consent searches.

CSSB 1195 is unnecessary because drivers know that they have the right to refuse a search and often agree to a search in order to cooperate with law enforcement officers. The U.S. Supreme Court has ruled that written permission is not needed for consent searches and that it is presumed that people know they can refuse. CSSB 1195 would go beyond what courts have ruled is necessary.

Although SB 1195 would not outlaw consent searches, the requirements of what would have to be in the consent form are so detailed that they could result in a bias toward persons refusing to give permission for the search. If people are agreeing to consent searches because they do not know that they can refuse, a better response would be to help educate people about their rights.

**OTHER
OPPONENTS
SAY:**

It would be better to prohibit explicitly all consent searches rather than to allow them with written or oral permission. Law enforcement still could intimidate drivers, intentionally or not, into agreeing to a consent search even with the written or oral permission requirement. Searches should be based solely on probable cause.

NOTES: The House committee substitute added the provisions allowing for peace officers to obtain oral consent from a vehicle's operator for a search evidenced by an audio or video recording.