

**REQUIRE WRITTEN CONSENT AT TRAFFIC STOPS
TO MINIMIZE UNPRODUCTIVE PRACTICES
AND IMPROVE CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM**

ISSUE

In Texas, law enforcement officers can conduct a search at a traffic stop without having a legal basis for the search (such as probable cause or a warrant), as long as the person detained provides consent for the search.

Four major problems with consent searches continue to crop up:

- (1) Texas law enforcement officers are not required to obtain a person's written consent prior to conducting a consensual search of the motorist or vehicle. Likewise, officers are not required to record the allowance of consent by the motorist on audio or video tape. This policy reduces the number of prosecutable cases: persons found with contraband or other evidence of wrongdoing during consent searches can more easily contest the search in court and have that evidence thrown out due to lack of documentation of valid consent.
- (2) Many people do not realize that they have the right to say 'no' to consent searches, and officers are not required to inform citizens that they are free to leave before providing their consent to a vehicle search. This – compounded by the fact that people generally feel anxious and intimidated at traffic stops and often believe that refusing consent will result in further detainment – leads to them consenting to searches.
- (3) The overwhelming majority of consent searches in Texas continue to be of Black and Latino motorists, pointing to possible sources of bias-based policing.
 - Approximately 60-70% of agencies reported consent searching Blacks or Latinos more frequently than Anglos in 2005.
 - The likelihood of Blacks and Latinos to be consent searched more frequently than Anglos decreased significantly from 2003 to 2004, but then remained fairly constant from 2004 to 2005.
- (4) In some areas, agencies are very unlikely to use consent searches as an investigation tool and generally only conduct searches when probable cause is present. Others tend to over-rely on consent searches, which, in 2005, resulted in thousands of people of all races – Black, Latino, *and* Anglo – being subjected to searches without legal basis. These disparities raise the possibility that certain agencies have general policies encouraging officers to conduct consent searches at stops more frequently.

Interestingly, we have found instances where a city's police department rarely uses consent searches, whereas its own county sheriff's department relies heavily on them. For instance, Plano Police Department (PPD) and Collin County Sheriff's Office (CCSO) have overlapping jurisdictions – they police the same areas and deal with the same criminal elements.

However, Collin County Sheriff's Office is actually conducting far more consent searches of **all** drivers than Plano Police Department. Anglos are consent searched by CCSO during 13.2% of stops, while they are consent searched by PPD during 1.1% of stops – meaning Anglos are 12 times more likely to be consent searched by CCSO than PPD.

Blacks are consent searched during 21.3% of stops by CCSO but only consent searched during 2.7% of stops by PPD – meaning Blacks are 7.9 times more likely to be consent searched by CCSO than PPD.

Latinos are consent searched during 11.9% of stops by CCSO but consent searched during 2.3% of stops by PPD – meaning Latinos are 5.2 times more likely to be consent searched by CCSO than PPD.

	Percentage of Anglos stopped who were consent searched	Percentage of Blacks stopped who were consent searched	Percentage of Latinos stopped who were consent searched
Plano Police Department	1.1	2.7	2.3
Collin County Sheriff's Office	13.2 <i>Anglos are 12 times more likely to be consent searched by CCSO than PPD</i>	21.3 <i>Blacks are 7.9 times more likely to be consent searched by CCSO than PPD</i>	11.9 <i>Latinos are 5.2 times more likely to be consent searched by CCSO than PPD</i>

SOLUTION

Requiring officers to obtain a person's written consent prior to conducting a consensual search at a traffic stop would have multiple benefits – both for law enforcement, and for the members of the community they are paid to protect. For instance, written consent search policies would accomplish the following:

- **They would provide a more solid basis for successful prosecution** by decreasing the likelihood that the hard work of law enforcement officers is lost on technicalities. This better ensures that roadside searches stand up in court by preventing the “he-said, she-said” problems that surface in the courtroom when defendants claim they never consented to a search.
- **They would ensure that drivers are informed of their rights at the scene before they waive them**, thus helping to build a better relationship between police and community members who have sometimes expressed they feel unfairly targeted or bullied through the use of consent searches.

Although oral consent is sufficient, written consent is definitely preferred to oral consent because it reduces the likelihood of a swearing match in court later.
 – Texas District and County Attorneys Association manual, “Traffic Stops”

- **Written consent policies could reduce the number of consent searches conducted without decreasing public safety.** After the Austin Police Department implemented a 2004 policy requiring written consent at traffic stops, the number of consent searches during traffic stops declined; approximately 63% fewer drivers consented to police searches of their vehicles when they knew they had the right to refuse. Officials say there was no harm to public safety.

Although written consent policies are already in place in Austin and at other agencies throughout Texas, a statewide requirement would give drivers uniform protection and ensure that officers' valuable time is no longer wasted but instead freed up for more productive uses (like improving 911 response times). Taxpayers could feel confident knowing that policing resources they are funding are being most efficiently and effectively allocated.

Increased dialogue between law enforcement and the community has encouraged the local implementation of consent search policies that mirror smart policing recommendations. One example:

If a search is conducted pursuant to consent, the officer shall document the circumstances under which the consent is obtained. The documentation may be enumerated in the "notes" section of the field Contact Report and written consent will be obtained from the person consenting to the search. The language for such consent shall be, "Having been informed of my constitutional right not to submit to a search, I voluntarily consent to such a search and do hereby authorize any deputy from the _____ to conduct said search."

– Written consent policy language, Texas Sheriff's Office

NOTE: *The Texas Legislature passed legislation in 2005 requiring written or recorded consent to search vehicles at traffic stops. Although S.B. 1195 garnered impressive, bi-partisan support, Governor Rick Perry vetoed the bill, urging legislators to revisit the issue in 2007. He stated in his veto message there was "insufficient information" to determine whether written or recorded consent should be mandated by law. However, Governor Perry "would expect members of the legislature to review this issue during the interim and to bring back their findings to the 80th legislative session."*