

Written Consent to Search Achieves Transparency and Accountability

Proposed Legislation: Require all law enforcement officers in the state of Mississippi to get written consent to search vehicles when seeking to administer a search absent a warrant or probable cause

The Problem: Police search thousands of cars each year at Mississippi traffic stops, usually looking for guns or drugs, through a simple request for a driver to consent. Many Mississippians are unaware that they have a constitutional right to refuse a vehicular search. The Fourth Amendment of the U.S. Constitution protects individuals from unreasonable searches and seizures. Unless an officer has probable cause to believe that a crime has been committed, the officer generally is not allowed to search an individual's vehicle unless the individual has voluntarily consented to the search. Consent is often given on an isolated roadside in a one-on-one encounter with an armed law enforcement officer – an inherently coercive setting.

Currently, an officer only has to receive verbal consent in order to conduct the search. In some cases, if an officer finds contraband during a vehicular search, an individual who verbally consented to a search might later claim to have not consented. In other cases, the individual might argue that they did consent but their consent was not voluntary, so all items found during the search should be inadmissible. In the absence of a written document demonstrating a driver did, in fact, consent to the search, courts are faced with evidence amounting to he-said-she-said arguments. In the absence of an exception to the warrant requirement of the U.S. and Mississippi Constitutions, if an officer fails to get consent to search, judges can bar evidence at trial.

The Solution: We recommend that the Mississippi Code of 1972 be amended to include provision §99-1-31, which requires written consent of the driver before a vehicular search is conducted. The more knowledge motorists receive regarding their constitutional rights, including information on refusing consent to search, the more individuals are empowered to stand up for their own rights. In addition, requiring written consent encourages law enforcement to focus searches on vehicles actually involved in crime and simplifies prosecution. This, in turn, improves public safety by focusing law enforcement priorities and conserves resources.

Main Points:

- Written consent protects law enforcement without impeding police work, and protects citizens' constitutional right to refuse an unwarranted search.
- Written consent laws improve policing and protect public safety and civil liberties.
- Written consent has no impact on probable cause.
- Requiring recorded consent makes sense for everyone. It can protect civilians from overly aggressive law enforcement officers who demand consent. Likewise, it can protect officers in court from false claims that a civilian had not consented to a search.