



AB 93 – Consent Searches

SUMMARY

Assembly Bill 93 will prohibit police officers from pursuing searches without meeting the required legal thresholds and using a person's perceived consent to violate their lawful rights.

BACKGROUND

Enforcement of even minor traffic offenses can lead to invasive and contentious interactions with police, including wrongful searches of people or their vehicles. The legal justification for these searches can range from needing probable cause to requiring a signed warrant. However, in many cases the only legal basis reported by police is that the stopped person consented to the search. In 2022, officers requested consent to search stopped persons or their property 57,166 times, when the primary reason for the stop was a traffic violation.

The State of California's Racial Identity and Profiling Advisory Board (RIPA) and the Committee on Revision of the Penal Code concluded that policy-makers should move to ban consent searches. Already two other states have moved ahead of California and passed legislation to limit police officers from asking for consent, when no legal justification is present, to search a vehicle or person during a stop.

In California officers legally need probable cause that a vehicle contains evidence of wrongdoing to conduct a warrantless search. Officers are allowed to conduct a more limited search when they reasonably suspect that a person is armed and dangerous. For other searches, such as a search of a stopped person's cellphone, a warrant is required.

PROBLEM

Consent searches bypass the legal protections all Californian's are entitled to protect them from unjust search and seizures. Additionally, consent searches are inherently vulnerable to bias because they are not based on objective criteria, and police have broad discretion to choose when and from whom to seek such a search. RIPA

data reveals that Black individuals were 4 times as likely, and Latino individuals were 2.4 times as likely as their white peers to be asked for a consent search during a routine traffic stop. During stops where officers perform consent searches, data shows that officers are least likely to find contraband in the possession of those identified as Black. Despite this, a far higher percentage of stops of Black individuals involve consent searches compared to any other group. Additionally, when consent searches are performed, the reason for the initial police contact is more likely to be traffic enforcement for people of color than for White people.

Police searches based only on a person's consent are ineffective, costly, and can be lethal. California law enforcement reported that the vast majority of consent searches do not result in the discovery of anything illegal. Well over 90% of consent searches of Black individuals result in no discovery of contraband. Data from Los Angeles found fewer than two percent of all consent searches resulted in serious contraband, leading LAPD's Inspector General to conclude that strategies like consent searches are "of limited effectiveness in identifying evidence of illegal firearms or other serious crimes."

SOLUTION

AB 93 will prohibit police officers from asking for consent to search a person or their vehicle without an evidence-based legal justification. This will ensure searches only happen when there is an articulable reason, as opposed to both implicit and explicit bias.

Limiting consent searches will help limit unjustifiable police interactions that lead to more intrusive stops of people of color and often escalate to unsafe encounters for all involved.

SUPPORT

ACLU Cal Action (Co-Sponsor)
CalBike (Co-Sponsor)
California Public Defenders Association

Californians for Safety and Justice
Communities United for Restorative Youth Justice
Council on American-Islamic Relations, California
Initiate Justice

FOR MORE INFORMATION

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