

A **NJSACOP** Position Paper



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## Consent Searches

March 2002



We live in a very mobile society. The motor vehicle is the most common means of transportation. It is a well-established fact that motor vehicles are routinely used to transport dangerous criminals, weapons, stolen property, illegal drugs and a variety of other contraband.

The primary goal of law enforcement is to ensure public safety. One way that we do this is by interdicting criminals, dangerous weapons, illegal drugs and other contraband that can be harmful to those we are sworn to protect.

The consent search is just one tool that the police use to combat crime and violence. The consent search has proven to be a very valuable tool, resulting in the arrest of murderers, rapists, kidnappers and other dangerous felons, and with the seizure of weapons, chemicals and biological agents that were meant to harm both small and large segments of our society.

The US Supreme Court and the NJ State Supreme Court recognize consent searches as a legally permissible exception to the warrant requirement. The NJ Supreme Court has also recognized that there is a need to place limitations on the conduct of the police in order to prevent overzealous police officers from abusing their authority. In order to regulate police conduct and prevent abuses the courts have tailored their decisions and narrowly defined consent searches and the circumstances under which they can be used.

The NJ Supreme Court has ruled that police officers must have a “reasonable and articulable suspicion of criminal wrongdoing prior to seeking consent to search a *lawfully stopped* motor vehicle”. The American Civil Liberties Union supports this decision and we, as professional police administrators, agree. Police officers must be reasonable in their actions, above all respecting the rights of the citizens they serve.

The public entrusts police officers with the authority to detain someone, to arrest someone, even to take someone’s life, under certain circumstances. Should we not also entrust those same officers with the authority to “ask someone” for permission to conduct a search when the officer clearly has a reasonable suspicion of illegal activity? In another setting other than a motor vehicle stop citizens would be outraged if an officer did not take action when he or she had a clear, reasonable, articulable suspicion that criminal activity was taking place. Those officers would be accused of not doing their job.

Unfortunately, much of the concern and publicity about consent searches is really a concern about racial profiling. Attempts have been made to equate the two when, in fact, they are two very different issues. A ban on consent searches will not reduce or eliminate racial profiling. A ban on consent searches will only embolden those who would commit crime and those who want to hurt our country. Now, more than ever, having experienced the horror of international terrorism here in our own country, and as we face the continued threat of violence against our nation, we should be



encouraging policies and practices that will help protect our citizens. Prior to the terrible events of September 11<sup>th</sup> it was assumed that federal law enforcement would be responsible for responding to the threat of terrorism. Now, it is clear that terrorism is the concern of every law enforcement agency, regardless of size or area of responsibility. The planning and preparation of terrorist acts are taking place in local law enforcement's jurisdictions and local law enforcement must be given the means to protect the public. The continued use of legal consent searches is vital if our law enforcement officers are to fulfill their duty to protect the public.

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