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Written Testimony, 2011
House Bill 512

Dear Members of the Committee,

Thank you for this opportunity to present testimony in favor of H.B. 512. This bill requires law enforcement officers to obtain drivers' written or recorded consent prior to a search of their vehicles at traffic stops, which will minimize unproductive practices and improve confidence in the criminal justice system.

PROBLEM

Texas law enforcement officers can conduct a search of a vehicle at a traffic stop without a legal basis, such as probable cause or a warrant, provided the person detained provides consent for the search. However, officers are not required to obtain a person's written or recorded consent prior to conducting a consent search, nor are there specific rules on how officers must explain or ask for consent during a no-cause search.

KEY FINDINGS

- Without written or recorded consent policies, the number of prosecutable cases declines: persons found with contraband or other evidence of wrongdoing during no-cause searches can more easily contest the search in court and have that evidence suppressed due to lack of documentation of valid consent.
- Along similar lines, in the absence of written or recorded consent policies, claims that verbal consent was coerced or fabricated¹ will continue to result in pretrial hearings that cost the state time and money.
- 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 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.
- Historically, consent searches in Texas have tended to occur more heavily among Black and Latino motorists,² pointing to possible sources of bias-based policing. However, in some Texas communities, law enforcement agencies seem to have general policies encouraging officers to conduct consent searches at the majority of stops,³ an investigation tool that results in thousands of people of all races being subjected to searches without legal basis, and that diverts officers and other police resources away from combating confirmed criminal activity.

SOLUTION: SUPPORT H.B. 512 BY REPRESENTATIVE DUTTON

The Legislature should require officers to obtain written or recorded consent prior to conducting a no-cause search at a traffic stop.

- **Written or recorded consent policies decrease the likelihood that the hard work of law enforcement officers is lost on technicalities, providing a more solid basis for a successful prosecution.** H.B. 512 better ensures that roadside searches will 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.

Continued on reverse.

- **Written or recorded 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, 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.⁴
- **Written or recorded consent policies 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 that they feel unfairly targeted or bullied through the use of consent searches.

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Thank you again for allowing me the opportunity to testify in favor of H.B. 512. Although written and recorded 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 focused on more productive uses, like improving 911 response times. Taxpayers will also feel confident knowing that policing resources they are funding are being most efficiently and effectively allocated.

¹ Stephen Gustitis, Criminal Defense Attorney, "Police Perjury," *The Defense Perspective*. "I can't count how many times clients told me about the police searching their vehicles without consent, but the police report showed the officer's justification for the search was consent"; <http://texascriminaldefenselawyer.blogspot.com/2007/07/police-perjury.html>.

² According to the most recent comparative report on consent searches among racial categories in Texas, approximately 3 out of 4 agencies (72%) reported consent searching Blacks more frequently than Anglos in 2005, up slightly from 71% in 2004. On the other hand, nearly 3 out of 5 agencies (56%) reported consent searching Latinos more frequently than Anglos in 2005, down slightly from 62% in 2004. Furthermore, the likelihood of Blacks and Latinos to be consent searched more frequently than Anglos remained fairly constant from 2004 to 2005. From Molly Totman, "Smarter Policing Practices," Texas Criminal Justice Coalition, March 2007, pgs. 2, 3.

³ According to calendar year 2010 data reported by Texas law enforcement agencies, the departments vary widely in their utilization of no-cause searches. For instance, Hidalgo County Sheriff's Office reports a 100% use of consent searches. Canton Police Department conducted no-cause searches in the large majority of instances involving searches (66%), while other agencies use no-cause searches in about half of instances (e.g., Fort Worth Police Department: 48%; Garland Police Department: 46%). Other agencies, like Stephenville, Houston, and Dallas Police Departments, conducted no-cause searches in approximately one-third or fewer instances (35%, 30%, and 20%, respectively), while others greatly minimized their use of these searches (Austin Police Department: 6%; McLennan County Sheriff's Department: 11%).

⁴ Scott Henson, "Austin: Drivers Refuse Searches When They Know They Can," *Grits for Breakfast*, <http://gritsforbreakfast.blogspot.com/2005/03/austin-drivers-refuse-searches-when.html>.