

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 10-0396.01 Michael Dohr

HOUSE BILL 10-1201

HOUSE SPONSORSHIP

Middleton, Carroll T., Ferrandino, McFadyen, Miklosi, Pace, Vigil, Weissmann

SENATE SPONSORSHIP

Steadman,

House Committees
Judiciary

Senate Committees
Judiciary

SENATE
3rd Reading Unam ended
March 29, 2010

A BILL FOR AN ACT

101 **CONCERNING DUTIES RELATED TO PEACE OFFICER CONTACTS.**

SENATE
Am ended 2nd Reading
March 26, 2010

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Before conducting a consensual search of a car, a person in the car, a home, or a pedestrian, the bill requires a peace officer to read a statement related to consent to the search and obtain the person's written consent to the search. The consent applies only to searches for which there is otherwise no legal basis.

HOUSE
3rd Reading Unam ended
March 1, 2010

HOUSE
Am ended 2nd Reading
February 26, 2010

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 3 of article 3 of title 16, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **16-3-310. Oral advisement and written consent prior to search**
6 **of a vehicle or a person during a police contact.** (1) (a) PRIOR TO
7 CONDUCTING A CONSENSUAL SEARCH OF A PERSON WHO IS NOT UNDER
8 ARREST, THE PERSON'S EFFECTS, OR A VEHICLE, A PEACE OFFICER SHALL
9 COMPLY WITH PARAGRAPH (b) OF THIS SUBSECTION (1).

10 (b) A PEACE OFFICER MAY CONDUCT A CONSENSUAL SEARCH ONLY
11 AFTER ARTICULATING THE FOLLOWING FACTORS TO, AND SUBSEQUENTLY
12 RECEIVING CONSENT FROM, THE PERSON SUBJECT TO THE SEARCH OR THE
13 PERSON WITH THE APPARENT OR ACTUAL AUTHORITY TO PROVIDE
14 PERMISSION TO SEARCH THE VEHICLE OR EFFECTS. THE FACTORS ARE:

15 ==
16 (I) THE PERSON IS BEING ASKED TO VOLUNTARILY CONSENT TO A
17 SEARCH; AND

18 (II) THE PERSON HAS THE RIGHT TO REFUSE THE REQUEST TO
19 SEARCH.

20 (c) AFTER PROVIDING THE ADVISEMENT REQUIRED IN PARAGRAPH
21 (b) OF THIS SUBSECTION (1), A PEACE OFFICER MAY CONDUCT THE
22 REQUESTED SEARCH ONLY IF THE PERSON SUBJECT TO THE SEARCH
23 VOLUNTARILY PROVIDES VERBAL OR WRITTEN CONSENT. OTHER
24 EVIDENCE OF KNOWING AND VOLUNTARY CONSENT MAY BE ACCEPTABLE,
25 IF THE PERSON IS UNABLE TO PROVIDE WRITTEN OR VERBAL CONSENT.

26 (2) A PEACE OFFICER PROVIDING THE ADVISEMENT REQUIRED
27 PURSUANT TO SUBSECTION (1) OF THIS SECTION NEED NOT PROVIDE A

1 SPECIFIC RECITATION OF THE ADVISEMENT; SUBSTANTIAL COMPLIANCE
2 WITH THE SUBSTANCE OF THE FACTORS IS SUFFICIENT TO COMPLY WITH
3 THE REQUIREMENT.

4 (3) IF A DEFENDANT MOVES TO SUPPRESS ANY EVIDENCE OBTAINED
5 IN THE COURSE OF THE SEARCH, THE COURT SHALL CONSIDER THE FAILURE
6 TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION AS A FACTOR IN
7 DETERMINING THE VOLUNTARINESS OF THE CONSENT.

8 (4) THIS SECTION SHALL NOT APPLY TO A SEARCH CONDUCTED
9 PURSUANT TO SECTION 16-3-103, C.R.S., A VALID SEARCH INCIDENT TO OR
10 SUBSEQUENT TO A LAWFUL ARREST, OR TO A SEARCH FOR WHICH THERE IS
11 A LEGAL BASIS OTHER THAN VOLUNTARY CONSENT. THIS SHALL INCLUDE,
12 BUT NOT BE LIMITED TO, A SEARCH IN A CORRECTIONAL FACILITY OR ON
13 CORRECTIONAL FACILITY PROPERTY, A DETENTION FACILITY, COUNTY
14 DETENTION FACILITY, CUSTODY FACILITY, JUVENILE CORRECTIONAL
15 FACILITY OR ANY MENTAL HEALTH INSTITUTE OR MENTAL HEALTH
16 FACILITY OPERATED BY OR UNDER A CONTRACT WITH THE DEPARTMENT OF
17 HUMAN SERVICES, A COMMUNITY CORRECTIONS FACILITY, OR A JAIL OR A
18 SEARCH OF A PERSON SUBJECT TO PROBATION OR PAROLE BY A
19 COMMUNITY SUPERVISION OR PAROLE OFFICER WHEN THE PERSON HAS
20 CONSENTED TO SEARCH AS A TERM AND CONDITION OF ANY PROBATION OR
21 PAROLE.

22 **SECTION 2. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.