

FIRST REGULAR SESSION

HOUSE BILL NO. 1353

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MITTEN.

2055L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 542, RSMo, by adding thereto one new section relating to consent for voluntary searches.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 542, RSMo, is amended by adding thereto one new section, to be known as section 542.287, to read as follows:

542.287. 1. (1) Prior to conducting a consensual search of a person who is not under arrest, the person's effects, or a vehicle, a peace officer shall comply with the provisions of subdivision (2) of this subsection.

(2) A peace officer may conduct a consensual search only after informing the person of the factors listed in paragraphs (a) and (b) of this subdivision, and subsequently receiving consent from the person subject to the search or the person with the apparent or actual authority to provide permission to search the vehicle or effects. Such factors include:

(a) The person is being asked to voluntarily consent to a search; and

(b) The person has the right to refuse the request to search.

(3) After informing the person of the factors required in subdivision (2) of this subsection, a peace officer may conduct the requested search only if the person subject to the search voluntarily provides verbal or written consent. Other evidence of knowing and voluntary consent may be acceptable if the person is unable to provide written or verbal consent.

2. A peace officer informing a person of the factors required under subdivision (2) of subsection 1 of this section is not required to provide a specific recitation of the factors.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **Substantial compliance with the factors in subdivision (2) of subsection 1 of this section is**
19 **sufficient to comply with the requirement.**

20 **3. If a defendant moves to suppress any evidence obtained in the course of the**
21 **search, the court shall consider the failure to comply with the requirements of this section**
22 **as a factor in determining the voluntariness of the consent.**

23 **4. This section shall not apply to a search conducted by a peace officer who has**
24 **probable cause, a valid search incident to or subsequent to a lawful arrest or a search for**
25 **which there is a legal basis other than voluntary consent, including but not limited to:**

26 **(1) A search in a correctional facility or on correctional facility property;**

27 **(2) A search in any detention facility, juvenile detention facility, or any mental**
28 **health facility; or**

29 **(4) A search in a jail; or**

30 **(5) A search of a person subject to probation or parole by a probation or parole**
31 **officer when the person has consented to search as a term and condition of any probation**
32 **or parole.**

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