



OPPOSE HB 2779

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Summary: HB 2779- Ban Consent Searches - 725 ILCS 5/108-1

- Officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because the driver or passenger consented to the search.
- Officer can only search the above:
 1. With a search warrant issued under this article;
 2. Incident to a lawful arrest the officer may search the person arrested and the area within such person's immediate presence (lunge area) for the purpose of:
 - Protecting the officer from attack; or
 - Preventing escape; or
 - Discovering fruits of the crime; or
 - Instruments, articles, and evidence of an offense.
 3. Officer has probable cause to believe that an offense or ordinance violation has been committed by the driver or passenger.

Specific Objections

- As drafted this bill seems to encourage conduct that is not constitutionally permitted and prohibits conduct that is permitted under the US Constitution.
- Section (4)(c) would permit an officer to conduct a motor vehicle search "if the law enforcement officer has probable cause that an offense or ordinance violation has been committed by the driver or passenger". Since an officer is not permitted to stop a vehicle absent reasonable suspicion or probable cause that an offense or ordinance violation has been committed that would essentially mean that an officer could conduct a search for every stop. That is clearly not permitted under the constitution. It also is internally inconsistent with the provision of subparagraph (3) which prohibits a search for a violation of Section 12-603.1 of the Illinois Vehicle Code (which is an offense).
- This law is not needed since numerous courts have already decided the legality of consent searches and can suppress any evidence illegally obtained. The bill's expansion of non-consensual searches, however, is likely to be struck down by the courts.
- Additionally, courts have determined the requirements needed for consent to be deemed valid:
 - Consent must be voluntarily given based upon the totality of the circumstances; and
 - it must be given by an individual with either actual or apparent authority over the vehicle.
- The vast number of firearms crimes that result in arrests and convictions have a direct nexus to vehicles, i.e., Drive-by shootings, suspect arrives or flees in a vehicle, etc.
- Traffic stops, investigatory stops, and the subsequent ability to utilize consent searches is a valuable tool in thwarting and deterring serious crime along with aiding in the recovery of illegal weapons and contraband.

- As drafted the bill removes of an officer’s ability to use consent searches in investigative/Terry Stop situations to “**interrupt crime that may be a foot or about to be committed**” by requiring “**probable cause that an offense or ordinance violation has been committed**”.
- Consent searches play a crucial role in officer safety and an officer’s ability to de-escalate situations. Often it less confrontational for an officer to ask for consent to search and be granted permission versus conducting a probable cause search which may be perceived as more intrusive.
- Banning consent searches will place officer at a tactical disadvantage and result in **increased risk** to officers, occupants, and the public by:
 - Limiting the officer’s ability to search occupants and their vehicles.
 - Making it easier for criminals to illegally carry and conceal weapons and contraband; and
 - Removing the “deterrent factor” and subsequent “fear of getting caught” with contraband or an illegal weapon.
- Prohibiting consent searches and requiring officers to obtain a warrant will result in prolonged stops and/or potentially depriving someone of their vehicle for several hours at a minimum.

Conclusion

- As communities across the state are experiencing rising crime rates, this bill serves as a barrier to keeping our citizens safe by removing a valuable tool for combating violent crime.
- This bill is predicated on the concept that law enforcement officers treat people unfairly and can’t be trusted to follow the rules.
- The bill offers no explanation why an individual should not be able to voluntarily agree to a search. Rather it seems to suggest that individuals cannot exercise independent judgement.
- This bill concludes that people are not smart enough to exercise their rights and act in their own best interests.
- The bill demonstrates an unfounded prejudice against law enforcement officers by suggesting that somehow, they cannot fairly ask individuals for consent.
- This bill impacts officer safety and makes our jobs less safe at a time when felonious assaults on officers are on the rise.
- The main argument against consent searches revolves around racial profiling. The state has been proactive in combatting this issue with previous legislation to include:
 - Mandating traffic stop data sheets/reports be completed on all stops.
 - The state now or soon will require officers to wear body worn cameras that will help clarify and document if the consent met the above legal requirements to be deemed valid while increasing transparency. Additionally, many departments already use in-car cameras which can serve the same purpose.