

AMENDED IN ASSEMBLY FEBRUARY 23, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

**ASSEMBLY BILL**

**No. 93**

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**Introduced by Assembly Member Bryan**

January 9, 2023

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An act to add Section 833.6 to the Penal Code, relating to criminal law.

LEGISLATIVE COUNSEL'S DIGEST

AB 93, as amended, Bryan. Criminal procedure: consensual searches.

Existing law describes search warrants and enumerates the grounds upon which a search warrant may be issued, including, among other grounds, when the property or things to be seized constitute evidence showing that a felony has been committed. Existing law authorizes a peace officer to conduct a search without a warrant if they have the voluntary consent of the person.

~~This bill would state the intent of the Legislature to enact legislation to prohibit officers from requesting consent to conduct a search if the officer does not suspect criminal activity.~~

*This bill would prohibit a peace officer or law enforcement agency from conducting a warrantless search of a vehicle, person, or their effects, based solely on a person's consent, as specified. The bill would specify that consent to conduct a search is not lawful justification for a search.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2 *following:*

3     *(a) The people have a right to be secure in their persons and*  
4 *effects against unreasonable seizures and searches. Search*  
5 *warrants may not be issued except on probable cause, supported*  
6 *by oath or affirmation, particularly describing the place to be*  
7 *searched and the persons and things to be seized.*

8     *(b) Nevertheless, every year, law enforcement agencies conduct*  
9 *tens of thousands of searches of people in California that are based*  
10 *not on any warrant, probable cause, nor even any factual basis to*  
11 *suspect a crime, but merely on the purported consent to search*  
12 *given by a person confronted on the street by a police officer.*

13     *(c) Data and research make clear that such searches should*  
14 *not be considered truly consensual. In data reported to the state,*  
15 *officers report that 98.5 percent of individuals consent to a search*  
16 *when asked. Social psychology research indicates that the consent*  
17 *to search that people give when asked by an authority figure is*  
18 *not truly voluntary due to power dynamics, particularly with*  
19 *vulnerable populations. In California, policing agencies reported*  
20 *most frequently subjecting youth 10 to 17 years of age to searches*  
21 *based solely on purported consent.*

22     *(d) Data and research show that these factually baseless*  
23 *searches are not beneficial for public safety, because searches of*  
24 *people and vehicles in which the only legal justification for the*  
25 *search is the person's purported consent have very low rates of*  
26 *discovering evidence of crime. Though police officers perform*  
27 *consent-only searches in stops of Black and Hispanic or Latine*  
28 *people more frequently, they are also least likely to find contraband*  
29 *or evidence during those searches.*

30     *(e) Considering the race of an individual to any degree when*  
31 *deciding whether to conduct additional actions during a stop,*  
32 *including consensual searches or asking questions, violates*  
33 *California law prohibiting racial or identity profiling. However,*  
34 *data and research show that giving officers the discretion to seek*  
35 *factually baseless searches based on purported consent leads to*  
36 *disparate stops and searches of Black and Hispanic or Latine*  
37 *individuals. State stop data show that when consent searches are*  
38 *performed, the underlying reason for the initial police contact is*

1 more likely to be traffic enforcement for people of color than it is  
2 for Caucasian people, raising the concern that consent searches  
3 incentivize racially biased pretextual stops. Black individuals are  
4 4 times as likely, Hispanic or Latine individuals 2.4 times as likely,  
5 and Multiracial individuals 2.2 times as likely to be asked for  
6 consent to search during a traffic stop than Caucasian individuals.

7 (f) Increased police contacts including searches can have a  
8 negative impact on public health and safety, with Black individuals  
9 who have been stopped and those that live in communities where  
10 such stops frequently occur reporting higher levels of anxiety,  
11 trauma, post-traumatic stress disorder, and depression along with  
12 other negative health consequences, including trauma-induced  
13 sleep deprivation in youth who are stopped or vicariously  
14 experience abusive police behaviors. It may also undermine public  
15 faith in the institution of policing, with research finding that  
16 individuals perceive stops for minor infractions that lead to officers  
17 asking additional questions, such as for consent to search, as  
18 illegitimate uses of police authority.

19 **SECTION 1.**

20 **SEC. 2.** It is the intent of the Legislature to ~~enact legislation~~  
21 ~~to prohibit officers from requesting consent to conduct a search if~~  
22 ~~the officer does not suspect criminal activity.~~ ensure the right of  
23 the people to be secure in their persons and effects against police  
24 searches based on purported consent rather than on an evidentiary  
25 basis.

26 **SEC. 3.** Section 833.6 is added to the Penal Code, to read:

27 833.6. (a) The consent of a person given to a peace officer to  
28 conduct a search shall not constitute lawful justification for a  
29 search. A warrantless search conducted solely on the basis of a  
30 person's consent is a violation of that person's rights under this  
31 section.

32 (b) A peace officer shall not seek consent to conduct a  
33 warrantless search of a vehicle, person, or their effects.

34 (c) A law enforcement agency shall not authorize a peace officer  
35 to conduct a search in violation of this section.

36 (d) This section shall not be construed to limit the authority of  
37 a peace officer to conduct a search based on probable cause, a  
38 valid warrant, or another legal basis that is not consent.

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