



**Testimony for the House Judiciary Committee  
March 13, 2018**

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**HB 1133 Criminal Procedure – Law Enforcement Procedures – Consent Search of  
Motor Vehicle**

**FAVORABLE**

The ACLU of Maryland urges a favorable report on HB 1133, which would prohibit law enforcement from basing the authority to search a motor vehicle *solely* on the officer obtaining the consent of the owner or occupant of the motor vehicle. Any search of a motor vehicle conducted in violation of the bill's provisions is unreasonable and the evidence obtained may not be introduced in a criminal proceeding.

**Consent searches are often fraught with racial biases**

Across the country, and here in Maryland, consent searches are conducted in racially biased ways. For example, a 2011 report by the Illinois Department of Transportation uncovered that state troopers asked motorists of color for permission to search their car without cause at a higher rate than white drivers during 2010. Hispanic motorists were more than 3 times more likely than white motorists to be asked for a consent search. African American motorists were nearly 3 times (2.96) more likely. Even worse, contraband was more frequently found in searches of white motorists.<sup>1</sup>

Unfortunately, the same is true here in Maryland. According to the annual Race-based Traffic Stops reporting, in 2016 "African American and Hispanic males were significantly more likely to be searched than any other race."<sup>2</sup> More troubling however, is the 'hit rate,' or the rate at which contraband is found during a search. Based on the 2015 Race-based Traffic Stop report, consensual searches have the lowest "hit rate" across the board (for any type of property or contraband.) Three-fourths of the time that police conducted consensual searches, they came up completely empty. Additionally, motorists identified as Black or Latinx have, on average, even lower "hit rates" for consent searches than white motorists—just over 23%, compared to 28%.

**Other jurisdictions have banned consent searches**

In July 2004, Rhode Island passed a consent search ban when the state re-enacted its data collection law.<sup>3</sup> This resulted after the state's 2-year data study that showed that

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<sup>1</sup> ACLU of Illinois website, available at <https://www.aclu-il.org/en/press-releases/new-data-shows-racial-bias-police-consent-searches>.

<sup>2</sup> Governor's Office of Crime Control and Prevention, 2015 Race-based Traffic Stop Data Analysis (2016), p. 13. Available at <https://goccp.maryland.gov/wp-content/uploads/traffic-stop-report-2016.pdf>.

<sup>3</sup> Title 31, General Laws entitled "Motor and Other Vehicles," 31-21.2-5.

a majority of departments had racial disparities for which no other explanation could be found. The law also required reasonable suspicion for a drug-sniffing dog search during a traffic stop.<sup>4</sup>

The California Highway Patrol (CHP) extended its ban on consent searches as part of a federal class action lawsuit the ACLU filed on behalf of the NAACP, the League of United Latin American Citizens (LULAC), and three victims of racial profiling, challenging the CHP's discriminatory drug interdiction program, then known as Operation Pipeline.<sup>5</sup> The first moratorium was issued in April 2001 following the data obtained in a class action suit against CHP that showed that respectively Latinos and African Americans were three times and twice as likely to be searched as whites in some divisions.

Also, in May 2003 the Minnesota Supreme Court did likewise, holding that police expansion of a routine traffic stop beyond the underlying justification for the stop violates Article I, Section 10, of its constitution.<sup>6</sup> Under this decision, to search, there must be reasonable suspicion of criminal activity beyond the traffic offense, and evidence seized as a result of a consent search in the absence of such suspicion would be suppressed.

In New Jersey, in 2001, in accepting a plea bargain for the shooting of minority motorists in 2001, two troopers acknowledged that racial profiling was taught by the State Police, that it was encouraged by supervisors, and that they and others tried to cover up the fact of racial profiling by providing false traffic stop data. Two months later, the New Jersey Supreme Court, noting "widespread abuse of our existing laws," outlawed "consent searches" where no reasonable suspicion exists.<sup>7</sup>

For the foregoing reasons, the ACLU of Maryland urges a favorable report on HB 1133.

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<sup>4</sup> Rhode Island Law: **31-21.2-5. Law enforcement practices.** - - (a) Unless there exists reasonable suspicion or probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation. Nothing contained herein shall prohibit the detention of a motor vehicle for a reasonable period of time for the arrival of a canine unit or subsequent criminal investigation, if there is reasonable suspicion or probable cause of criminal activity. (b) No operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle which is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity

<sup>5</sup> Rodriguez v. California Highway Patrol, 89 F. Supp. 2d 1131 (N.D. Cal. 2000)

<sup>6</sup> Minnesota v. Mustafaa Naji Fort, 660 N.W.2d 415(Minn. 2003)

<sup>7</sup> State v. Carty, 170 N.J. 632, 790 A.2d 903(2002)