

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

February 22, 2010  
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB10-1201 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 2, line 6, strike "**vehicle, a person, or a**  
2 **person's home**" and substitute "**vehicle or a person**".

3 Page 2, strike lines 7 through 27 and substitute:

4 "(1) (a) PRIOR TO CONDUCTING A CONSENSUAL SEARCH OF A PERSON, THE  
5 PERSON'S EFFECTS, OR A VEHICLE, A PEACE OFFICER SHALL COMPLY WITH  
6 PARAGRAPH (b) OF THIS SUBSECTION (1).

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

12 (I) THE PERSON IS NOT IN CUSTODY;

13 (II) THE PERSON IS BEING ASKED TO VOLUNTARILY CONSENT TO A  
14 SEARCH; AND

15 (III) THE PERSON HAS THE RIGHT TO REFUSE THE REQUEST TO  
16 SEARCH.

17 (c) AFTER PROVIDING THE ADVISEMENT REQUIRED IN PARAGRAPH

1 (b) OF THIS SUBSECTION (1), A PEACE OFFICER MAY CONDUCT THE  
2 REQUESTED SEARCH ONLY IF THE PERSON SUBJECT TO THE SEARCH  
3 VOLUNTARILY PROVIDES VERBAL OR WRITTEN CONSENT. OTHER  
4 EVIDENCE OF AFFIRMATION MAY BE ACCEPTABLE, IF THE PERSON IS  
5 UNABLE TO PROVIDE WRITTEN OR VERBAL CONSENT."

6 Page 3, after line 4 insert:

7 "(3) IF A DEFENDANT MOVES TO SUPPRESS ANY EVIDENCE  
8 OBTAINED IN THE COURSE OF THE SEARCH, THE COURT SHALL CONSIDER  
9 THE FAILURE TO COMPLY WITH THIS FACTOR IN DETERMINING THE  
10 VOLUNTARINESS OF THE CONSENT."

11 Page 3, strike lines 5 and 6 and substitute:

12 "(4) THIS SECTION SHALL NOT APPLY TO A SEARCH CONDUCTED  
13 PURSUANT TO SECTION 16-3-103, C.R.S., A SEARCH INCIDENT TO LAWFUL  
14 ARREST, OR TO A SEARCH FOR WHICH THERE IS A LEGAL BASIS. THIS SHALL  
15 INCLUDE, BUT NOT BE LIMITED TO, A SEARCH IN A CORRECTIONAL FACILITY  
16 OR ON CORRECTIONAL FACILITY PROPERTY, A DETENTION FACILITY,  
17 COUNTY DETENTION FACILITY, CUSTODY FACILITY, JUVENILE  
18 CORRECTIONAL FACILITY OPERATED BY OR UNDER A CONTRACT WITH THE  
19 DEPARTMENT OF HUMAN SERVICES, A COMMUNITY CORRECTIONS FACILITY,  
20 OR A JAIL OR A SEARCH OF A PERSON UNDER COMMUNITY SUPERVISION OR  
21 PAROLE BY A COMMUNITY SUPERVISION OR PAROLE OFFICER WHEN THE  
22 PERSON HAS EXECUTED A CONSENT TO SEARCH AUTHORIZATION FORM AS  
23 A TERM AND CONDITION OF ANY COMMUNITY SUPERVISION OR PAROLE."

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