



## OBTAINING WRITTEN CONSENT FOR SEARCHES

Consent must be expressed clearly and voluntarily given. Misunderstandings can occur during the process of asking for and giving consent due to many factors, from language barriers to weather conditions to stress. This policy requires consent be given in writing and applies to all manner of consent searches, including searches of vehicles, premises, people, and electronic devices. Case law permits consent to be given orally, in writing or by other means, but written consent facilitates the clearest understanding for all involved.

Prior to conducting a search where consent is the sole basis for the search, and probable cause to conduct the search does not exist, the officer must first explain the concept of a consent search, that a person has the right to refuse the search, and if the person refuses to consent, their refusal will not be held against them. If consent for the search is given, the officer must obtain the signature of the person with actual or reasonably apparent authority to grant such consent on the Consent to Search form. This form is not meant to replace any recording of consent; it should be used in conjunction with recording devices when applicable. If consent is refused, such refusal will be documented on the Consent to Search form and signed by the officer. {Optional Inclusion: If written consent is refused, the officer may not complete a consent search unless another form of consent is recorded via audio and video, including an explanation of the subject's right to refuse, and the subject's reasons for declining to sign the consent form.}

Consistent with language access requirements, and based on community needs, this form should be available in languages other than English. Current and retired police chiefs and sheriffs, policy experts, and researchers, helped draft this document, resulting in a sample policy informed by years of expertise in the field.<sup>1</sup> TREC did not incorporate all feedback given and ultimately the authorship of the final policy remains with TREC. Not all concepts or approaches included in this Sample Policy are required by law and implementation remains at the discretion of law enforcement agency leadership.

### **ABOUT THE TASK FORCE FOR RACIAL EQUITY IN CRIMINAL JUSTICE**

The North Carolina Task Force for Racial Equity in Criminal Justice, which is co-chaired by Supreme Court Associate Justice Anita Earls and Attorney General Josh Stein, was established in June 2020 and made a recommendation to require all consent searches to be based on written, informed consent. For more information about the Task Force, please visit <http://ncdoj.gov/trec> or email [criminaljustice@ncdoj.gov](mailto:criminaljustice@ncdoj.gov).

<sup>1</sup> The State Highway Patrol has a practice consistent with the concepts in this sample policy.



**CONSENT SEARCH SAMPLE FORM**

**CONSENT GIVEN**

I, \_\_\_\_\_, (FULL NAME) do knowingly and voluntarily consent to the search of \_\_\_\_\_ (DESCRIBE PERSON/ PROPERTY TO BE SEARCHED) by a law enforcement officer.

By signing below, I acknowledge the following:

- That I am giving my consent to search knowingly and voluntarily. No threats or promises have been made to me, and I understand that refusing consent will not be held against me.
- That I have been advised and understand I have the right to refuse to give consent to search the above-described location.
- That I have been advised and understand I have the right to limit the scope of the search. I can determine what specific areas of the above described can and cannot be searched by law enforcement at this time.
- That I have been advised and understand I can change my mind, and revoke my consent at any time, even after the search has begun.

Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

**CONSENT DENIED**

Consent was denied by \_\_\_\_\_, (FULL NAME) to the search of \_\_\_\_\_ (DESCRIBE PERSON/ PROPERTY TO BE SEARCHED) by a law enforcement officer.

Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_  
(Law Enforcement Officer)