



OBTAINING WRITTEN CONSENT FOR SEARCHES

The law allows for consent to search to be given orally, in writing or by other means.¹ Some North Carolina law enforcement agencies have chosen to require an officer to obtain written consent for non-probable cause-based searches. No matter how it is expressed, consent is required to be clearly and voluntarily given from a person who has a reasonable expectation of privacy in the place or thing to be searched.² The burden to prove that consent was voluntarily given lies with the State (i.e. the prosecution).³ Prosecutors may rely on officer testimony, body camera or dashboard camera video, and in some cases written consent forms.

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 TREC sample policy, which is based on a recommendation from TREC's [2020 Report](#), requires consent be given in writing and applies to all manner of consent searches, including searches of vehicles, premises, people, and electronic devices. This policy is not required by law. 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.

¹ "Arrest, Search and Investigation in North Carolina", Robert L. Farb, and Christopher Tyner, 6th Ed, p. 259.

² *Florida v. Royer*, 460 U.S. 491, 497 (1983).

³ *Id.*



IMPLEMENTING THIS POLICY

Not all concepts or approaches included in this ample policy are required by law and implementation remains at the discretion of law enforcement agency leadership. Before implementing policy changes, it is important to conduct training on new policies and for leadership to signal the culture change that must accompany and support changes in policy. We encourage those agencies adopting this or any new policy to explicitly tie this reform to the philosophy of community policing with the hopes that this policy change will help increase trust between law enforcement and the communities they serve.

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.⁴ 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.

⁴ 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)