

## TRAINING BULLETIN

A PUBLICATION OF THE SAN DIEGO POLICE DEPARTMENT

DAVID NISLEIT  
CHIEF OF POLICE

21-05

AUGUST 31, 2021

### CONSENT SEARCHES

#### **I. PURPOSE**

This bulletin updates the requirements necessary for officers to obtain consent to search a premise, person, or property. It does not pertain to other legal searches, such as pat downs, when officers have articulable facts which causes them to reasonably believe the person is dangerous or may be in possession of a weapon.

#### **II. SCOPE**

This Training Bulletin applies to all sworn members of the Department.

#### **III. BACKGROUND**

Absent a search warrant, officers may conduct a search under limited circumstances. This includes an incident when a subject gives their consent for a search.

#### **IV. DEFINITIONS**

- A. Express Consent - When a person responds in the affirmative to an officer's request for permission to search, specifically any word(s) that reasonably indicates the person is agreeing to the specific request. Express consent may be verbal or written.
- B. Implied Consent - When a person's actions or responses effectively communicate permission to search; for example an individual handing an officer his or her car keys after the officer requests to search the vehicle. A failure to object to a search or a request to search does not constitute implied consent.

## **V. LEGAL PARAMETERS OF A CONSENT SEARCH**

- A. Consensual searches involve the following legal concepts:
1. Consent must be given, either expressly or impliedly, by the subject.
  2. Consent must be given freely and voluntarily.
    - a. No threats, promises or demands for consent may be used.
  3. Scope of consent.
    - a. Officers shall only search those places and/or things that the person gave express or implied authorization to search.
  4. Intensity of search.
    - a. The search shall not be unduly intensive or intrusive. For example, consent to search does not authorize officers to destroy or damage the property or location during the search.
  5. Duration of the search
    - a. The search shall not be unreasonable in length of time.
- B. The consenting person may modify the scope of consent or withdraw it altogether at any time.

## **VI. PROCEDURES**

- A. Verbal Consent to Search
1. When obtaining verbal consent from a person to search, the entire interaction shall be captured on Body Worn Cameras (BWC).
  2. In a verbal consent to search, each of the following shall be declared/asked and recorded on BWC:
    - a. A clear request for consent to search the premise, person, personal property, or vehicle.

- (1) For instance, an officer may request to search any of the following: a house, vehicle, person, cellphone, computer, other mobile device, or purse/backpack.
  - (2) A request to search one's person may include fingerprints, DNA, or other identifying biological samples. A request for a biological sample should include an explanation of the method of analysis or comparison, such as running the sample through a comparison database.
  - (3) Members shall follow all applicable Department procedures and forms when obtaining biological samples.
- b. The officer shall explain to the person they have the right to refuse or withdraw consent to search at any time, even after they have consented, and the search has begun.
3. If a person's actions indicate implied consent, the officer shall confirm the consent verbally and ensure the confirmation is captured on BWC.
  4. In the absence of BWC, officers shall obtain written consent for a search on applicable Department forms.

B. Written Consent to Search

1. Consent to Search forms are available in the F: Drive under Templates/Patrol Based Forms/Consent to Search – Person and Personal Items.
2. These forms were translated into many of the languages spoken in our communities and shall be used to facilitate communication and clearly document consent searches as circumstances dictate.
3. In addition to forms, officers are encouraged to continue to use qualified bilingual officer and civilian translators, as well as interpretation services contracted by the Department to enhance communication efforts as detailed by DP 1.47 – Limited English Speakers.

Department Procedure 4.01 has been updated to reflect this Training Bulletin.

If you have any questions concerning the information provided in this bulletin, please e-mail Captain Jeff Jordon at [jjjordan@pd.sandiego.gov](mailto:jjjordan@pd.sandiego.gov).