

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, Subchapter II of Chapter 5 of Title 23 of the District of Columbia Official Code to require that District law enforcement officials obtain the informed consent of a subject of a search when that search is based solely on the subject's consent, to create a process for obtaining the informed consent of a subject, and to establish presumptions in cases where law enforcement officials fail to comply, or document compliance, with the process for obtaining the informed consent of a subject.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Limitations on Consent Searches Emergency Amendment Act of 2021".

Sec. 2. Subchapter II of Chapter 5 of Title 23 of the District of Columbia Official Code is amended by adding a new section 23-526 to read as follows:

"§ 23-526. Limitations on consent searches.

"(a) Beginning as of August 15, 2020, in cases where a search is based solely on the subject's consent to that search, and is not executed pursuant to a warrant or conducted pursuant to an applicable exception to the warrant requirement, sworn members of District Government law enforcement agencies shall:

"(1) Prior to the search of a person, vehicle, home, or property:

"(A) Explain, using plain and simple language delivered in a calm demeanor, that the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to a search:

35                               “(B) Advise the subject that:

36                                       “(i) A search will not be conducted if the subject refuses to provide

37 consent to the search; and

38                                       “(ii) The subject has a legal right to decline to consent to the search;

39                               “(C) Obtain consent to search without threats or promises of any kind being

40 made to the subject;

41                               “(D) Confirm that the subject understands the information communicated

42 by the officer; and

43                               “(E) Use interpretation services when seeking consent to conduct a search

44 of a person:

45                                       “(i) Who cannot adequately understand or express themselves in

46 spoken or written English; or

47                                       “(ii) Who is deaf or hard of hearing.

48                               “(2) If the sworn member is unable to obtain consent from the subject, refrain from

49 conducting the search.

50                               “(b) The requirements of subsection (a) of this section shall not apply to searches executed

51 pursuant to a warrant or conducted pursuant to an applicable exception to the warrant requirement.

52                               “(c)(1) If a defendant moves to suppress any evidence obtained in the course of the search

53 for an offense prosecuted in the Superior Court of the District of Columbia, the court shall consider

54 an officer’s failure to comply with the requirements of this section as a factor in determining the

55 voluntariness of the consent.

56                   “(2) There shall be a presumption that a search was nonconsensual if the evidence  
57 of consent, including the warnings required in subsection (a), is not captured on body-worn camera  
58 or provided in writing.

59                   “(d) Nothing in this section shall be construed to create a private right of action.”.

60                   Sec. 3. Fiscal impact statement.

61                   The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact  
62 statement required by section 4a of the General Legislative Procedures Act of 1975, approved  
63 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

64                   Sec. 4. Effective date.

65                   This act shall take effect following approval by the Mayor (or in the event of a veto by the  
66 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than  
67 90 days, as provided for emergency acts of the Council of the District of Columbia in section  
68 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
69 D.C. Official Code § 1-204.12(a)).