

B. CONSENT

Consent constitutes agreement and/or approval by an individual allowing a police officer to search without a warrant. In doing so, the individual waives his right as granted by the Fourth Amendment and/or Alaska Constitution, Article 1 Section 14, which prohibits warrantless searches. The State has the burden of proving the alleged consent. In order to establish the validity of consent, it is your responsibility to ensure the following:

1. The consent was given voluntarily and freely without duress (compulsion by threat) or coercion (to dominate by force).
2. Deception was not used to obtain consent. Examples of deception are threats against family members, physical, psychological, or religious coercion, and relating false statements.
3. The person consenting made a knowing and intelligent waiver. The person should be informed of the relevant circumstances and likely consequences.
4. Consent was clear and explicit; silence is not considered consent.
5. Consent to enter is not consent to search.
6. The person consenting must have the authority to permit the search. The rule that generally applies is only the person who has the right to occupy the premises can consent to its search.

You should obtain a written waiver signed by the person who gave consent. If the person consenting is in custody at the time consent is given, you should also ask the individual to waive his Miranda rights. The individual, by consenting to a warrantless search, waives his right as provided by the Fourth Amendment and/or Article 1, Section 14 of the Alaska Constitution.

CONSENT SELECTED CASES

PHILLIPS v State (Consent Search of Murder Scene) bulletin no. 43. Consent to enter murder scene by occupant of a cabin even though five (5) separate entries were made is considered "ongoing" until consent is revoked.

HENRY v State (Seizure of Person/Fingerprints) bulletin no. 45. Defendant was asked to accompany police officer to police station for questioning, while there, asked for fingerprints. The seizure of this person and fingerprints upheld due to voluntary consent.

DOYLE v State (Third Party Consent to Enter) bulletin no. 52. Son (estimated age between 11 and 14) of defendant gave officers consent to enter residence, whereupon defendant (father) was arrested. Court ruled that the son had the authority to permit officers to enter residence.

SPEZIALY v State (Administrative Airport Security Search) bulletin no. 67. Evidence seized from briefcase during normal boarding of airplane upheld as administrative search. Consent to search is condition to board the aircraft.

MURDOCK & ROBINSON v State (Protective Search of Residence) bulletin no. 69. Girlfriend, age 15, who cohabited with defendant, had the authority to grant consent to enter resulting in subsequent seizure of defendants (who were hiding in another room) and weapons; upheld as protective search.

GUIRDY v State (no bulletin). In an attempt to identify defendant (by means of vehicle license number) in a game violation, the investigating troopers, dressed in plain clothes, drove to the suspect's residence in a personal vehicle, drove into the driveway to turn around and were confronted by the defendant. The troopers stated they were property shopping and were invited into the defendant's residence. While in the residence, the troopers observed evidence that was later cited in their affidavit supporting a search warrant for the defendant's residence. The court upheld the troopers' entry was by the defendant's invitation and not subterfuge.

COLLIDGE v New Hampshire (no bulletin). The wife of defendant was requested to produce her husband's weapons, which included the murder weapon. Seizure upon production was upheld as consent and plain view. The husband/defendant should have assumed the risk that this could possibly occur due to the fact that the wife had the authority to consent.

J.M.A. v State (no bulletin). A foster parent, although paid by the State, had the authority to consent to the search of the foster child's room.

INGRAM v State (no bulletin). Evidence against a third party was seized when the defendant initially refused to consent to the search, but then reconsidered.

U.S. v BILY (7th Cir. -- no bulletin). Although defendant had furnished written waiver, he can revoke his consent and officers must cease their search. Defendant may also restrict the search to time and place. In other words, the defendant may consent to the search of one room only and limit the time of search.

STAATS v State (Warrantless Entry Into Hotel Room By Private Citizens Who Invited Police) bulletin no. 103. Hotel had double booked a room and the second party assigned to the room discovered drugs in a suitcase already in the room. The police were called and their subsequent warrantless entry was authorized by consent of the second party.

CHRISTIANSON v State (Investigatory Stop of Vehicle With No Imminent Public Danger) bulletin no. 112. Consent to search by non-owner/driver was proper. No requirement that imminent public danger existed or recent serious harm to person or property had occurred to justify stop.

BRANDON v State (Consent to Search Residence by Non-Present Spouse) bulletin no. 136. A woman was beaten by her husband at their home and later consented to a search of the home for collection of evidence and to check on the welfare of her young son. The woman had authority to allow the search since she had equal right of possession of the premises. The fact that she was not present during the search was not relevant. Caution should be used when consent is given to search a section of the house that is normally "off limits" to the spouse, such as a private study, workshop, etc. This issue was not explored in the opinion.

GEORGIA v Randolph (Physically Present Resident can Negate Consent Given by Co-Resident) bulletin no. 306. Janet RANDOLPH called the police to report a domestic problem and to report also that her husband, Scott, had taken her son from the residence. She informed responding officers that her husband was a chronic abuser of cocaine. Shortly thereafter, Scott returned to the residence with the boy. He denied using drugs and said that it was Janet who used both drugs and alcohol. Police asked Scott for his consent to search; he refused. Police asked Janet, who gave her consent, took the officers to Scott's bedroom where a straw containing white residue was observed. The officer left the residence to secure the straw and contact the DA who informed the officer to cease the search and get a warrant. When the officer returned to the house Janet withdrew her consent. Based on the earlier consent, a warrant was issued. Additional evidence was seized. Scott argued that because he had already refused his consent the police were not allowed to enter based on Janet's consent. The US Supreme Court agreed. This is a "shared dwelling" and when one of the co-residents (who is present) refused consent the other co-resident (who is also on the premises) cannot override the refusal.

WRIGHT v State (Investigative Seizure of Person/Luggage at Airport for Sniff Test by Narcotics Dog) bulletin no. 147. A request by a police officer to inspect a person's ID can be done without it turning into a constitutional seizure. A person can consent to a search of luggage without the encounter turning into an investigatory stop. Based on the officer's suspicion, luggage can be seized for a minimally intrusive canine sniff, since the suspected crime posed imminent public danger.

Florida v JIMENO (Consent to Search Vehicle) bulletin no. 159. A police officer stopped a vehicle for a traffic violation and asked the driver for consent to search his vehicle (because he earlier overheard the driver arranging a drug transaction on a public telephone). The driver consented to the search and the officer opened a folded brown paper bag found inside the vehicle that contained drugs. The driver did not place any limitations on the search and it was found to be reasonable to open the bag, but mentioned that if the container were locked, further consent to search or probable cause to justify its seizure while you apply for a search warrant would be necessary.

Alabama v WHITE (Investigatory Seizure of Vehicle Based on Anonymous Tip Leads to Consent to Search) bulletin no. 146. Under the "totality of the circumstances," the anonymous tip, as corroborated, exhibited sufficient information of reliability (reasonable suspicion) that a crime occurred or is soon to occur to justify an investigatory stop of a vehicle. Alaska has not adopted the anonymous tip principle, except where imminent danger exists (i.e. stopping a suspected DWI).

Maryland v PRINGLE (Consent By Driver/Owner Of Vehicle Leads To Arrest Of Passenger) bulletin no. 275. Baltimore Police stopped vehicle occupied by three men. The owner/driver gave permission to search the vehicle. Drugs were found in the armrest of the rear seat; all three men were arrested. Pringle, who was a front seat passenger, later admitted that the drugs belonged to him. Court ruled that a reasonable police officer could conclude that Pringle both solely, or jointly had possession of the drugs, and consequently had ample probable cause to arrest him.

MILTON v State (Warrantless Search of Third-Party Custodian's Bedroom) bulletin no. 187. Milton was a third party custodian for Gutierrez. A probation officer conducted a search of Milton's residence based on information that Gutierrez was either using or distributing drugs. The officers entered Milton's bedroom and discovered letters and bills on a nightstand, some of which were addressed to Gutierrez. White powder was also noted on the nightstand. A suitcase inside a closet in Milton's bedroom was searched and drugs were found. Drugs were also found in Gutierrez's bedroom. The case was remanded back to Superior Court. The court ruled that when a probationer is sharing living quarters with another person, the probation officer may search all areas where the probationer has common authority to use or control even if it is not exclusive. The

searching officer must have reasonable suspicion that the item to be searched is owned, shared or controlled (even if not exclusive) by the probationer. The third party custodian has a limited expectation of privacy.

HILBISH v State (Consent to Search Authorized By a Temporary Occupant) bulletin no. 189. A daughter and her family visiting her father and his companion were granted permission by the companion to camp in the front yard of their residence. The daughter, suspecting her father was dead under a tarp in the yard because of a strong smell and conversations with her father's companion, gave consent to search for police to look under the tarp. Actual authority to give consent is not required as long as the person has apparent authority to give consent. The daughter had joint access to or control of the place to be searched. The daughter, as a temporary occupant of the residence and having the run of the area, had actual authority over the portion of the yard examined by the police and there was nothing in the record to suggest the companion revoked the daughter's authority to consent.

Vernonia School District v ACTON (Mandatory Drug Testing of Students Participating in School Athletic Programs) bulletin no. 191. Athletes were required to submit to a drug testing program in order to participate in sports programs. This test was unsupported by probable cause. A search, unsupported by probable cause can be constitutional when special needs (which existed in this drug infested school district), beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable.

Board of Education v EARLS (Mandatory Drug Testing of Students Participating in Extracurricular Activities) bulletin no. 258. The mandatory drug testing for students who participate in after school activities such as cheerleading, choirs, Future Farmers of America, etc. does not violate the Fourth Amendment.

JOUBERT v State (Lack of Consent To Probation/Parole Officer Negates Search of Parolee's Premises) bulletin no. 208. A search of a probationer's residence can take place under the terms of the probationer's release agreement upon request of the probation officer, but the parolee must communicate in some way with the probationer before conducting a search.

Ohio v ROBINETTE (Warning Not Required for Consent to Search) bulletin no. 209. During a traffic stop, an officer asked consent to search the driver's vehicle. Consent was given and the search was conducted, which resulted in seizure of contraband and arrest of the suspect. The question at issue is does the Fourth Amendment require that a lawfully seized defendant be advised he is free to go and that he can refuse to have his vehicle searched, before consent to search is recognized as voluntary. **NO.**

BROWN, Susan v State (Warning or Probable Cause is Required by State Constitution) bulletin no. 328. During traffic stop for insufficient illumination of her license plate, a State Trooper, who failed to tell her why he had stopped her, asked for and received consent to search her person and vehicle. A crack pipe was found in the lining of her coat. She was arrested for possession of the pipe and during the search incident to that arrest, the trooper found cocaine in her purse. The Court of Appeals ruled that the Alaskan Constitution (Article I § 14) affords the citizens of this state greater right than they are guaranteed under the (Fourth Amendment) U.S. Constitution. The court said, absent probable cause, the trooper should have advised (unlike ROBINETTE above) BROWN that she had a right to refuse consent to search her person and vehicle.

MARINO v State (Limited Waiver of Fourth Amendment) bulletin no. 216. During a murder investigation, police obtained blood and urine samples, but assured the suspect they would only be used in the murder investigation and not for drug offenses. He was later charged and convicted of murder as well as possession of drugs. The blood/urine tests had detected drugs in his system. The State exceeded the scope of the suspect's consent, because he had limited the consent to take the samples for the murder investigation only.

MACKELWICH v State (Anonymous Tip Leads to Consent to Search) bulletin no. 222. Troopers received an anonymous tip that moose poaching had occurred and that the suspect was possibly involved with drugs. They visited the site and received consent to search, reference the illegal moose kill. During the search, a locked shed was noticed and, standing outside the shed, you could smell an odor of marijuana. A search warrant was later applied for and executed. The issue is, if a State statute allowing a warrantless search for fish and game violations is allowed with a properly prepared signed statement, is this written statement necessary if the occupants consent to a search. **NO.**

State v JAMES (Warrantless Search of Probationer's Residence as Condition of Probation) bulletin no. 229. A probation officer searched the defendant, who was on probation and subject to warrantless searches of his person, personal property, residence or any vehicle in which he might be found. The defendant initially refused to allow the probation officer entry into his residence. The probation officer, accompanied by police, made a warrantless entry into the residence and seized drugs. Under the provision of his probation, the probation officer was authorized to conduct the search even without the consent of the defendant. Further, when another person is involved, such as a shared living situation, the officer may search all parts of the premises that the probationer has common authority to use.

BOND v U.S. (Manipulation of Passenger's Carry-On Luggage) bulletin no. 240. Border patrol officer checked bus and, in so doing, squeezed a soft luggage bag where he felt a brick like object. He got consent to search and found methamphetamine. Court ruled that officer's "physical manipulation" of a passenger's carry-on luggage violates the Fourth Amendment. It should be noted, however, that the government in this case did not argue the consent aspect.

HASKINS v Anchorage (Consent to Enter is Not Consent to Search) bulletin no. 248. APD was invited into entryway of residence by wife of DUI suspect. She said she would go and get him. The officers followed her to a lower level of the residence. Court said they had no right to do so and that consent can be limited to time and place.

FITTS v State (Mother Has Authority To Give Consent To Search Bedroom Where Guest Is Staying With Her Son) bulletin no 249. Mother gave police consent to search the bedroom of her 16 year-old son where another person was also staying. Both subjects had been involved in the armed robbery of a taxi driver. The gun and money were found in the room.

CARTER v State (Guests Expectation of Privacy in Hotel Room – property not in plain view when unlawfully evicted by police) bulletin no. 269. Police do not have authority, unless granted by hotel management, to enforce 1 o'clock checkout time to evict a person from their room. Nor, is evidence in their "plain-view" while the person is removing his personal effects (after being ordered to vacate the room) admissible evidence. The police had no lawful right to be in the room.

BAXTER et al v State (Traffic Stop Leads To Consent To Search Person And Vehicle, Search Of Wallet As Incident To Arrest And Issuance Of Search Warrant 2 Months Later) bulletin no. 272. North Pole Police Officer stopped Lara JOHNSON for a burned out headlight. She had no driver's license. Officer asked if she was carrying drugs and she replied she was not. She gave the officer consent to search her person and vehicle. Officer noticed a bulge that turned out to be coffee filters and two pill bottles. The coffee filters contained white powder that the officer thought was meth. She was arrested for no valid driver's license. At the police station, a more thorough search was conducted. In her wallet was a folded piece of paper containing a list of what the officer thought was items needed for a meth lab. He photocopied the list returning the original to the wallet. Two months later, search warrant issued for JOHNSON'S residence. Three persons present. Discovered a meth lab. All arrested for conspiracy to produce. All searches upheld as consent and incident to arrest. Officer had probable cause to believe evidence of drug enterprise might be in the wallet.

MOORE v State (Consent is tainted by prior illegal search) bulletin no. 300. Police accompany social worker to check on welfare of a child. Police suspect that MOORE is also suspected of being involved in drug activity. On arrival, one of the officers goes to the rear of the residence where he sees an electrical extension going to a shed. The officer looks in the shed and discovers a methamphetamine laboratory. He goes to the front of the house and informs the other officer what he has found. The officer informs MOORE that if he does not give consent the officer will seize the house and apply for a warrant. MOORE gives consent and a methamphetamine laboratory is found. While MOORE is out on bail, the court issues an arrest warrant. When police respond to his residence they detect an odor associated with drugs. MOORE gives consent to search his house. Chemicals used in the manufacturing of methamphetamine and methadone are discovered and seized. MOORE argues that the consent was based on the prior illegal search of the shed and that the evidence must be suppressed. The court

agrees! The court made note of the fact that the State did not argue any other justification (e.g. emergency, etc.) of this search other than consent.