

By: J. Johnson of Harris

H.B. No. 71

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the authority of peace officers to conduct certain  
3 searches.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 1.06, Code of Criminal Procedure, is  
6 amended to read as follows:

7 Art. 1.06. SEARCHES AND SEIZURES. (a) The people shall be  
8 secure in their persons, houses, papers, and possessions from all  
9 unreasonable seizures or searches. No warrant to search any place  
10 or to seize any person or thing shall issue without describing them  
11 as near as may be, nor without probable cause supported by oath or  
12 affirmation.

13 (b) A peace officer who stops a motor vehicle for any  
14 alleged violation of a law or ordinance regulating traffic may not  
15 search the vehicle unless the peace officer:

16 (1) has probable cause to conduct the search;

17 (2) obtains the written consent of the operator of the  
18 vehicle on a form that complies with Section 1701.1526(b),  
19 Occupations Code;

20 (3) obtains the oral consent of the operator of the  
21 vehicle and ensures that the oral consent is evidenced by an audio  
22 and video recording that complies with Section 1701.1526(c),  
23 Occupations Code, and is recorded by a body worn camera, as defined  
24 by Section 1701.651, Occupations Code; or

1           (4) has a reasonable and articulable fear that the  
2 operator or another person in the vehicle poses a threat to the  
3 safety of the peace officer or another person.

4           SECTION 2. Subchapter D, Chapter 1701, Occupations Code, is  
5 amended by adding Section 1701.1526 to read as follows:

6           Sec. 1701.1526. RULES FOR CERTAIN EVIDENCE OF CONSENT TO  
7 VEHICLE SEARCH. (a) The commission by rule shall establish  
8 requirements for:

9           (1) a form used to obtain the written consent of the  
10 operator of a motor vehicle under Article 1.06, Code of Criminal  
11 Procedure; and

12           (2) an audio and video recording used as evidence of  
13 the oral consent of the operator of a motor vehicle under Article  
14 1.06, Code of Criminal Procedure.

15           (b) At a minimum, the rules adopted under Subsection (a)(1)  
16 must require the form to contain:

17           (1) a statement that the operator of the motor vehicle  
18 fully understands that the operator may refuse to give the peace  
19 officer consent to search the motor vehicle;

20           (2) a statement that the operator of the motor vehicle  
21 is freely and voluntarily giving the peace officer consent to  
22 search the motor vehicle;

23           (3) the time and date of the stop giving rise to the  
24 search;

25           (4) a description of the motor vehicle to be searched;  
26 and

27           (5) the name of each peace officer conducting the stop

1 or search.

2 (c) At a minimum, the rules adopted under Subsection (a)(2)  
3 must require the audio and video recording to be created by a body  
4 worn camera, as defined by Section 1701.651, and document the  
5 following affirmative statements:

6 (1) a statement made by the peace officer that informs  
7 the operator of the motor vehicle that the operator may refuse to  
8 give the peace officer consent to search the motor vehicle; and

9 (2) a statement made by the operator of the motor  
10 vehicle that the operator:

11 (A) fully understands that the operator may  
12 refuse to give the peace officer consent to search the motor  
13 vehicle; and

14 (B) is freely and voluntarily giving the peace  
15 officer consent to search the motor vehicle.

16 SECTION 3. The Texas Commission on Law Enforcement shall  
17 adopt the rules required by Section 1701.1526, Occupations Code, as  
18 added by this Act, not later than December 1, 2021.

19 SECTION 4. (a) Except as provided by Subsection (b) of  
20 this section, this Act takes effect September 1, 2021.

21 (b) Article 1.06, Code of Criminal Procedure, as amended by  
22 this Act, takes effect January 1, 2022.