

## BILL ANALYSIS

H.B. 917  
By: Dutton  
Public Safety  
Committee Report (Unamended)

### BACKGROUND AND PURPOSE

The Fourth Amendment of the U.S. Constitution guarantees the right to be free from unreasonable searches and seizures. However, that right has been continually eroded by a series of judicial decisions, particularly regarding citizens' rights after a traffic stop. Consent searches after traffic stops generally occur when a law enforcement officer has no probable cause to believe a crime has been committed but simply request the driver's consent to search.

Under current Texas law, however, the legal rights of the driver at a traffic stop do not afford a meaningful ability to deny "consent" to the police officer. In January 2001, the U.S. Supreme Court ruled in *Atwater v. City of Lago Vista* that under Texas law a police officer may arrest a driver and then arrest the person even for the slightest traffic infraction which usually would only incur a fine as a punishment, such as failure to signal a lane change, or, in the case of Ms. Atwater, a seat belt violation.

In her dissent in the *Atwater* case, Justice Sandra Day O'Connor noted, "Such unbounded discretion carries with it grave potential for abuse. The majority takes comfort in the lack of evidence of "an epidemic of unnecessary minor-offense arrests." *Ante*, at 33, and n. 25. The recent debate over racial profiling demonstrates all too clearly that a relatively minor traffic infraction may often serve as an excuse for stopping and harassing an individual."

As Justice O'Connor also pointed out, under Texas law, anyone who refuses a request for consent to search after a lawful traffic stop may simply be arrested, fingerprinted and jailed for no other offense than whatever traffic violation precipitated the stop. Studies of traffic stop data indicate that minorities are subjected more often to such consent searches but that many thousands of Texans of all races are subjected to unreasonable consent searches every year.

HB 917 prohibits peace officers from requesting permission to search vehicles stopped solely for traffic violations but absent probable cause for the search.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### ANALYSIS

**SECTION 1:** A law enforcement officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic only may not request the operator of the motor vehicle for consent to search the vehicle, unless the peace officer has probable cause or another legal basis for the search.

**SECTION 2:** This Act takes effect January 1, 2010.

### EFFECTIVE DATE

January 1, 2010