

16-3-310. Oral advisement and consent prior to search of a vehicle or a person during a police contact

(1)(a) Prior to conducting a consensual search of a person who is not under arrest, the person's effects, or a vehicle, a peace officer shall comply with paragraph (b) of this subsection (1).

(b) A peace officer may conduct a consensual search only after articulating the following factors to, and subsequently receiving consent from, the person subject to the search or the person with the apparent or actual authority to provide permission to search the vehicle or effects. The factors are:

(I) The person is being asked to voluntarily consent to a search; and

(II) The person has the right to refuse the request to search.

(c) After providing the advisement required in paragraph (b) of this subsection (1), a peace officer may conduct the requested search only if the person subject to the search voluntarily provides verbal or written consent. Other evidence of knowing and voluntary consent may be acceptable, if the person is unable to provide written or verbal consent.

(2) A peace officer providing the advisement required pursuant to subsection (1) of this section need not provide a specific recitation of the advisement; substantial compliance with the substance of the factors is sufficient to comply with the requirement.

(3) If a defendant moves to suppress any evidence obtained in the course of the search, the court shall consider the failure to comply with the requirements of this section as a factor in determining the voluntariness of the consent.

(4) This section shall not apply to a search conducted pursuant to section 16-3-103, a valid search incident to or subsequent to a lawful arrest, or a search for which there is a legal basis other than voluntary consent. This shall include, but not be limited to, a search in a correctional facility or on correctional facility property, a detention facility, county detention facility, custody facility, juvenile correctional facility or any mental health institute or mental health facility operated by or under a contract with the department of human services, a community corrections facility, or a jail or a search of a person subject to probation or parole by a community supervision or parole officer when the person has consented to search as a term and condition of any probation or parole.