

VEHICLE EXCEPTION

General. The vehicle exception provides that, if a law enforcement officer has probable cause to believe that a readily mobile vehicle has evidence or contraband located in it, a search of that vehicle may be conducted without first obtaining a warrant.

Requirements. There are two requirements for a valid search under the vehicle exception: (1) there must be probable cause to believe that evidence of a crime or contraband is located in the vehicle to be searched; and (2) the vehicle must be “readily mobile.” The vehicle need not be moving, but must be capable of ready movement, at the time it is encountered. A search conducted pursuant to the vehicle exception may be conducted at the scene or after the vehicle has been impounded.

Scope. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents (to include locked or unlocked containers) that may conceal the object of the search. Additionally, if a law enforcement officer has probable cause to believe a specific container placed inside a vehicle has evidence of a crime or contraband inside, the vehicle may be stopped and searched as is necessary to retrieve that container. Once the container is retrieved, it may be searched without a warrant under the vehicle exception. This situation would not, however, support a general search of the entire vehicle. To search the remainder of the vehicle, a law enforcement officer would need some further justification, such as consent or a search incident to arrest.

TERRY FRISK OF A VEHICLE

General. A law enforcement officer may “frisk” a suspect if, during a lawful stop, the officer has a reasonable and articulable suspicion that the suspect might be presently armed and dangerous. Vehicles may also be frisked in certain circumstances.

Requirements. There are two requirements for a lawful “frisk” of a vehicle for weapons: First, a law enforcement officer must have lawfully stopped the vehicle that is the subject of the frisk. Like the investigative detention of a person, this element requires that the officer have a reasonable suspicion, based upon specific and articulable facts, that criminal activity is afoot and that the driver or passenger is involved in that criminal activity. The second requirement is that the officer have a reasonable belief that the driver or passenger is dangerous and may gain immediate control of a weapon.

Scope. If reasonable suspicion exists to believe that the driver or passenger is dangerous and may gain immediate control of a weapon, a law enforcement officer may “frisk” that person, as well as the entire passenger compartment of the vehicle and any unlocked containers in the passenger compartment. While an officer generally cannot “frisk” a locked container in a vehicle (such as a locked glove box), some federal courts, but not all, have started to allow this practice. A law enforcement officer may not “frisk” areas from which a passenger could not retrieve a weapon while seated inside the vehicle (such as a separate trunk compartment). The accessible rear area of hatchbacks, vans, buses, and SUVs are considered part of the passenger compartment.

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Searching Vehicles Without Warrants

The Federal Law Enforcement Training Center

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Homeland Security

CONSENT SEARCHES

General. Law enforcement officers may conduct a warrantless search of a vehicle if an individual with actual or apparent authority voluntarily consents to the search. In such cases, neither probable cause nor reasonable suspicion is required.

Requirements. There are two requirements for a consent search to be valid. First, the consent must be voluntarily given (i.e., not coerced). Second, the consent must be given by someone with either actual or apparent authority over the place or thing to be searched. For example, the owner of a vehicle would have actual authority to consent to the search.

Scope. The scope of a consent search is defined by the consent given. An individual may limit the scope of and revoke any consent given. A law enforcement officer may specifically ask for permission to search any area of a vehicle, including the passenger compartment, trunk, and any locked or unlocked containers. If the consent is granted, a valid search of those areas may ensue. When a suspect gives general permission for a law enforcement officer to “search the car,” the law enforcement officer may search any unlocked containers located in the vehicle. However, it is unreasonable to believe that an individual who has given general consent to search a vehicle is consenting to any property damage or destruction. When dealing with a locked container, a law enforcement officer should seek express permission to search that particular item. If the consent is granted, the search may then proceed. If another person who is capable of giving consent objects to a consent search, however, officers may not search under the consent exception.

INVENTORY SEARCHES

General. A vehicle that has been lawfully taken into the custody of law enforcement officers may be inventoried, if done pursuant to a reasonable, standardized policy. Neither probable cause nor reasonable suspicion is required. Inventory searches are permitted to protect the owner’s property, protect law enforcement officers against claims or disputes over lost or stolen property, and protect law enforcement officers from potential dangers that may be located in the property.

Requirements. There are three requirements for an inventory search. First, the vehicle must have been lawfully impounded.. Second, a standardized inventory policy must exist. Third, the inventory must be conducted in accordance with that standardized inventory policy and otherwise be reasonable.

Scope. The scope of an inventory search is defined by the standardized inventory policy of the particular agency involved. As a general rule, inventory searches may not extend any further than is reasonably necessary to discover valuables or other items for safekeeping. The federal courts have upheld inventory searches of the passenger compartments and trunks of vehicles. Inventory searches of containers, locked or unlocked, may also be conducted, so long as the standardized inventory policy permits. Finally, a valid inventory search conducted by law enforcement officers according to standard procedure may include the engine compartment of a vehicle. **KNOW YOUR AGENCY’S POLICY!**

SEARCH INCIDENT TO ARREST

General. In April 2009, in a case called *Arizona v. Gant*, the Supreme Court substantially limited the search of a vehicle incident to the arrest of an occupant (driver or passenger) of that vehicle.

Requirements. There are two general requirements for a search incident to arrest. *Gant* added a third requirement, which can be met in either one of two ways, when officers want to search a vehicle incident to the arrest of one of the vehicle’s occupants.

Two general requirements for all searches incident to arrest. First, there must have been a lawful custodial arrest. Second, the search must be “substantially contemporaneous” with the arrest—the search may not be too remote in time or place from the arrest.

Third requirement for searching a vehicle incident to arrest of one of the vehicle’s occupants. Before searching the vehicle incident to the arrest of one of its occupants, either one of the two following requirements must also be met:

1. “The arrestee is within reaching distance of the [vehicle’s] passenger compartment at the time of the search.” Given the prevailing practice of securing an arrestee, this should be very rare.

OR

2. “It is reasonable to believe the vehicle contains evidence of the offense of arrest.”

Scope. If a search incident to arrest of the occupant of a vehicle can be conducted, the passenger compartment of the vehicle may be searched. The courts that have considered the issue have held that the passenger compartment extends to the entire interior of hatchbacks, station wagons, vans, and sport-utility vehicles. Additionally, any containers big enough to contain evidence of the crime of arrest found in the passenger compartment may be searched. Although the Supreme Court has not expressly addressed locked containers in the passenger compartment, several federal cases can be interpreted as including locked containers within the scope of a lawful search incident to arrest. The trunk of a vehicle, however, cannot be searched during a search incident to arrest.