

CONSENT SEARCHES

TERRY FRISK OF A VEHICLE

Searching Vehicles Without Warrants

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

Requirements.

- 1) Voluntary consent
- 2) From a person with actual or apparent authority.

Scope. The scope of a consent search is defined by the consent given. An individual may limit the scope of consent or revoke it at any time. A LEO may ask for specific permission to search any area of a vehicle, including the passenger compartment, trunk, and any locked or unlocked container. If consent is given, a LEO may validly search those areas. When a suspect gives general permission for a LEO to search “the car,” a LEO may search that suspect’s unlocked containers located in the vehicle. However, general consent to search a vehicle does not reasonably allow a LEO to damage or destroy property. Upon encountering a locked container, a LEO should seek express permission to search that particular item. If the suspect consents, the search may proceed. If another person with authority to consent objects, however, LEOs may not use the consent exception to search.

General. A LEO may “frisk” a suspect for weapons 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 for weapons that could be accessible to a suspect.

Requirements.

LEO has reasonable suspicion that

- 1) Criminal activity is afoot,
- 2) An occupant of a vehicle is involved, and
- 3) An occupant is dangerous and may gain immediate access to a weapon.

Scope. If facts support a reasonable suspicion to believe that the driver or passenger is dangerous and may gain immediate control of a weapon, a LEO 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, but not all, federal circuits allow this practice if a suspect has immediate access to a key. A LEO may “frisk” areas from which a passenger could retrieve a weapon while seated inside the vehicle, such as rear areas of hatchbacks, vans, and SUVs.

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SEARCH INCIDENT TO ARREST

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

Requirements.

- 1) Arrestee recently occupied the vehicle,
 - 2) The search occurs substantially contemporaneous, or close in time and place, to the arrest, and
 - 3) Either a) the area was within suspect's reaching distance at time of the search, or b) LEO has reasonable belief that evidence of the crime of arrest is in the vehicle.
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Scope. If a search incident to arrest of a vehicle's occupant is permitted, LEOs may search the vehicle's entire passenger compartment, including containers capable of containing evidence of the crime of arrest. Although the Supreme Court has not decided whether LEOs may search locked containers inside the passenger compartment, some lower federal courts have approved of searching locked containers as well. Ordinarily, however, searching inside a closed trunk is beyond the scope of a lawful search incident to an arrest.

MOBILE CONVEYANCE (VEHICLE) EXCEPTION

General. The mobile conveyance exception allows a LEO with probable cause to believe that a readily mobile conveyance contains evidence or contraband in it to search for that item without a warrant.

Requirements.

- 1) LEO has lawful access to the conveyance,
- 2) The conveyance is readily mobile, and
- 3) Probable cause exists to believe contraband or evidence of a crime is presently in the conveyance.

Readily mobile means the vehicle is capable of ready movement, or of movement with only a minor repair or adjustment.

Scope. When facts support probable cause to search a vehicle, a LEO may search every part of the vehicle and its contents including locked or unlocked containers capable of containing the object of the search. Additionally, a LEO with probable cause to believe that only a specific container in a vehicle contains evidence or contraband may stop that vehicle and search it to retrieve the container. Upon retrieving the container, a LEO may search it without a warrant. Such circumstances would not support a general search of the rest of the vehicle unless a LEO has additional facts showing probable cause to believe that evidence or contraband are also elsewhere in the vehicle.

INVENTORY SEARCHES

General. LEOs may inventory the contents of a lawfully impounded vehicle without a warrant pursuant to a reasonable, standardized policy. Neither probable cause nor reasonable suspicion is needed. Courts allow inventory searches to protect an owner's property, protect LEOs against claims or disputes over lost or stolen property, and protect LEOs from potential dangers inside the vehicle.

Requirements.

- 1) The vehicle is lawfully impounded,
 - 2) The LEO's agency has a standardized inventory policy, and
 - 3) The search adheres strictly to the policy's terms.
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Scope. The lawful scope of an inventory search is limited by what a reasonable, standardized agency policy allows. Generally, an inventory search may be no more intrusive than is reasonably necessary to discover dangerous items, valuables, or other items for safekeeping. Federal courts allow inventory searches of passenger compartments, trunks, locked or unlocked containers, and even engine compartments so long as the standardized inventory policy authorizes them.

KNOW YOUR AGENCY'S POLICY!