



Constitutional Policing Update

Vehicle Searches: When Can You Search Without a Warrant?

Absent specific exceptions, deputies must obtain a warrant before conducting a search. But, when it comes to vehicle searches, there are many exceptions to the Fourth Amendment's warrant requirement. Below is a quick reference guide of applicable exceptions to the warrant requirement for vehicles.

Consent Search

- May be express (e.g. suspect says "yes" or "go ahead" or gives consent spontaneously) or implied (e.g. suspect does something that can be interpreted as consent, a gesture such as opening a backpack). Absent extraordinary circumstances, members should get explicit consent to search a vehicle either verbally (e.g. captured on BWC or otherwise recorded) or in writing (e.g. consent to search form).
- The consent must be voluntary (e.g. not motivated by a threat, promise, pressure, or coercion) and must be from someone who members reasonably believe has authority to provide the consent.
- Search is limited to the area or items that the consenting individual authorized.
- Consent may be revoked at any time. If consent is revoked, the search must stop.

Exigent Circumstances

- Exigent circumstances exist if there is a "compelling need for official action," if the circumstances present "immediate major crisis," or the potential for "real, immediate, and serious consequences" if deputies don't act.
- Members must reasonably believe that entry and search is necessary to protect life or property from imminent danger or damage. Reports must articulate specific facts establishing exigency.
- Scope is limited to the specific exigency. (e.g. can't search center console for a missing child).

Instrumentality Search

- Deputies have probable cause to believe that the *vehicle itself* was how the crime was committed (e.g. hit-and-run, or vehicle used in a kidnapping) or was itself evidence (e.g. woman drives her car into a crowd: Cal. Penal Code 245(a)(1) with the vehicle as the deadly weapon).
- Best practice is to seize the vehicle without a warrant, then get a warrant for scientific examination or any other applicable search.

Vehicle Inventory

- Permitted if it was reasonably necessary to tow the vehicle under the circumstances and the search was conducted according to standard procedure or established routine.
- Purpose is: (1) to protect owner's property and secure valuable items; (2) protect the Department from claims of loss and damage; and (3) protect members from potential danger. Search is not for evidence and deputies must be able to articulate and testify to OCSD POM Section 48.





Plain View: Seizure of Item

- Deputies may seize evidence in plain view if he or she has: (1) a lawful vantage point to see the item (e.g. vehicle parked on public sidewalk); (2) identifies the item is evidence of a crime; and (3) lawful physical access to the evidence.
- If a deputy violates a subject's Fourth Amendment rights to get a good view of the item, then the item seized will not qualify under the plain view exception and is inadmissible.

Probable Cause Search (aka "automobile exception" or "vehicle exception")

- If deputies have probable cause to believe the vehicle contains contraband or evidence of a crime and a judge would sign a search warrant, it is legal to search the vehicle without a warrant.
- Vehicles must be lawfully accessible and in a public place.
- Scope depends on the items the deputy is searching for.
- If a deputy is unsure of whether probable cause exists, the best practice is to obtain a search warrant.

Probation, PRCS, or Parole Search

- Must verify search condition prior to search.
- Search is reasonable as long as it is not arbitrary, capricious, or harassing.
- Can search whole car if the owner or driver has valid search terms. If search terms are for passenger, then limit your search to areas where passenger had immediate control to place or toss evidence.

Protective Search

- Commonly known as a "vehicle frisk." Requires (1) lawful detention of an occupant inside the vehicle, (2) objectively reasonable belief, supported by articulable facts, that the person is dangerous and there's reason to believe there is a weapon inside the vehicle, (3) occupant has reasonable access to the weapon or item that could be used as a weapon in the vehicle.
- The scope of the search is the passenger compartment of the vehicle where weapons might be hidden.
- Do not search the trunk of the vehicle.

Search Incident to Custodial Arrest

- Vehicle Search is permitted if (1) there is probable cause to arrest, the arrestee is unsecured and within reaching distance of the vehicle during the search or (2) if police have reason to believe that the vehicle contains evidence relevant to the crime of arrest.
- The search is limited to the passenger compartment and must occur close in time to the arrest.

VIN Search

- If a vehicle is located in a public place, deputies may look through the windshield of a vehicle and inspect the VIN plate located on the dashboard.
- If the vehicle is stopped for a traffic violation, members may reach into the passenger compartment of a vehicle and move papers or other items that are obstructing the VIN plate. Deputies cannot fully enter the vehicle to search for the VIN under this exception. Traffic violation alone is not enough probable cause to search for the VIN for this exception to apply. See search exceptions above to determine appropriate legal authority to search for the VIN.

