



SAN JOSE POLICE DEPARTMENT

TRAINING BULLETIN

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: WARRANTLESS SEARCHES OF
VEHICLES**

DATE: July 21, 2022

Bulletin# 2022-018

The 4th Amendment acts as a control on the authority of government to intrude into private property. A search of property may be conducted whenever a warrant supported by probable cause has been issued by a judge. Without a warrant, officers may only conduct a search under very specific circumstances. Case law has defined those circumstances when a warrantless search of a vehicle may be conducted.

Officers may encounter community members and their vehicles for a variety of reasons including, but not limited to enforcement stops, suspicious vehicle contacts, and stranded motorists. Often those encounters involve persons who are not engaged in serious criminal activity. Therefore, all vehicle related contacts need to be conducted in a manner consistent with procedural justice which reinforces police legitimacy with the community. All enforcement actions, including warrantless searches, must be justified by specific articulable facts, and be conducted in a manner consistent with applicable law and with the public's trust in mind.

The purpose of this bulletin is to remind officers of the principles justifying a warrantless vehicle search and to remind officers various aspects of vehicle searches are not interchangeable. A warrantless search of a vehicle may occur under the following circumstances:

Consent:

An officer may request consent to search a vehicle at any time. Although a request for consent to search does not require reasonable suspicion, officers should consider the likelihood of discovering illegal activity when deciding whether to request consent. Additionally, the request for consent and the search must occur during the amount of time necessary to address the original violation justifying the detention.¹

Consent may only be obtained from a person who has the legal authority or "apparent" legal authority over the vehicle or items to be searched.

All consent searches must be voluntary. During a detention, the voluntariness of the consent will be determined by the totality of the circumstances related to the manner in which the consent request was

¹ [Gallardo \(2005\) 130 Cal.App.4th 234, 239](#)

ALL DEPARTMENT PERSONNEL
SUBJECT: WARRANTLESS SEARCHES OF VEHICLES

July 21, 2022

Page 2

made. The consent should be obtained during the stop and not after a citation has been issued or driver's license returned (unless the post-citation consent is written). Officers should not ask for consent multiple times. Repeated requests can invoke subtle intimidation which casts doubt on the "voluntary quality" of the consent. Although it is not required, a written and signed *Consent to Search Form* will make it easier to prove in court the consent was voluntary.²

All consent searches should be limited in scope to only those areas a reasonable person would believe was intended in the initial request. For example, consent searches of vehicles should generally be limited to the passenger compartment, glove box, and center console. After an initial search, officers can ask for additional consent to expand the search into other areas. For example, opening additional bags and containers and/or manipulation of the vehicle's paneling should only occur after obtaining additional consent authorizing the increased scope and intensity of the search.³

Consent can be revoked at any time and the consenting party should be in a position where they are capable of withdrawing consent.

It is recommended officers seek consent to search even when they have another authority to conduct a warrantless search.

Incident to Arrest:

An officer may conduct a search of a vehicle incident to the arrest of an occupant only under the following circumstances:

- The arrestee is unsecured and could reasonably gain access to the passenger compartment of the vehicle.
- It would be reasonable to believe the passenger compartment of the vehicle contains evidence of the crime for which the occupant was arrested.⁴

If an officer has arrested and handcuffed an occupant away from their vehicle, the officer cannot then conduct a search of the vehicle incident to the arrest. It is unreasonable under those circumstances to conclude the handcuffed suspect could access the vehicle and reach into the passenger compartment to retrieve a weapon or destroy evidence.

When vehicle searches incident to arrest are justified, they are limited to the passenger compartment and unlocked containers and objects found in it. A search incident to arrest does not authorize an expanded search of other areas beyond the passenger compartment, such as the trunk. Any search extending beyond the passenger compartment of a vehicle must be justified under one or more of the other warrantless search exceptions (e.g., probable cause/automobile exception or inventory search).

An incident to arrest search for evidence must be associated to the crime for which the vehicle's occupant was arrested. For example, if the occupant was arrested for resisting arrest (a violation of Penal Code section 148(a)) while standing next to their car, a search incident to that arrest would not

² [Chavez-Valenzuela \(9th Cir. 2001\) 268 F.3d 719](#)

³ [Jimeno \(1991\) 500 U.S. 248, 251](#)

⁴ [Arizona v. Gant \(2009\) 556 U.S. 332](#)

ALL DEPARTMENT PERSONNEL
SUBJECT: WARRANTLESS SEARCHES OF VEHICLES

July 21, 2022

Page 3

be justified because evidence related to a violation of 148(a) PC could not reasonably be believed to be in the vehicle.

As with all searches, officers must document the specific articulable facts which led them to reasonably believe the arrestee could access a weapon or evidence in the passenger compartment of the vehicle. In addition to the report, the Body Worn Camera (BWC) is a valuable tool for documenting the circumstances and events preceding a warrantless search.

Limited Searches for Weapons, Identification, or Registration:

During a detention of the occupants of a vehicle, officers may conduct a limited warrantless search in situations where there are sufficient articulable facts to justify it.

Although officers may not conduct a full search of a vehicle during a detention, they are entitled to conduct a limited, protective sweep of the passenger compartment in areas where a weapon could be placed or hidden if they believe, based on specific facts, the suspect is dangerous and may gain immediate access to a weapon. This exception does not mean officers can search a vehicle whenever they conduct a stop based solely on the fear a weapon could be in the vehicle. Rather, officers must articulate the specific facts which would lead a reasonable person to believe the occupant poses a danger to the officer, a weapon is reasonably believed to be in the vehicle, and the occupant could access it.⁵

In 2019 the California Supreme Court held that the Fourth Amendment does not contain an exception to the warrant requirement for searches to locate a driver's identification following a traffic stop.⁶ However, Vehicle Code section 40302(a) states, when a person has been detained for a vehicle code violation, they may be arrested and taken before a magistrate if they fail to present their identification.

Officers may conduct a limited search for the vehicle registration in any situation where the driver, upon an officer's request, fails to produce the necessary documentation. This search must be carried out before the citation is issued. The search is not restricted to "traditional repositories," such as a glove compartment or a sun visor but may include any area within the vehicle where such documentation reasonably may be expected to be found.⁷ A search of a trunk for a registration would not be reasonable.

Officers must remember not to conduct a further, full search of the vehicle unless they have valid consent for an expanded scope or articulable "probable cause." Because these searches are limited beyond what is already considered an exemption to the Constitutional warrant requirement, officers should sufficiently document their reasons on BWC, event notes, and/or a written report.

Vehicle Impound Inventory:

Officers may conduct a seizure of a vehicle in accordance with Duty Manual section L 5210 SEIZURES OF VEHICLES when:

- The vehicle is seized as evidence

⁵ [Long \(1983\) 463 U.S.1032](#); [Lafitte \(1989\) 211 Cal.App.3d 1429](#)

⁶ [Lopez \(2019\) 8 Cal.5th 353](#)

⁷ [Arturo D. \(2002\) 27 Cal.4th 60](#)

ALL DEPARTMENT PERSONNEL
SUBJECT: WARRANTLESS SEARCHES OF VEHICLES

July 21, 2022

Page 4

- The driver is arrested and unable to provide direction to dispose of the vehicle in another lawful manner
- The vehicle is in violation of certain parking or traffic regulations
- The vehicle is obviously abandoned
- The vehicle is hazardous to the public health, safety, and welfare
- The vehicle is stolen, and the owner agrees to storage or is unable to retrieve it in the field

In 2019, the California Legislature amended Vehicle Code section 22650 to require any vehicle impounded for an arrested driver must be to achieve a "community caretaking" need. There must be a justification for the impound based on a need to ensure the safe flow of traffic or to protect property from theft or vandalism.

When officers impound a vehicle, they shall conduct an inventory search:

- To protect the owner's property while it is in impound
- To protect the officer against claims of lost, stolen, or vandalized property
- For officer safety⁸

Inventory searches must be conducted under the standardized Police Department procedures outlined in Duty Manual sections L 5403 PROCEDURES TO FOLLOW IN ORDER TO STORE/IMPOUND A VEHICLE and L 5406 INVENTORY OF STORED/IMPOUNDED VEHICLES. The search can only occur after the vehicle has been lawfully seized. Inventory searches are limited in scope to areas where items of value or weapons are likely to be stored and cannot be used as a ruse to conduct an investigatory search for contraband or evidence. If an officer has probable cause to believe an impounded vehicle contains contraband or evidence a search warrant should be obtained prior to conducting an expanded search of the vehicle. However, nothing precludes an officer from seizing contraband discovered within the scope of an inventory search.

Probable Cause/Automobile Exception to the 4th Amendment:

When an officer has probable cause to believe a vehicle, either locked or unlocked, contains evidence, contraband, instruments of a crime or weapons, all those areas of the vehicle which could contain such items may be searched without a search warrant whenever the following circumstances exist:

- There is reasonable belief the vehicle can be easily driven or removed from the area, and a delay to obtain a search warrant would result in the destruction or loss of evidence.
- There is reasonable belief the nature of the circumstances or evidence does not allow for sufficient time to obtain a search warrant before the evidence is destroyed, deteriorates, or is otherwise lost.

The probable cause exception for a warrantless search of automobiles is different from the incident to arrest justification, even though officers may encounter situations where both apply. To conduct a probable cause search of a vehicle, officers must have sufficient articulable facts based on knowledge, training, etc. to provide a "fair probability" the evidence they are seeking will be found inside the

⁸ [Bertine \(1987\) 479 U.S. 367, 372](#); [Opperman \(1976\) 428 U.S. 364, 369](#); [Needham \(2000\) 79 Cal.App.4th 260, 266](#)

ALL DEPARTMENT PERSONNEL
SUBJECT: WARRANTLESS SEARCHES OF VEHICLES

July 21, 2022

Page 5

vehicle.⁹ This is the same level of probable cause necessary to obtain a search warrant. It is important to note this exemption applies only to the vehicle itself and would not justify an entry onto the curtilage of private property to search a vehicle.

A probable cause search of a vehicle is based on the lower expectation of privacy people have in their vehicles and the nature of a vehicle's mobility creating a greater risk for destruction of evidence. Therefore, a vehicle must reasonably appear to be mobile.¹⁰ Additionally, if a vehicle is seized and impounded for the investigation of a crime, a search warrant should be obtained before conducting a search.

As with the other warrantless searches, it is important for officers to fully document the factual basis justifying a probable cause search. The BWC is a valuable resource to document, in real time, the observations and information which justify a warrantless search of a vehicle. Officers should consider narrating the facts supporting their belief the vehicle contains evidence of criminal activity and/or contraband.

Plain View:

A plain view seizure is not a search but the observation of contraband or evidence from a location the officer had a lawful right to be. If an officer observes an illegal item from outside the vehicle, they may enter the vehicle to seize that item. Additionally, if the officer has already lawfully entered the vehicle under one of the warrantless search exceptions and observes contraband or evidence, they may seize it. This includes items which may have been outside of the initial reasonable scope of the search but in view of an officer who is conducting that search within the scope. For example, an officer enters a vehicle to retrieve documentation of registration. While looking into the center console, the officer observes the grip of a firearm protruding between the seat and the console. The officer may seize that firearm. However, once the item is seized, any expanded search of the vehicle would have to be justified under the warrantless search exceptions and supported by specific facts.

Officers should remember any warrantless search will have increased scrutiny by the court and the public. As these exceptions to the 4th Amendment are not well known by the public, officers should avail themselves of the opportunity to explain their actions whenever possible.



Anthony Mata
Chief of Police

AM:SD:DK:CS

⁹ [Harris \(2013\) 568 U.S. 237, 243-244](#)

¹⁰ [Hatley \(9th Cir. 1993\) 999 F.2d 392, 395](#)