



DEPARTMENT NOTICE

21-001
01/05/21

Warrantless Searches of Vehicles for Identification or Registration Documents

The California Supreme Court has recently ruled that “the desire to obtain a driver’s identification following a traffic stop does not constitute an independent, categorical exception to the Fourth Amendment’s warrant requirement.” (*People v. Lopez* (2019) 8 Cal.5th 353.) In deciding *Lopez*, the California Supreme Court overruled, at least in part, *In re Arturo D.* (2002) 27 Cal.4th 60., which had been the governing case allowing a limited warrantless search of a vehicle following a lawful traffic stop, for registration and/or identification in locations where such documentation could reasonably be found.

It is Department policy, consistent with the ruling in Lopez, that during a routine traffic stop, if a subject is unable to produce proper documentation, members shall not conduct a warrantless search of a vehicle for registration or identification documents absent another recognized warrant exception.

The *Lopez* decision acknowledged the need to ensure that law enforcement officers have all the information necessary to issue a citation and notice to appear for a traffic violation. The court gave a number of alternatives and options that are less intrusive than a search, such as asking questions of a subject and verifying information through radio and computer records checks. Officers may seek the driver’s consent to search the vehicle or in some instances exigent circumstances may permit a vehicle search.

The court went on to explain that if officers have reason to believe that a subject provides false information there are a number of other options at their disposal as the issue is no longer enforcing a traffic violation. Lying about one’s identity (Penal Code section 148.9) or knowingly providing false information (Vehicle Code section 31) is a criminal offense punishable by imprisonment in county jail. Under the “automobile exception” to the warrant requirement, an officer may search a vehicle if the officer has probable cause to believe that evidence of that crime will be found inside. Identification may be evidence of the crime of lying about one’s identity.

Members are reminded that pursuant to DGO 9.01, “when issuing a moving violation, an officer shall reasonably ascertain the true identity of the violator. If this is not possible through valid identification or other efforts, the violator shall be booked and the ‘inability to ascertain identity’ entered on the booking form as the reason for not issuing a citation (see DGO 5.06, Citation Release).” Tow authority policy and procedure is set forth in DGO 9.06 and relevant Department Bulletins.

Warrant Exceptions for Vehicle Searches:


Members are reminded that absent specific exceptions, law enforcement officers are required to obtain a warrant before conducting a search. There are a number of exceptions to the Fourth

Amendment's warrant requirement when it comes to a search of a motor vehicle and items within it. The following is a brief summary of recognized exceptions to the warrant requirement.

- **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 (captured on BWC or otherwise recorded) or in writing (Permission to Search – SFPD Form 468).
 - The consent must be voluntary (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.
- **Probation or parole search**
 - Must verify search condition prior to search.
 - Search is reasonable as long as it is not arbitrary, capricious, or harassing.
- **Probable cause search**
 - Commonly known and the "automobile exception" or "vehicle exception."
 - If members have probable cause to believe the vehicle contains contraband or evidence of a crime and a magistrate would sign a search warrant, it is legal to search the vehicle without a warrant.
 - Vehicle must be lawfully accessible and in a public place.
 - Scope depends on items members are searching for.
 - If a member is unsure of whether probable cause exists, best practice is to obtain a search warrant.
- **Seizure of item in plain view**
 - Members may seize evidence in plain view if: (1) members have a lawful vantage point; (2) members have probable cause to believe the item is evidence of a crime; and (3) members have lawful access to the evidence.
 - Members have a lawful vantage point if they did not violate a subject's Fourth Amendment rights by getting into the position to see the item.
 - Members have lawful access to the evidence if the vehicle is parked in a public area or place where the subject has no reasonable expectation of privacy.
- **Protective search**
 - Commonly known as a "vehicle frisk."
 - Requires (1) lawful detention of an occupant in the vehicle and (2) reason to believe there is a 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**
 - Search is permitted if (1) there is probable cause to arrest and the arrestee is 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 scope of these searches should be limited to the passenger compartment of the vehicle.

- **Instrumentality search**
 - If members have probable cause to believe that the vehicle, itself, was the means by which the crime was committed (e.g. hit-and-run or kidnap vehicle) or was itself evidence.
- **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.
- **Exigent circumstances**
 - Exigent circumstances exist if there is a "compelling need for official action," if the circumstances present a "immediate major crisis," or the potential for "real, immediate, and serious consequences" if nothing is done. It is a question of, is this an emergency?
 - Members must reasonably believe that entry and search is necessary to protect life or property from imminent danger or damage.
- **VIN search**
 - If a vehicle is located in a public place, members 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.

Members who need clarification on any of these types of searches are encouraged to ask a supervisor or contact the Legal Division of the Risk Management Office.


 WILLIAM SCOTT
 Chief of Police

Per DN 20-150, all sworn & non-sworn members shall electronically acknowledge this Department Document in PowerDMS. Members whose duties are relevant to this Document shall be held responsible for compliance. Any questions regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional information.