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Chapter 202 - Limits on Authority			
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SEARCH AND SEIZURE

202.2 - 1 PURPOSE

To establish guidelines and procedures for conducting searches by members of the Detroit Police Department (DPD) including searches by consent, searches of motor vehicles, searches of persons (e.g., incident to an arrest, detainee inventory, body cavity and strip searches), investigatory stops, stops and frisks, searches under exigent circumstances and other searches authorized by state and federal law.

202.2 - 2 POLICY

Officers shall observe the rights of citizens under the Fourth Amendment to the U.S. Constitution which guarantees the right of people to be free from unreasonable searches and seizures of their homes, persons and things. Searches shall be accomplished pursuant to a valid search warrant obtained upon probable cause, except in those instances where there is a clearly recognized legal exception to the warrant requirement. Officers conducting a search and/or seizure, with or without a warrant, shall be courteous and show respect for the rights, welfare and property of the citizens involved.

202.2 - 3 Definitions

202.2 - 3.1 Body Cavity Search

A physical intrusion into the interior of the human body not visible by normal observation. The search shall only be conducted by a qualified medical professional and only with a valid search warrant.

202.2 - 3.2 Container

An item capable of holding another item.

202.2 - 3.3 Open View

Situations when there is no reasonable expectation of privacy, it is not a search. A member sees what the public could see.

202.2 - 3.4 Plain View

Involves a situation when the police are lawfully in an area that is protected by the Fourth Amendment. While in the area the police find items that they have probable cause to believe could be evidence or contraband, and it is immediately apparent to them.

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202.2 - 3.5 Probable Cause

In the arrest context, a reasonable belief that an individual has committed, is committing, or is about to commit an offense.¹ In the search context, a reasonable belief that the person(s) or items subject to seizure will be found in place specified at the location.

202.2 - 3.6 Reasonable Suspicion

The specific facts and reasonable inferences drawn from those facts to convince an ordinarily prudent person that criminality is at hand.

202.2 - 3.7 Search

An intrusion on an individual's reasonable expectation of privacy.

202.2 - 3.8 Strip Search

A search of a person requiring the removal of a person's clothing to expose underclothing, breasts, buttocks or genitals.

202.2 - 3.9 Vehicle

All vehicles impelled on the public highways by mechanical power, except traction engines, road rollers and such vehicle as run only upon rails or tracks.

202.2 - 4 Procedures

202.2 - 4.1 Search Warrant

1. An application for a search warrant is presented to a judge for review. It outlines the particular contraband or evidence to be seized that a member believes is present on the premises and why. The document also describes the exact geographical location of the property or place, what the place looks like and how the member learned about these things.
2. If the judge concludes that there is probable cause to support the application (e.g., belief that seizable property exists in a particular place or on a particular person), he or she will issue a search warrant. This document permits police officers to search the property without the owner's permission and seize the items named in the warrant.
3. After the officer executes the warrant, he or she must file a return of search warrant (within 24 hours) with the court itemizing what (if anything) was seized. (Refer to Directive 202.3 Search Warrants)

¹ It should be noted that the definition of probable cause includes a reasonable belief that a person is "about to commit" a crime. MCL 750.92 requires that "[a]ny person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense" has committed an attempt crime. If a person has not taken any act towards the commission of a criminal offense, there is no probable cause for an arrest. However, an investigative detention (*Terry v. Ohio*, 392 U.S. 1, 1968) is permitted when there exists reasonable articulable suspicion. Reasonable articulable suspicion exists where the facts and reasonable inferences drawn from those facts convince an ordinarily prudent person that criminality is at hand."

² When a frisk is conducted during a Tier 2 Investigative Detention reasonable suspicion for the frisk is required. Please see 202.2-11.3.

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202.2 - 4.2 Exceptions to the Warrant Requirement

1. Courts and department policy recognize that some situations may require officers to take immediate action; and, as a result, have exempted officers from the usual requirement of a warrant under some circumstances. The following are circumstances that may exempt an officer from securing a search warrant prior to a search:
 - a. Consent searches;
 - b. Community Caretaking (Emergency Situations)search;
 - c. Exigent Circumstances search;
 - d. Plain view;
 - e. Abandoned personal property;
 - f. Executing arrest warrants;
 - g. Terry Stops and Frisks;
 - h. Searches incident to an arrest;
 - i. Detainee inventory searches; and
 - j. Vehicle searches (in specific instances)

202.2 - 5 Consent Searches

202.2 - 5.1 General

1. A search warrant, probable cause, or reasonable suspicion is not necessary to conduct a search where a person, who has authority or control over the thing or place to be searched, consents to the search. An officer may merely ask for permission from someone with authority or control over the premises or the item he or she wishes to search. If that person grants permission, the search may take place.
2. Written consent should be obtained whenever possible before conducting a search based on consent by utilizing the Consent to Search Form (DPD 675).
3. The sole justification for a consent search is the existence of a knowing, intelligent, and voluntary consent. The legal standard for determining if consent was given voluntarily is an evaluation of the totality of the circumstances. If an officer requests consent from a citizen under circumstances which a reasonable person would consider coercive, then the officer must seek a warrant (if probable cause exists) prior to a search.
4. A person need not be told that they have a right to refuse consent. A member may not misrepresent the limits of his/her authority and should accurately answer any questions that are asked.
5. A person may withdraw their consent at any time and has the right to limit the scope of their consent (e.g., a person can consent to the search of only one room of a house). Revocation of consent does not constitute probable cause that contraband or evidence of a crime will be found.
6. All consent searches must be conducted reasonably. For example, consent to search the trunk would justify the opening of containers, but unless explicitly authorized, it would be unreasonable to believe that general consent would authorize a member to break open and damage locked containers.

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202.2 - 5.2 Consent during Traffic Stops

1. Once a member issues a civil infraction or a verbal warning, the officer shall return the license, registration, and certificate of insurance before asking for consent to search the motor vehicle.
2. The officer may advise the driver, but is not required to, that he is free to go before requesting consent to search.

202.2 - 5.3 Third Party Consent

1. One person may not “give up” the constitutional rights of another person.
2. Third party consent recognizes that people have “common authority” over a piece of property or premises at which property is stored and may give consent in their own right. Common authority rests “on mutual use of the property by persons having joint access or control for most purposes” (United States v. Matlock, 415 U.S. 164 [1974]).
3. Common authority is not the same as legal ownership. A person can have common authority, but not have legal ownership (e.g. one person who resides with another in the other person’s apartment would have no legal ownership or is the signed contractual tenant, but would have common authority in shared areas).

202.2 - 5.4 Consent by Parents

There is no common rule or guidelines that a parent cannot give valid consent to search a room of an adult son or daughter. Each case depends on the circumstances because the parent may have actual common authority based on joint access or control.

202.2 - 5.5 Co-occupant Objection to Consent Searches

In dealing with third party consent where a co-occupant is at the scene and refuses consent, a warrantless search has been deemed unreasonable because of the objecting co-occupant. As a general rule, if one person **who** possesses common authority to give consent to jointly controlled premises gives consent, but a second co-occupant is physically present and refuses to give permission to search, a consent search is not justified.

202.2 - 6 Community Caretaking (Emergency Situations)

A search warrant is not necessary in emergency situations if a person within the dwelling is in need of aid or assistance. Officers must be able to articulate the specific facts that an emergency did exist and that entry was needed to assist. A guiding principle is whether an officer would be derelict in their duties for not entering.

202.2 - 7 Exigent Circumstances

The following exigent circumstances would justify a warrantless search:

1. If officers have a reasonable belief that contraband is about to be removed or destroyed, he or she may conduct a search and seizure, without a warrant, provided probable cause exists, and it can be shown that the search was

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necessary to prevent the possible imminent destruction of evidence. (Not all crimes are serious enough to create exigent circumstances.);

2. If officers are pursuing a felony suspect, and have reason to believe that he or she has entered a particular premise, they may enter those premises to search for him or her. To justify warrantless entry following the pursuit, the arrest process must have begun away from the premises and the offender is trying to avoid arrest.

202.2 - 8 Plain View Doctrine

1. A plain view seizure is, technically, not a search. To make a plain view seizure of property (contraband or evidence of a crime) two requirements must be met:
 - a. Officers are lawfully present and observe the contraband in open view; and
 - b. It must be immediately apparent to the officer that the items he or she observes may be evidence of a crime, contraband, or otherwise subject to seizure. An officer may not move an item to look underneath for serial numbers or identifying marks.
2. From time to time an officer may have a lawful reason to open a vehicle door or enter a vehicle (e.g., to examine the vehicle identification number, check for defective equipment; assist a motorist in moving a disabled vehicle). If the officer's actions are reasonable and are narrowly limited to those necessary to accomplish their goal, and if while properly within the vehicle the member sees a weapon carried in violation of the law or contraband, then the officer may seize it.

202.2 - 9 Abandoned Personal Property

A search warrant is not required for personal property that has been abandoned. To constitute abandoned property, two conditions must apply:

1. The property was voluntarily abandoned; and
2. The property was discarded outside the area in which someone has a reasonable expectation of privacy (e.g., in a trash receptacle in an alley).

202.2 - 10 Executing Arrest Warrants

1. Officers with an arrest warrant may search for a person in their home provided the warrant is valid and reason to believe that the suspect is home at the time of the search. The search for the suspect must be limited to places where a person may be found. For example, an officer may not open a dresser drawer if it does not appear that a person is able to hide there.
2. To search for a person in the home of a third party an officer must have a search warrant.
3. Officers may undertake a "protective sweep" of the premises where the arrest is for a violent crime and the arrest takes place without a warrant. The purpose of the "protective sweep" is to discover persons on the premises who might present a danger to officers. In order to extend a "protective sweep" beyond closets and adjoining spaces, officers must have reasonable suspicion for fearing that persons may be on

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the premises that pose a threat. In such cases the sweep is limited to places where a person may hide.

202.2 - 11 Search and Seizures of Persons

An understanding of this area of the law requires an understanding that courts have classified police interaction with citizens in three categories. Police officers interact with the public in many different ways, only some of which involve the enforcement of criminal laws. Depending on the police conduct, the Fourth Amendment may or may not come into play and whether constitutional restrictions apply depends on the intrusiveness of the police conduct and whether the conduct constitutes either a "seizure" or "search" as those terms are defined by case law. If the Fourth Amendment applies, it may require either reasonable suspicion or probable cause. Obviously, if probable cause is required, the police violate the Constitution if they only have reasonable suspicion.

202.2 - 11.1 Interactions with Citizens

Law Enforcement and citizen contacts can be broken down in three (3) tiers of conduct, each having different levels of searches and seizures of a person. The following is the three (3) tiers of interactions with citizens and their legal standards:

Tier 1 -- Informational Encounters

Does it constitute a seizure?	No
Does it constitute a search?	No
Is the police conduct covered by the Fourth Amendment?	No
What level of justification must the officer have?	None

Tier 2 - Investigative Detentions (Terry Stop)

Does it constitute a Fourth Amendment seizure?	Yes
Does it constitute a Fourth Amendment search ² ?	Yes
Is the police conduct covered by the Fourth Amendment?	Yes
What level of justification is required?	Reasonable Suspicion

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Tier 3 - Arrests (or equivalent)

Does it constitute a seizure?	Yes
Does it constitute a search?	Yes
Is it governed by the Fourth Amendment?	Yes
What justification is required?	Probable Cause

202.2 - 11.2 Informational Encounters (Tier 1)

The first tier is based on the recognition that not all personal interaction between a citizen and the police rises to the level of either a Fourth Amendment "search" or a Fourth Amendment "seizure." Therefore, Tier I conduct is usefully conceived as a "non-seizure."

The Constitution does not forbid the police asking for a citizen agreeing to voluntarily cooperating with the police. "A consensual encounter is simply the voluntary cooperation of a private citizen in response to non-coercive questioning by a law enforcement official."

A person has been seized within the meaning of the Fourth Amendment only if, in view of the circumstances, a reasonable person would conclude that he was not free to leave. In some circumstances, it is useful to frame the question as whether the subject of the interaction with the police would reasonably have felt free to terminate the conversation.

This is an objective standard. The person's subjective belief that she was not free to leave or to terminate the conversation is not determinative because that person may or may not be a "reasonable person." Although doing so is a strong indication that the person was not detained, an officer is not required to advise the person that he is free to leave or free to decline to cooperate or answer questions. Several factors can be used to determine if a officer/citizen contact is an informational encounter or if it rises to another tier level:

1. Language used by officer
2. Commands
3. Threatening presence of several officers
4. Tone of voice
5. Display of weapon
6. Physical touching
7. Words or actions indicating compliance with the officer's request might be compelled

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8. Failure to return documents

Simply asking if a person is willing to step aside and talk with the police is a consensual encounter that implicates no Fourth Amendment interest. Cooperation may not be induced by intimidating or coercive means. The officer cannot act -- by words or actions -- in a manner that would lead a reasonable person to conclude that he was required to answer questions or would not be allowed to leave if he attempted to do so.

GUIDELINES FOR INFORMATIONAL ENCOUNTERS

1. It should not be called a "stop" in the report or during testimony because reasonable suspicion is required for the type of Fourth Amendment seizure commonly referred to as a "stop."
2. Asking a person "would you mind" answering a few questions is advisable.
3. Do not make demands or give instructions. A request for voluntary cooperation must be made in a manner that does not indicate that compliance will be required.
4. Do not frisk without reasonable suspicion or consent.
5. Do not give *Miranda* warnings.
6. Do not use any force.
7. Do not detain the person if he refuses to cooperate and attempts to leave. The failure to cooperate does not constitute reasonable suspicion justifying an investigative detention. Likewise, declining to give consent to frisk or search does not constitute reasonable suspicion or probable cause.
8. Do not arrest for refusing to provide a name.
9. Except in appropriate circumstances, do not arrest for providing a false name or false information during an investigative detention. The Michigan Supreme Court has ruled that a person cannot be charged with obstructing a police officer in the performance of duty (MCL 750.479) for giving a false name because that statute was construed to require threatened or actual physical interference. However, MCL 257.324(h) makes it a misdemeanor to furnish a peace officer false, forged, fictitious or misleading verbal or written identification identifying the person as another person, if (and only if) the person is detained for a violation of the motor vehicle code. However, in combination with other circumstances, an attempt to disguise one's identity might ripen reasonable suspicion justifying an investigative detention into an arrest for a crime other than making a false police report. (Refer to Training Directive #12-08 New Law on Providing False Information in Criminal Investigations)
10. Think through the answer if asked on cross-examination by defense counsel "what would you have done, officer, if my client had not cooperated and walked away?" While the duty is always to answer all questions truthfully, the truth may be that the officer had not decided on the course of action that would be followed under various contingencies that never happened. Courts do not ordinarily

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permit questions that call for speculation. The prosecutor's objection to the question should also be sustained on another ground. Since the relevant test for a seizure is defined by the objectively reasonable conclusion that would be reached under the circumstances on whether the person is free to leave, the unexpressed intention of the officer to detain the person if he were to walk away is not relevant to the custody inquiry.

11. While not legally required, specifically informing the subject that he is not being detained and is free to leave if he chooses substantially increases the likelihood that a court will categorize the event as an informational encounter.

202.2 - 11.3 Investigatory Detentions (Tier 2)

An officer may stop an individual for the purpose of conducting an investigatory stop only where reasonable suspicion is present. Reasonable suspicion must be more than a hunch or feeling, but need not meet the test for probable cause sufficient to make an arrest. The officer must be able to point to the specific facts that, when taken together with rational inferences, reasonably warranted the stop. Officers shall, if feasible and if it does not pose a danger to the officer or others, adhere to the following guidelines:

- a. Officers shall be courteous at all times during the contact but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions;
- b. If not in uniform, officers shall clearly identify him or herself as a law enforcement officer, by announcing his or her identity and displaying departmental identification;
- c. Before approaching more than one suspect, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives;
- d. Officers shall confine their questions to those concerning the suspect's identity and other questions necessary to resolve the officer's suspicions; and
- e. Suspects are not required, nor can they be compelled, to answer questions posed during an investigatory stop. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to make an arrest although it may provide sufficient justification for additional observation and/or investigation.

“Pat-Down” (Frisk)

Although the words “stop” and “frisk” have become synonymous with each other, they involve two distinct acts and require separate justification by officers: the investigatory stop which is a brief detention of a person because of suspected criminal activity and the “pat-down” (frisk) which is a limited search for weapons for officer safety. Not every investigatory stop justifies a “pat-down” (frisk).

1. A frisk is authorized only when the officer has reasonable suspicion that the person is armed and presently dangerous and the scope of the frisk is narrowly tailored to those specific reasons.
2. Clearly, not every investigatory stop poses sufficient justification for conducting a “pat-down.” An officer must have facts indicating that the person may be armed and presently dangerous (e.g., the type of crime suspected, prior knowledge of the

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suspect's propensity for violence, any indication that the suspect is armed, etc.). For example, there is an obvious difference between what is allowed during an "investigative stop" of a person sleeping on a park bench after the park has closed, as opposed to a person stopped for possession of narcotics. In the latter case, courts acknowledge that persons who engage in serious criminal conduct commonly carry weapons, so the officer's fear of the person is presumptively reasonable. The person sleeping on the park bench may be frisked only if the officer can articulate reasonable grounds for believing that he or she is armed and dangerous.

3. If an officer detects an object during a "pat-down" that he/she reasonably believes is contraband, the officer may seize it under the "plain feel" doctrine. However, the "plain feel" doctrine applies only if the officer has the right to conduct the "pat down" in the first place (just as the "plain view" doctrine applies only where the police have the right to be in the position from which they got the view). In addition, the officer may not conduct the "pat-down" in a manner that exceeds what is necessary to determine whether the person has a weapon.
4. During a traffic stop officers shall take reasonable steps to protect themselves. Officers may direct the occupants to step out of the vehicle. If the officer has a reasonable suspicion that the person is armed and dangerous, the officer may conduct a "pat-down." It is of critical importance that officers be able to state specifically what it was about this situation that made them suspicious. It is not enough to say; "I was suspicious." Officers shall include all details in their CRISNET Report as to those circumstances that attracted their attention to the suspect or the suspect's vehicle and made them suspicious.

Procedures for Performing a "Pat-Down"

When reasonable suspicion exists to perform a "pat down," it should be performed with due caution, restraint and sensitivity. If reasonable suspicion exists to perform a "pat-down," it shall be conducted as follows:

1. If possible, "pat-downs" should be conducted by at least two officers, one of whom performs the "pat-down" while the other provides protective cover;
2. Officers are permitted only to externally feel the outer clothing of the suspect. The evidence must be "immediately apparent" to the officer and the fabric cannot be manipulated. Officers may not place their hands in pockets unless they feel an object that could reasonably resemble a weapon, e.g., firearm, knife, etc.; and
3. If the external feeling of the suspect's clothing fails to disclose evidence of a weapon, no further search may be made. If a weapon is found, the possession of which is a crime, the officer may make an arrest of the suspect and complete a full custodial search of the suspect. The search shall not be discontinued simply because one weapon has been found.

Recording the Investigatory Stop or Stop and Frisk

1. Officers must check either the "FRISK" or "STOP" box on their Activity Log.
2. Officers shall articulate and document on their Activity Log and CRISNET Report the precise description of all the facts and circumstances of the initial stop or stop and frisk.

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3. All members shall turn their Activity Logs in to their supervisor by the end of their shift.
4. Supervisors shall review Activity Logs for all investigatory stops or stops and frisks conducted by members of their command. Those unsupported by reasonable suspicion shall be documented on an Investigatory Stop or Stop and Frisk Form (UF-003), within twenty-four (24) hours of receiving the Activity Log.

Commander's Review Report

The commander of the district/precinct and, if applicable, the commander that the specialized unit reports to shall review in writing all reported EXCEPTIONS to this department's investigatory stop and frisk policy. The Commander's Review Report (U-59) shall be completed within seven (7) days of receiving the Investigatory Stop or Stop and Frisk Form (UF-003). The Commander's Review Report shall include an evaluation of the actions taken to correct the EXCEPTION and whether any corrective or non-disciplinary action was taken.

202.2 - 11.4 Arrests (Tier 3)

The investigative detention and protective search authorized by Terry v. Ohio is limited. It authorizes only a limited detention and a limited search. If the police exceed those limits, the conduct enters Tier 3 and is illegal in the absence of probable cause. Every arrest, and every seizure having the essential attributes of a formal arrest, violates the Constitution unless supported by probable cause.

A person's mere presence or proximity to criminal activity does not, without more, support probable cause to search or arrest that person.

202.2 - 12 Detainee Inventory Searches

1. A search of the arrestee's personal effects at the district/precinct, as part of the booking process, is justified as an inventory procedure. An inventory search protects the department from false claims of missing or damaged property and prevents the introduction of contraband into the system.
2. Any contraband or evidence found during a detainee inventory search is admissible in court and can form the basis of new charge(s) being filed against the detainee.

202.2 - 13 Search Incident to an Arrest

1. The most common warrantless search is the search of a person under arrest. The major reason for this exemption is to protect the officer from a potential attack. Having to wait for a search warrant could increase the officer's exposure to possible injury from weapons that the arrested person may have.
2. For this exemption to be applicable there must be: a lawful custodial arrest; the search is for weapons and evidence located within the immediate control of the arrestee; and the search is conducted contemporaneously (almost immediately) to the arrest.

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202.2 - 13.1 Strip Searches

1. An officer's authority to conduct a strip search incident to a lawful arrest is restricted to persons known or suspected of having committed a felony.
2. A person arrested for a misdemeanor offense shall not be strip-searched unless there exists probable cause to believe that the arrested person is concealing a weapon, a controlled substance, or evidence of a crime.
3. Persons arrested for misdemeanor offenses may be strip searched only after written authorization is documented by preparation of the Strip Search Authorization Form (DPD 190). Only the Chief of Police, or designee, (Commander of a district/precinct or specialized unit, Deputy Chief, Assistant Chief or Field Duty Officer) may give written authorization.
4. Distribution is as indicated on the form. The original shall be given directly to the person being searched. A CRISNET report shall also be prepared by the arresting officer to include relative information concerning the search.
5. A person of the same sex as the detainee shall conduct the search out of the view of persons not conducting or necessary to assist with the search. A member assisting in a strip search shall also be of the same sex as the person being searched.

202.2 - 13.2 Body Cavity Searches

1. Under no circumstances shall there be a body cavity search of an arrested person by department personnel.
2. Where there exists probable cause to support a body cavity search, the member shall apply for a search warrant.
3. If a search warrant is granted, the detainee shall be taken to Detroit Receiving Hospital (DRH), where a qualified medical professional will conduct the search.
4. Any member of the DPD witnessing the search shall be of the same sex of the person that is being searched.
5. The member of this department that applied for the search warrant shall document the search on the return of search warrant and prepare a CRISNET report including the following information:
 - a. Name and sex of person subjected to the search;
 - b. Name and sex of all persons conducting, assisting and witnessing the search;
 - c. Time, date, and place of the search;
 - d. Name of Judge authorizing the search warrant;
 - e. A list of all items recovered from the person searched; and
 - f. Attach a copy of the search warrant and the return of the search warrant to the CRISNET report.

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202.2 - 14 Vehicle Searches

202.2 - 14. 1 General

For Fourth Amendment purposes, the automobile has a lesser expectation of privacy when compared to a dwelling and therefore there is a vehicle exception to the search warrant requirement. The vehicle exception is based upon two (2) main rationales:

1. A vehicle is readily mobile; and
2. Is subject to a range of police regulations inapplicable to a fixed dwelling (e.g., licensing, etc.).

Consent search

When the owner or driver voluntarily consents to a search of a vehicle. The consent must be voluntary and not made under any threat or compulsion. The test for a valid consent search is based on the totality of the circumstances.

Undriveable Vehicles

A vehicle does not have to be self propelled in order to be covered by the vehicle exception of the search warrant rule.

Types of Vehicle Searches

There are several types of vehicle searches based on varying legal standards and justifications, these are:

1. With a Search Warrant;
2. Probable cause search;
3. Search incident to arrest of driver or occupant;
4. Inventory search

202.2 - 14. 2 With a Search Warrant

When searching under a warrant, members may search all areas in which the object of the search warrant could be located.

202.2 - 14. 3 Probable Cause Search of a Vehicle

1. If a member has probable cause to search a vehicle a warrantless search may be made of any area of the vehicle that could conceal the object of the search.
2. The search should take place within a reasonable amount of time, if the time period exceeds what is reasonable, then a search warrant should be obtained.
3. If probable cause exists to search a vehicle, the search may be conducted on the street or the vehicle may be removed to a more convenient location, such as the district/precinct.
4. Vehicles stored in garages may need a search warrant unless the search is based upon a recognized exception, such as consent or exigent circumstances. The reason for obtaining a search warrant in this case is because a garage is a Fourth Amendment protected premises.
5. The scope of this type of search is anywhere in the vehicle, and any containers, that could hold the object for the probable cause search. Members have the

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authority to force open any locked containers or compartments as if authorized by a search warrant.

Dual Use Vehicles or “Mobile homes”

Mobile homes can be considered a “dwelling” and a search warrant may be required in order to search a mobile home vehicle. Some factors to consider if the mobile home is a vehicle and not a “dwelling” is:

1. Is the vehicle mobile with a turn of the key?
2. Is the mobile home elevated on blocks?
3. Is the mobile home connected to utilities (e.g., water, electricity, etc.)?
4. Is the mobile home readily accessible to a road?

202.2 - 14. 4 Search of Vehicles Incident to Arrest of Driver or Occupant

1. Under limited circumstances a member has the authority to search the passenger compartment of a vehicle incident to an arrest of an occupant of the vehicle.
2. Based on the court case Arizona v Gant, 556 U.S. 332 (2009), a police officer may search the passenger compartment of a vehicle incident to a recent occupant’s arrest only in two (2) circumstances:
 - i. The arrested person is within reaching distance of the passenger compartment at the time of the search; or
 - ii. It is reasonable for the officer to believe the vehicle contains evidence that pertains to the offense for which the person is being arrested.
3. The search permitted by a search incident to lawful arrest is confined to the passenger compartment and does not include the trunk. Courts construe the term “passenger compartment” as areas that could be reached by an individual without exiting the vehicle.
4. Unlike a vehicle search justified by probable cause, a vehicle search incident to an arrest must be performed at the location of the arrest.

202.2 - 14. 5 Inventory Search

Vehicles seized, taken as evidence, or taken into police custody and towed at the direction of department members shall be inventoried to safeguard the person’s property and to protect the department from false claims of damage or removed property from the vehicle.

- i. The impounding officer shall conduct an itemized inventory of the vehicle for personal property and place all property of value into safekeeping.
- ii. Any containers found in the vehicle shall be opened, and all contents of such containers shall be inventoried.
- iii. A locked glove compartment, locked trunk or other locked compartment shall be opened and the contents inventoried if the impounding officer has possession of a key to these areas during the inventory.

Members are also to refer to Directive 204.4, Impounding of Vehicles, for specific procedures for department impounding.

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202.2 - 15 Vehicle “Frisk” for Weapons³

202.2 - 15.1 General Requirement

1. Reasonable suspicion to believe a person in the vehicle is about to commit, is committing, or has committed a crime.
2. Reasonable suspicion to believe the person is armed and dangerous (either on the person or in the vehicle).
3. Officers must be able to articulate the specific facts and circumstances supporting the objectively reasonable conclusion that the subject was potentially dangerous.
4. Member may remove the subject, frisk the subject, and place the subject in the scout car or away from the vehicle.
5. Member can still “frisk” the passenger compartment (not the trunk) for offensive weapons and open easily accessible containers, even if the subject is not in the position to get a weapon from inside the vehicle.
6. The scope of the “frisk” or “protective search” of the vehicle is any place in the passenger compartment in which an easily accessible dangerous weapon could likely be placed or hidden.
7. The scope of the “frisk” or “protective search” also includes containers in the passenger compartment that are capable of containing a dangerous weapon and are easily accessible without breaking the container open.
8. In order to avoid confusion, members must remember that the Arizona v. Gant case does not apply in the “frisk” of a vehicle for weapons. Officers are permitted to frisk the passenger compartment of the vehicle (if all of the above requirements are met) on the premise that the individual may re-enter the vehicle and have access to a weapon after the investigatory detention is concluded.

202.2 - 16 Searches of Containers – Inside and Outside of a Vehicle

202.2 - 16.1 Container Outside of a Vehicle

1. Closed containers and packages outside of a vehicle cannot be opened and searched without a search warrant.
2. An officer can seize a container or package outside a vehicle if they have probable cause to seize the object.
3. In extraordinary circumstances requiring immediate action, courts may excuse the warrant requirement.

202.2 - 16.2 Containers Inside of a Vehicle

1. Probable cause for a search of a lawfully stopped vehicle can be any part of the vehicle and its contents that may conceal the object.
2. A package or container can be searched within a vehicle if the officer has probable cause to search the vehicle. There is no search warrant requirement.

³ Michigan v. Long, 463 U.S. 1032 (1983),

202.2 Search and Seizure

3. However, the container or package must be capable of concealing the object of the search (e.g., officers cannot search a briefcase if they have probable cause for a 40 inch television).

Related Procedures:

- Directive 202.1 – Arrest
- Training Directive 09-02 Searches of Vehicles Incident to Arrest of Driver or Occupant
- Training Directive 12-08 New Law on Providing False Information in Criminal Investigations

Related Forms:

- Strip Search Authorization Form (DPD 190)
- Investigatory Stop and Stop and Frisk Form (UF 003)
- Consent to Search Form (DPD 675)