

## trialdex.com automobile search chart

### Stops—roadblock or checkpoint

**Lawful** if a random stop in the nature of a border or immigration checkpoint, drunk driving, or license/registration check; **not lawful** if not random, or was established to uncover evidence of ordinary criminal wrongdoing.

Police may, **without reasonable suspicion**, at an **immigration, drunk driving, or license/registration checkpoint**:

- Ask for identification
- Run records check
- Make plain view observations
- Ask for consent to search

Police may search the car and occupants without any suspicion at the **border or its functional equivalent**.

May frisk the driver or passenger with a **reasonable suspicion** armed or dangerous.

The **duration** of the stop may last no longer than is necessary to effectuate its purpose.

### The car was already stopped

**Approach is unlawful** if police enter a home or its curtilage to look at the vehicle without a warrant (or unless some other warrant exception applies).

Police may, **without reasonable suspicion**, ask for identification, make observations, etc., if the stopped car is occupied unless, by means of physical force or a show of authority, the occupants' freedom of movement is restrained.

May frisk the driver or passenger with a **reasonable suspicion** armed or dangerous.

The **duration** of the stop may last no longer than is necessary to effectuate its purpose.

### Police make a routine traffic stop with a show of authority

These stops are "seizures" of the vehicle and its passengers that ordinarily must be supported by a reasonable suspicion of a crime or traffic violation.

May not make the stop without reasonable suspicion.

May stop the car if a **reasonable suspicion** of a crime or traffic violation. May frisk the driver or passenger with a **reasonable suspicion** armed or dangerous.

Authority for a seizure of the vehicle and occupants ends when tasks tied to the traffic infraction are—or reasonably should have been—completed (can't extend duration to summon **drug sniffing dog**).

### Probable cause—automobile Exception

- Police may **search an automobile** and the containers within it where they have **probable cause** to believe contraband or evidence is contained.
- This includes containers belonging to passengers.
- The police may, if they wish, impound the car and search it on police premises.
- No showing of exigent circumstances is required.
- Officers do not lose their ability to stop and search the car when it enters curtilage or a garage while closely followed by the observing officer.
- Exception does not cover cell phone data.

### Probable cause—search incident to arrest

- A **person** arrested for a crime may be searched incident to the arrest, even if there is no concern about danger or loss of evidence.
- The **timing** of the search must be reasonable under the circumstances. It may take place immediately before the arrest, or some considerable time after it.
- Police may search the **vehicle** incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.
- Exception does not cover cell phone data.

### Other issues—Inventory

- Impounds of vehicles for community caretaking.
- Lawfully impounded vehicles may be inventoried for the purpose of protecting the owner's property while it is in police custody; protecting the police against claims; protecting the police from potential danger; or to determine whether a vehicle has been stolen and thereafter abandoned.
- The search may extend to closed containers so long as discretion on what to open is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.

### Reasonable expectation of privacy (standing)

- One who owns or lawfully possesses or controls property generally has a legitimate expectation of privacy by virtue of the right to exclude others.
- No reasonable expectation of privacy in a stolen car.
- Passengers are seized in traffic stops, and thus may contest the legality of the *stop* (and its fruits), but may not contest a seizure of incriminating evidence taken from the vehicle unless they claim to own the vehicle or the evidence.