

**CITY OF OCONOMOWOC POLICE DEPARTMENT
POLICIES & PROCEDURES**

DATE: February 3, 2021

HISTORY: September 18, 2018
June 10, 1997

SUBJECT: Motor Vehicle Searches

POLICY NUMBER: 96-004

I. PURPOSE

The purpose of this policy is to give departmental personnel guidelines for the search of motor vehicles.

II. POLICY

It is the policy of this department to conduct motor vehicle searches that are both legal and thorough. Such searches are to be conducted in strict observance of the constitutional rights of the owner and occupants of the motor vehicle being searched, and with due regard for the safety of all officers, other persons and property involved.

III. DEFINITIONS

- A.** Motor Vehicle: Motor vehicle means any self-propelled device for moving persons or property from one place to another and capable of being operated on streets or highways. The term “motor vehicle” includes, without limitation, automobiles, trucks trailer, recreational vehicles, mobile homes, motor homes and any other type of vehicle, whether self-propelled or towed. This policy does not apply to vehicles immobilized in one location for use as a temporary or permanent residence, or which are otherwise classified by law as residence or buildings. The term “motor vehicle”, for purposes of this policy is to be construed to effectuate the purpose of this policy, which is to search vehicles for evidence and/or contraband before that vehicle is moved or taken from the location of the search. It is therefore imperative that at the time of the search that the vehicle be mobile or have the possibility of becoming mobile within a very short time.
- B.** Searches: An examination of all or part of a vehicle, including any and all containers discovered in the vehicle, whether locked or open, in order to discover evidence of a crime/offense or locate and seize contraband. Any such search is to be restricted to the area or container that may contain the object of the search. This policy does not cover inventory of personal property conducted pursuant to an impoundment of a vehicle.

IV. PROCEDURES

A. Motor Vehicle Searches

1. A motor vehicle may be searched under the following circumstances:
 - a. When probable cause exists to believe the vehicle contains contraband, evidence of a crime or the fruits of a crime.
 - b. With the consent of the owner, or operator, in the owner's absence.
 - c. Incident to a lawful custodial arrest if there is a reason to believe the vehicle contains evidence of the offense for which the arrest has been made (see *Gant v Arizona*).
 - d. To examine the vehicle's identification number or establish ownership of the vehicle.
 - e. With a search warrant.

2. A Motor Vehicle may be frisked for weapons under the following circumstances:
 - a. A frisk for weapons in a vehicle is based on the officer's reasonable suspicion that there are weapons in the vehicle or that the person stopped poses a threat of injury to the officer or others.
 - b. Officers must confine frisks for weapons normally to the passenger area of the vehicle. The frisk for weapons may extend to those areas within the lunge, reach or grasp of the person detained. Such a frisk must be limited to the areas where a weapon may be concealed. Officers may not frisk areas not immediately accessible to the vehicle's occupants, such as a locked glove compartment.
 - c. Any contraband observed in plain view during this frisk may be seized as evidence.
3. Scope of a Vehicle Search
 - a. Based on Probable Cause
 - (1) Probable cause searches include all areas of the vehicle, including containers and compartments, that could contain the object of the search.
 - (2) If an officer is not certain if probable cause exists to search a vehicle, the officer should contact the on-call district attorney for further assistance.
 - (3) If an officer has probable cause for a vehicle search, but the vehicle is immobile and cannot be moved (i.e., the vehicle is on blocks, missing an engine, etc.) a search warrant will be obtained before searching the vehicle.
4. Consent Search
 - a. General Consent
 - (1) May include the passenger compartment, trunk and the engine compartment and all containers that may contain the item(s) being searched for. If a container is discovered during a general consent search and is owned by another occupant (other than the person who gave the initial consent to search) and is present at the scene of the search and that person objects to the search of that container and the officer conducting the search is satisfied that the objecting party owns the container, then that container may not be searched, absent additional consent from the owner of that container, unless probable cause exists to search that container.
 - (2) Limited Consent
 - (a) If the person granting consent for the search has limited the area to be searched, then only that area may be searched pursuant to that consent. As always, plain view applies during any such search which may serve to expand the search beyond the original area of consent.
5. Search Incident to a Lawful Arrest
 - a. Search is limited to the passenger compartment of the vehicle, including the hatchback area of the vehicle, if so designed. Plain view applies during this search. Officers are searching for elements of the crime committed (see *Arizona v Gant*).
 - b. Includes closed and locked containers found within that passenger compartment area, notwithstanding the objection of the owner of that container.
 - c. The search must be done while the arrestee is still at the scene (even if restrained) and such search is done contemporaneous with the custodial arrest. The custodial arrest must be supported by probable cause.

6. Vehicle Search with Search Warrant
 - a. All areas of the vehicle that may contain the items described in the warrant may be searched, unless search warrant specifies otherwise.

7. Examine VIN number and/or Establish Ownership
 - a. The search is limited to the actions necessary to accomplish the goal.
 - b. Location and Time of Search (See Vehicle Inventory Policy 96-003)
 - (1) Whenever possible, the search of a motor vehicle and its contents should be conducted where the vehicle was stopped or located.

 - (2) If exigent circumstances exist, the search may be delayed or conducted at another location.

 - (3) If the search is going to be delayed, the vehicle must be secured.
 - c. All vehicle searches will be conducted in a manner to avoid any damage to the vehicle or its contents.
 - d. Seizure of Evidence and/or Contraband
 - (1) Any items of evidentiary value or contraband found during a vehicle search will be seized and packaged pursuant to the Wisconsin Department of Justice Physical Evidence Handbook and Department policies and procedures.

V. EXCEPTIONS TO THIS POLICY MAY BE AUTHORIZED ONLY BY THE CHIEF OF POLICE

This policy is effective immediately
and will supersede any directives or understandings in conflict