

## SEARCHES - VEHICLES

### PREAMBLE:

The Fourth Amendment to the United States Constitution guarantees the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. The courts have determined that such rights extend to people's vehicles. A "seizure" for a traffic violation justifies a police investigation; but the scope of the detention must be carefully tailored to its underlying justification, and it may last no longer than is necessary to effectuate that purpose.

### POLICY:

It is the policy of the Omaha Police Department (OPD) to conduct lawful and thorough searches of motor vehicles.

### DEFINITIONS:

See the OPD "[Traffic Law Enforcement](#)" policy for definitions of the terms "Articulable Facts," "Probable Cause," and "Reasonable Suspicion" as used in this policy.

Infotainment System: A complex network of highly integrated electronics systems installed in vehicles that deliver content for entertainment and information purposes.

Telematics System: An external wireless connection to and from a vehicle for data and information transfer.

### PROCEDURES:

#### I. Warrant Searches

- A. Officers who desire to search a motor vehicle shall first obtain a warrant, unless the motorist has consented to the search or some other exception to the warrant requirement exists.
- B. The search warrant template for [Infotainment and Telematics Systems](#) should be used when requesting to extract data from the infotainment and telematics systems.
  1. Officers should contact the OPD Digital Forensics Squad, prior to requesting a search warrant, in order to determine if it is feasible to extract information from the motor vehicle (See PPM [Appendix A](#) for the phone number).

**NOTE:** Officers should be cognizant that the motor vehicle's Infotainment and Telematics System is separate from the Event Data Recorder (EDR) accessed for crash reconstruction.

- C. When officers conduct a warrant search, they may search all areas of the vehicle unless the warrant states otherwise. Officers may continue their search of the vehicle, and all vehicle components and/or compartments, until all the items listed on the warrant have been found or the officers determine the items will not be found.
- D. If a vehicle is being impounded for safekeeping and a search warrant is being obtained, officers shall NOT conduct an inventory of the vehicle. Officers shall maintain custody (i.e., line of sight) of the vehicle until the search warrant is obtained.

#### II. Warrantless Searches

- A. Officers shall not request permission to search vehicles on a random basis, or absent articulable suspicion. Officers must be able to articulate the suspicion that led to the request for permission to search.
- B. During a stop, officers may conduct a preliminary investigation of the vehicle's driver and passengers reasonably related to the stop. Officers may request identification, check vehicle information, and run data checks.

- 1. The driver is required to provide an operator's license or identification, vehicle registration, and/or proof of ownership and insurance.

**NOTE:** Drivers of vehicles who are not registered in the state of Nebraska do not have to provide proof of insurance.

- 2. Officers may order a driver or passenger out of a vehicle during a lawful traffic stop for a legitimate reason or if officers identify facts and circumstances that indicate a driver or passenger is (or is about to be) involved in criminal activity.

- a. Examples of a legitimate reason include, but are not limited to:

- (1) Concern for officer safety.
- (2) The driver and/or passenger are interfering with the search of the vehicle or the investigation.
- (3) The passenger needs to be interviewed separately or away from the driver.

– AND / OR –

- (4) There is Probable Cause or Reasonable Suspicion that the driver or passenger violated the law.

- b. Officers shall utilize good judgment when requesting a driver or passenger to step out of a vehicle. Alternatively, officers may order drivers or passengers to stay in a vehicle.

- 3. An adult, front seat passenger who is not wearing a vehicle restraint is required to provide identification.
- 4. An officer may request identification from any other passengers in a vehicle; however, it is not required that the passengers comply, unless there is Probable Cause or Reasonable Suspicion that the passengers violated the law.
- 5. If a passenger is in close proximity to contraband in plain view, the officer has Probable Cause to arrest the passenger.
- 6. Passengers are NOT allowed to leave a traffic stop while officers pursue an investigation. This includes a traffic stop conducted to investigate a traffic violation committed by the driver.
  - a. Once the traffic stop for a traffic violation has ended, or the officer's suspicions that led to the traffic stop are dismissed after a thorough investigation, and there is no evidence the passengers violated the law, the passenger(s) must be IMMEDIATELY released.

**NOTE:** The United States Supreme Court has determined both the driver and passengers are seized during a traffic stop. The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop.

C. Expanded Inquiry.

1. Further detention is justifiable when articulable Reasonable Suspicion of criminal activity exists.
2. Officers are allowed to detain a person stopped for a traffic offense in order to obtain additional information regarding the officer's observations and/or suspicions.
3. Officers may request OPD Canine Unit assistance, if needed, per the OPD "[Canine Unit](#)" policy; however, officers may not detain a motorist beyond the time reasonably required to complete the traffic stop without Reasonable Suspicion.

**NOTE:** When an OPD Police Service Dog has conducted a free air sniff of a motor vehicle and has displayed a positive alert and indication to the odor of illegal drugs, then Probable Cause exists to search the motor vehicle.

4. If officers do not have additional articulable Reasonable Suspicion, continued detention of a motorist is prohibited.

D. Plain View Doctrine.

1. The "Plain View" doctrine allows an officer to seize any item without a warrant under three (3) conditions:
  - a. Officers observe the item(s) in plain view or open view (including items observed by using a flashlight) within a vehicle, even if the occupants have been removed from the vehicle.
  - b. Officers must have Probable Cause to believe that the item is a weapon, contraband, stolen, or was used in the commission of a crime, or other evidence of a crime.
  - c. Officers must have the legal right to be in the area where the item was spotted and must be able to lawfully access the item.

### III. Emergencies and Exigencies

- A. Officers may enter a vehicle without a warrant where emergency circumstances make it necessary for them to do so in order to protect life or property, or when the exigencies of the situation otherwise require such action.
- B. Searches of a motor vehicle under emergency circumstances not otherwise covered under the warrant exceptions enumerated above must be co-extensive with the nature of the emergency.
  1. Emergency and Exigent circumstances apply when:
    - a. Officers need to rescue persons who are at risk of serious bodily injury or death.
    - b. Where there is an imminent threat of substantial property damage.
    - c. There is danger to the public.

- d. Officers are trying to prevent the destruction of evidence.
- e. Officers are trying to prevent the escape of a fleeing suspect from lawful custody.
- f. Hot pursuit.

#### **IV. Officer Safety Vehicle Searches (Vehicle Frisk)**

- A. The search of the passenger compartment of an automobile is permissible if:
  - 1. The officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officer in believing:
    - a. The suspect is dangerous.
    - AND –
    - b. The suspect may gain immediate control of weapons (Michigan v. Long).
- B. The scope of the search is limited to only the area(s) that is accessible to the suspected individual. This area may include the passenger side glove compartment if the glove compartment is within reach of the suspect.
  - 1. If Probable Cause exists, the Officer Safety Vehicle Frisk Search may extend to the entire vehicle including closed containers.
- C. This type of search is limited to officers' attempts to find weapons only.

#### **V. Incident to Arrest Vehicle Searches**

- A. Absent warrant exceptions, officers may search a vehicle incident to a recent occupant's arrest ONLY IF:
  - a. The arrestee is within reaching distance of the passenger compartment at the time of the search, and is unsecured.
  - OR –
  - b. It is reasonable to believe the vehicle contains evidence of the offense of the arrest.

**NOTE:** Officers may search a vehicle when given permission by the person in actual physical control of the vehicle as described in this policy (i.e., a consensual search).

#### **VI. Consensual Vehicle Searches**

- A. Consensual searches of vehicles during traffic stops are permitted if the consent is voluntary and without force or coercion. Consent may be verbal or written.
- B. If an officer requests permission to conduct warrantless vehicle search, and permission is freely and voluntarily given by the driver or owner of the vehicle, the officer may request the individual to provide signed acknowledgement of the consent, prior to the search, on an OPD Permission to Search form ([OPD Form 5](#)).

- C. If an individual revokes consent, officers may continue the search only if they can articulate Probable Cause that existed prior to commencing the search. Revocation of consent does not establish Probable Cause.

- 1. Officers will document as much information as possible about what occurred when the person revoked the permission to search.

**NOTE:** Absent Probable Cause, officers shall stop the search once the consent has been revoked.

- D. If an officer feels there is a legitimate reason to ask a driver or owner for permission to search the vehicle, but the party refuses, and the officer is unable to articulate Probable Cause to search the vehicle without the driver's consent, a Field Observation Card ([OPD Form 150](#)) should be completed to document the occupants of the vehicle and why the officer believed contraband may have been in the vehicle.

## **VII. Probable Cause Vehicle Searches**

- A. Officers may search a vehicle without a warrant if there is articulable Probable Cause to believe that the vehicle contains fruits, or evidence of a crime or contraband.
- B. Probable Cause searches may extend to all areas of the motor vehicle, unless the Probable Cause is limited to a specific area of the vehicle.
- C. Officers may not search areas of the vehicle that could not contain the fruits, or evidence of a crime or contraband being sought.

## **VIII. Vehicle Entry to Examine Vehicle Identification Numbers**

- A. If, during a traffic stop, circumstances require that officers determine the vehicle identification number or ownership of a vehicle, and such information cannot be acquired from the exterior of the vehicle, officers may enter the vehicle without a warrant to obtain this information.
- B. Entries made to examine the vehicle identification number or to determine the ownership of the vehicle must be limited to actions reasonably necessary to accomplish these goals.

**NOTE:** See the OPD "[Searches – Private Property and Residences](#)" policy for additional details regarding vehicles located in curtilage areas and warrant requirements.

## **IX. Documentation of Warrantless Vehicle Searches**

- A. The electronic reporting system is available on all OPD computers and shall be used to document all warrantless searches whether or not permission is obtained for the search.
  - 1. The OPD Vehicle Search Form ([OPD Form 7](#)) should be completed when the electronic reporting system is not used to cite or book the subject.
  - 2. When officers issue electronic Citations (any type) or use the electronic reporting system to book subjects, search information will be collected as part of the electronic reporting process.
  - 3. Probable Cause and indicators should be included in the narrative portion of the Citation or Booking/Arrest Report.
  - 4. The Traffic Stop Analysis Form and OPD Vehicle Search Form ([OPD Form 7](#)) should be completed using the electronic reporting system if applicable.

## **X. Special Considerations**

- A. There are situations when conducting a vehicle search, at the vehicle's current location, can interfere with an investigation.
- B. Canine and Narcotics Units may receive approval from a sergeant or above to drive a vehicle to another location to conduct a search and continue their investigation.
- C. The vehicle transportation shall be documented by the Body Worn Camera (BWC) of the officer driving the vehicle or the Mobile Video Recorder (MVR) of the cruiser following the vehicle.

## **REFERENCES:**

### **I. Laws and Court Cases**

- A. The United States Constitution Fourth Amendment is relevant to this policy.
- B. The following court cases are applicable to this policy: Nebraska v. Briggs (308 Neb. 84); Arizona v. Gant 556 US 332, 129 S.Ct. 1710 (2009), Rodriguez v. US 135 S.Ct. 1609 (2015), Illinois v. Caballes, 543 US 405, 125 S.Ct. 834 (2005), Michigan v. Long, 463 US 1032, S. Ct. 3469 (1983), US v. Vinson WL 7292878 8th Cir. (10-23-2015), Collins V. Virginia, 2018 WL 2402551, Horton v. California, 496 US 128 (1990), Brendlin v. California, 551 U.S. 249 (2007), State v. Gutierrez, 611 N.W.2d 853 (2000), and Maryland v. Wilson, 519 U.S. 408 (1997). Earlier case law includes Carroll v. US 267 US 132 (1925), (Pennsylvania v. Mimms, 434 U.S. 106 (1977), and Whren v. US 517 US 806 (1996). Case law relevant to the "Preamble" of this policy additionally include Arizona v. Johnson 555 US 323, 330, 129 S.Ct. 781 (2009) and Florida v. Royer, 460 US 491, 400, 103 S.Ct. 1319 (1983).

### **II. Previous OPD Orders**

- A. Previous General Orders: #5-94, 86-00, 42-16, 49-17, 16-19, 16-19 Supplement #1, 13-21, 13-21 Supplement #1, and 8-25.

### **III. Accreditation Standards**

- A. Relevant CALEA Accreditation Standards: 1.2.4.

### **IV. Other**

- A. PPM Monthly Updates: #03-2017 and 04-2021.
- B. OPD Training Bulletin: [#06-25](#).