

Germantown Police Department

Policies and Procedures

Number: 5-2
Effective Date: May 29, 2009
Subject: Motor Vehicle Searches
Previous Revisions: January 1, 2003

I. PURPOSE

The purpose of this policy is to provide departmental personnel with guidelines for the search of motor vehicles. This section must be considered in conjunction with policy number 5-1 (Search and Seizure).

II. POLICY

It is the policy of the Germantown Police Department that officers will 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

Motor Vehicle: Any vehicle operating or capable of being operated on public streets or highways to include automobiles, trucks, trailers, recreational vehicles, mobile homes, motor homes and any other type of vehicle, whether self-propelled or towed. This policy does not apply to vehicles of any type that have been immobilized in one location for use as a temporary or permanent residence or storage facility, or which are otherwise classified by the law as residences or buildings.

Search: An examination of all or a portion of the vehicle with an investigatory motive (i.e., for the purpose of discovering fruits, instrumentalities or evidence of a crime or contraband, or to enter the vehicle to examine the vehicle identification number or determine the ownership of the vehicle). Inventories of personal property conducted pursuant to impoundment of the vehicle are not covered by this policy.

IV. PROCEDURE

A. When Vehicle Searches May Be Conducted

Whenever feasible, a warrant will be obtained for the search of a motor vehicle. Warrantless searches are to be conducted only when lack of time or other exigencies

make it impractical for officers to obtain a warrant. When a vehicle has broken down, or there is otherwise no significant chance the vehicle will be driven away or that evidence contained within it will be removed or destroyed, the vehicle should be searched only after a warrant has been obtained. In other cases, vehicles may be searched:

1. When probable cause to search the vehicle exists;
2. With consent of the operator;
3. Incident to an arrest of the occupants of the vehicle;
4. To frisk for weapons;
5. When necessary to examine the vehicle identification number or to determine the ownership of the vehicle; or
6. Under emergency circumstances not otherwise enumerated above.

B. Scope of Vehicle Searches

1. *Searches With a Warrant.* When searching under a warrant, officers may search all areas of the vehicle unless the warrant states otherwise.
2. *Probable Cause Searches.* 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.
3. *Consent Searches.* The extent of a consent search depends upon the terms of the consent itself. If the consent is limited to specific areas of the vehicle, officers may search only portions of the vehicle covered by the consent. Written consent shall be obtained whenever possible before conducting these searches.
4. *Searches Incident to Arrest.* In cases involving a search incident to an arrest related to a motor vehicle, the officer may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offence of the arrest. Arizona v. Gant, 07-542 U.S. Supreme Court (2009).
5. *Frisks for Weapons.* Frisks for weapons normally must be confined to the passenger area of the vehicle. Areas not immediately accessible to the vehicle's occupants, such as a locked glove compartment, may not be frisked.
6. *Entries to Examine a Vehicle Identification Number or to Determine Ownership of the Vehicle.* 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.

7. *Emergencies.* Search of a motor vehicle under emergency circumstances not otherwise enumerated above must be co-extensive with the nature of the emergency. The proper extent of the search must therefore be determined by search personnel in each specific situation, but in no event will the extent of the search exceed that necessary to respond properly to the emergency. Note: Where the initial search discloses probable cause to believe that other portions of the vehicle may contain fruits, instrumentalities or evidence of a crime or contraband, any additional portions of the vehicle may be searched that could reasonably contain the items being sought.

C. Search of Containers Found in Vehicle

In no instance shall a container in a motor vehicle be searched unless it could contain the item(s) being sought. In addition:

1. Unlocked containers found in motor vehicles are governed by the nature of the search, as follows:
 - a. In a probable cause search, containers such as paper bags, cardboard boxes, wrapped packages, etc., wherever found in the vehicle, may be opened.
 - b. When the passenger compartment of a vehicle is being searched incident to an arrest, such containers found within the passenger compartment may be opened.
 - c. Containers discovered during a consent search of the vehicle may be opened provided that the terms of the consent expressly permit or reasonably imply that the particular container may be opened.
 - d. Containers found in or discarded from a vehicle under circumstances that do not justify their search under probable cause rules or in connection with a search incident to arrest should be secured but not searched until a warrant is obtained to search them.
2. Locked containers such as attaché cases, suitcases and footlockers found during a vehicle search should be opened only if:
 - a. the search is being conducted under a warrant; or
 - b. a valid consent to open the locked container is first obtained. Where these conditions are not met, locked containers should be secured by search personnel and opened only after a warrant has been obtained.

D. Location and Time of Search

Whenever possible, the search of a motor vehicle and of containers found there should be conducted at the location where the vehicle was discovered or detained. Under

exigent circumstances, search of the vehicle or container may be delayed and/or conducted after the vehicle or container has been moved to another location. However, in all instances searches shall be conducted as soon as is reasonably possible; that is, as soon as adequate personnel are available to conduct a thorough search with due regard for the safety of all officers, citizens and property concerned.

E. Conduct of the Search

Motor vehicle searches shall be conducted in a manner that minimizes the intrusiveness of the search and the inconvenience caused to vehicle owners, occupants and other persons involved. Where possible, damage to the vehicle or to other property in the course of the search should be avoided. Where unavoidable, such damage should be confined to that reasonably necessary to carry out a safe and thorough search.

F. Abandoned Vehicles

Examination of a vehicle that has been abandoned on a public thoroughfare is technically not a search. If an officer can determine in advance that the vehicle has been abandoned, examination of the interior of the vehicle shall be conducted only in accordance with the provisions of this policy and the law.

G. Seizure of Evidence

Any evidentiary items discovered in the course of a motor vehicle search shall be collected, handled, packaged, marked, transported and stored in accordance with applicable policies and procedures of this department. Where appropriate and feasible, itemized receipts for seized property shall be given to the owner and/or occupants of the vehicle.

H. Compliance with Health and Safety Requirements

Searches of motor vehicles are to be conducted in strict compliance with all applicable laws, governmental regulations, and departmental policies and procedures pertaining to the protection of departmental personnel from communicable diseases and hazardous substances. Any exposure of search personnel or others to such substances shall be reported in accordance with regulations, policies and procedures of this department.

I. Security of Vehicles and Property Contained Therein

If a search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft or damage, search personnel shall take such steps as are reasonably necessary to secure and/or preserve the vehicle or property from such hazards.

J. Responsibility of Supervising Officer

An officer supervising a vehicle search shall be responsible for ensuring that it is conducted in accordance with this policy. In the event that the vehicle search is conducted under a warrant, the officer shall ensure that the execution of the warrant is properly reported to the issuing court or other authority. The officer shall also be responsible for making any other reports regarding the search that may be required by law, policy or procedure. **In the event that the vehicle search is conducted without the benefit of a warrant, the officer shall articulate in detail the factual basis of the specific established and well-delineated exception.**

V. **REVIEW PROCESS**

An annual review of this policy shall be conducted to determine if it should be revised, cancelled or continued in its present form.

This order shall remain in effect until revoked or superseded by competent authority.