



POLICY & PROCEDURES

HOLMEN POLICE DEPARTMENT

SUBJECT: **ARREST PROCEDURES**

NUMBER 1.10

SCOPE: ALL DEPARTMENT PERSONEL

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PURPOSE

This order defines the authority to make arrests and guidelines for effecting arrests, both with/without a warrant, and releasing from custody arrested individuals. Guidelines ensure that rights/privileges are afforded to citizens during arrest situations.

POLICY

It is our policy that officers shall investigate violations of laws/ordinances and shall make arrests for violations in accordance with procedures imposed by the U.S./WI Constitution; federal, state and municipal legislation and department policy. Members, take into consideration new case laws, which can affect citizen's rights.

DEFINITIONS

- A. **Arrest:** Depriving a person his/her liberty by legal authority for a civil, or criminal law violation.
- B. **Custodial Arrest:** Depriving a person his/her liberty by legal authority for the purpose of holding/detaining him/her to answer a criminal charge or civil forfeiture action.
- C. **Non-custodial Arrest:** Temporarily depriving a person of his/her liberty by legal authority for the purpose of issuance of a citation or summons relating to a civil forfeiture action.
- D. **Crime:** Conduct prohibited by law, punishable by fine, imprisonment or both. Conduct punishable by forfeiture only is not a crime. **Pat Down/Frisk** - The feeling/touching of outer garments of a person temporarily detained for the purpose of locating weapons or articles capable of causing injury.
- E. **Search** - The feeling/touching of garments of a person taken into custody for the purpose of locating weapons, evidence, or personal property.
- F. **Legal Standing** – In cases of warrant-less arrest, a person with legal standing would be a person whom the officer reasonably believes is the person with the authority to grant permission to enter/search. Examples homeowner, renter, long-term guest or as otherwise dictated by case law.
- G. **Hot Pursuit** – Pursuit of a suspect from the scene of a crime.

ARRESTS - GENERALLY

In order for an arrest to occur, an officer must have the intent to take a person into custody and an understanding by the person arrested that s/he is in custody. When making an arrest, an officer should:

1. Identify him/herself as a police officer. (If it is apparent by the wearing of a uniform or other means that the person making the arrest is a police officer, no further identification is necessary.)
2. Inform the subject that s/he is under arrest.
3. Restrict the arrested subject's movements as required, using only force necessary to overcome any resistance by the person being arrested.
4. In all cases where an arrested person is taken into physical custody, a report number shall be assigned and the arresting officer shall be responsible for completing a detailed report.

ARRESTS WITH A WARRANT

Law enforcement officer may arrest a person when any of the following exists:

1. Have probable cause to believe a warrant for the person's arrest has been issued in this state.
2. Have probable cause to believe a felony arrest warrant has been issued for the person in this or another state. A Wisconsin officer may not arrest a person on a **misdemeanor warrant** issued in another state.
3. Arrest warrants may be served at any time to the individual on the warrant in a public place, however, discretion should be used when serving a warrant to ensure serving it at a reasonable time. Factors such as the nature of the offense, potential to escape and for doing further injury/damage should be considered when selecting a time to serve an arrest warrant.
4. As soon as practicable after arresting on a warrant, the officer shall inform the person of the reason for the arrest. If the officer has the arrest warrant in his/her possession, the officer should read the warrant to the person.

ARRESTS WITHOUT A WARRANT

- A. An officer may make an arrest without a warrant if s/he has probable cause to believe a person is committing or has committed a crime
 1. For an officer to enter a person's home to arrest a person without a warrant, permission by a person of "legal standing" or probable cause plus "exigent circumstances" must exist. (Exigent circumstances does not include minor traffic offenses. *Welsh V. Wisconsin*) Exigent circumstances include:
 - i. The immediate threat of escape;
 - ii. The immediate threat of destruction of evidence;
 - iii. The immediate threat of death or great bodily harm to the officer or another.
 - iv. Hot pursuit
 - v. Fleeing Felon
 - vi. As directed by Case and/or State laws
- B. If exigent circumstances do not exist, it is necessary to obtain an arrest warrant or consent to enter the premises from someone authorized to give consent to make an arrest of a person in his/her own residence.

FORCIBLE ENTRY (Non Exigent Circumstances)

- A. When forcible entry is required in the effect of an arrest, officers shall perform the following:
 1. Make a reasonable attempt to contact the on-duty shift commander
 2. Locate and control all persons and property, which might potentially serve as a weapon
 3. Photograph damage occurring as a result of the forced entry; complete a detailed report describing same.
 4. Make reasonable efforts to contact the owner and secure the property to prevent further damage/loss.

SEARCH INCIDENT TO A LAWFUL ARREST

- A. WI ss. 968.10(1), authorizes officers to conduct searches "incident to a lawful arrest."
- C. "Incident to a lawful arrest" requires that the search shall occur as soon as practical after the arrest. The search shall be made at/near the arrest location. Such searches made of the premises or vehicle the person was in at the time of the arrest shall be made while the person arrested is still at the location of the arrest unless extenuating circumstances exist and are noted in relevant reports. A search of the arrested person "incident to a lawful arrest" may occur after the person has been transported to the department/detention.
- D. "Lawful arrest" for the purpose of a search incident to an arrest, means any arrest action to include issuance of a citation/summons if the person is taken into physical custody.
- E. WI ss. 968.11, scope of a search incident to a lawful arrest: permits officer to reasonably search the person arrested and an area within the person's immediate presence for the purpose of:
 - a. Protecting the officer from attack
 - b. Preventing the person from escaping.
 - c. Discovering/seizing the fruits of the crime.

- d. Discovering/seizing instruments or things which may have been used in the commission of, or which may constitute evidence of, the offense.
- F. The area within an arrested person's immediate presence can be defined as that area within lunge, reach, or grasp of the person at the time of the arrest.
- G. If the area within "E" above includes a motor vehicle, the search may include the passenger compartment of the vehicle when the subject is still present at the scene.
 - a. Search may include a locked/unlocked glove box/containers if present in the passenger compartment.
 - b. Search may not extend to the trunk unless the trunk is readily accessible from the passenger compartment of the vehicle or unless the search is supported by probable cause to search.
- H. Officers are not authorized to conduct searches of routine traffic violators who are merely issued citations and subsequently released without being taken into physical custody unless a "Terry-type" frisk or other exception to the search warrant requirement is present. Persons taken into physical custody for traffic violations, even if only temporarily such as to post bond are subject to search incident to a lawful arrest.
- I. Protective Sweep: Officers making a lawful arrest or executing a lawful search in a private residence may conduct a protective sweep of the residence if they have a reasonable belief that the areas to be swept may harbor individuals posing a danger to those on the scene. Officers should be prepared to articulate the reasons for the protective sweep.

STOP AND FRISK

WI ss. 968.24 & 968.25, an officer may stop a person and conduct a limited search of that person if/when:

1. After identifying him/herself as an officer, may stop a person in a public place for a reasonable time when the officer reasonably suspects that the person is committing, about to commit, or has committed a crime and demand the name/address of the person and an explanation of conduct. Such detention/questioning shall be conducted in the vicinity where the person was stopped. ***Refusal to answer the officer's questions in itself is not "obstructing an officer." If no further acts lead the officer to probable cause for arrest, the person must be released.***
2. When stopping a person for temporary questioning and reasonably suspecting that s/he or another, is in danger of physical injury, s/he may search the person for weapons or an instrument/article/substance readily capable of causing injury and of a sort not ordinarily carried in public places by law abiding persons. If such a weapon/instrument or other property possession of which s/he reasonably believes may constitute the commission of a crime, or which may constitute a threat to his/her safety, s/he may take and keep it until the completion of the questioning, at which time the officer shall either return it or arrest the person

STRIP SEARCHES

1. Strip searches will only be conducted pursuant to WI ss. 968.255 in instances where high probability of weapons, contraband, or evidence of the crime for which s/he is detained would be present on the detained person's body. No person may be the subject of a strip search unless s/he is under arrest. **Refer Policy & Procedure 8.4**

DETERMINING CRIMINAL CHARGES OR CIVIL FORFEITURE

- A. The arresting officer should consider the following factors: injury to persons, extensive property damage, violence or threat of violence, prior record of the offender indicates a continuing pattern of deviant behavior, and/or the offender's attitude.
- B. The decision to charge a person will not be based upon the offender's race, creed, color, or sex.
- C. Cases should not be referred for prosecution unless sufficient evidence.

ALTERNATIVES TO ARREST. See Policy & Procedure 4.2 regarding Use of Discretion

- A. Discretion - When confronted with situations involving non-serious conduct/minor violations, officers have the discretion to examine possible alternatives to arrest/confinement, (e.g. bail, citations, warnings, etc.).
- B. SPECIFIC RESPONSIBILITIES
 - a. Officer action/discretion may be further regulated by specific policies or supervisory discretion.
 - b. The severity of action/inaction is not be influenced by race, sex, ethnic background, religious belief, or political reasons.
 - c. Enforcement action must not be more severe than can be reasonably and objectively justified to further department goals and objectives.
 - d. Enforcement action or contact may not be extended unnecessarily for the purpose of delaying the release or inhibiting the free movement of any person.
- C. FORFEITURES AND DEPOSITS
 - a. Traffic and Misdemeanor Crimes: The forfeiture/deposit amount for traffic violations or misdemeanor crimes shall conform with the State Traffic Deposit and Uniform Misdemeanor Bail Schedule.
 - b. Non-traffic Municipal Forfeitures: The forfeiture/deposit amount for ordinance violations shall be in accordance with the current Deposit Schedule as set by law and the courts.
- D. RELEASE FROM CUSTODY (NON-FELONY ARRESTS)
 - a. Persons arrested for a forfeiture shall be released from custody without a cash bond if they:
 - i. Have a valid WI driver's license or show sufficient evidence of ties to the community; or
 - ii. The officer is satisfied that the accused will make court appearances.
 - iii. By direction of the Court
 - b. Persons arrested for a misdemeanor shall be released from custody without cash bond unless:
 - i. Does not have proper ID, refuses to identify him/herself, or refuses to submit to booking procedures authorized under WI ss. 165.83.
 - ii. Appears to represent a danger of harm to him/herself, another person or property.
 - iii. Not a Wisconsin resident.
 - iv. Cannot show sufficient evidence of ties to the community.
 - v. Accused has previously failed to appear in court or failed to respond to a citation.
 - vi. Arrest/detention is needed to carry out legitimate investigative action in accordance with policy.
 - c. All persons not released for forfeiture, misdemeanor or misdemeanor traffic offense shall be released upon compliance with the state deposit or misdemeanor bail schedules unless bail is otherwise set by a court.
 - d. The guidelines on release from custody for non-felony arrests do not supersede specific statutorily mandated detention or written standing orders issued by a judge(s) of the County of La Crosse.
 - e. An officer need not release an arrested person if it is the officer's opinion the person in custody is not in a fit condition to care for his or her own safety or would constitute, because of his or her physical condition, a danger to the safety of others. If an arrested person is not released under this provision, the person shall be taken before a judge within a reasonable period of time. Refer to Wi. S.S. 969.07 and 970.01.
- E. RELEASE FROM CUSTODY (FELONIES)
 - 1. Persons arrested for felonies do not necessarily have to be incarcerated. In deciding to hold/release an arrested felon, consideration should include, but not be limited to:
 - i. Seriousness of the offense.
 - ii. Seriousness of bodily injury to victim(s).
 - iii. Previous criminal record of the arrestee.
 - iv. Danger posed to others.
 - v. Likelihood of fleeing to avoid prosecution;

- vi. As directed by written judicial orders.
- 2. Further investigative requirements (i.e. line-ups, handwriting samples, bodily fluids, hair samples, etc.).
- F. MANDATORY INCARCERATION. Arrested persons are held in custody upon verification of any of the following:
 - a. An arrest warrant exists for the person who is unable to post required bond and the issuing agency requests the person detained.
 - b. An apprehension request has been issued by Corrections or Probation and Parole.
 - c. A state/federal judge has issued a capias for the individual in custody.
 - d. As directed by written judicial orders of the County of La Crosse Circuit Court Judges.
- G. Persons held in custody for other agencies may be: transported to the jail or turned over to the issuing agency.

JUVENILES Refer to Policy & Procedure 4.8

REPORTS

- 1. Every arrest situation shall be assigned an incident number.
- 2. A report shall be completed to document every arrest situation.

**Chief of Police
Shane Collins**