



POLICY & PROCEDURES

HOLMEN POLICE DEPARTMENT

SUBJECT: **SEARCH & SEIZURE**

NUMBER: 1.12

SCOPE: ALL DEPARTMENT PERSONEL

ISSUED: 03/01/2012

DISTRIBUTION: POLICY & PROCEDURE MANUAL

REVIEWED: 02/15/2017

PURPOSE

Establish guidelines for conducting searches and seizures by departmental personnel to include situations such as search by consent, stop and frisk, search of a vehicle under moveable vehicle exception, crime scene, exigent circumstances, inventory searches and other situations authorized by state and federal constitutional provisions. Provide guidelines for conducting such searches/seizures that have not been reviewed by judicial personnel. Adherence to guidelines will ensure the admissibility of evidence & protect the rights of citizens to be free from unreasonable searches/seizures.

POLICY

Officers shall observe the rights of citizens under the State/Federal Constitutions to be secure in their person, houses, papers and effects against unreasonable searches/seizures. Officers conducting searches/seizures shall comply with all constitutional/statutory laws.

Searches/seizures shall be accomplished pursuant to a valid warrant obtained upon probable cause except searches/ seizures may be accomplished under clearly recognized exceptions to the warrant requirement. Officers conducting searches/seizures, with/ without a warrant, shall show due regard for the rights, welfare and property of the citizens involved.

DEFINITIONS

- A. **Frisk:** A limited pat-down search for weapons occurring during a valid investigative stop in which the officer reasonably suspects that the person stopped poses a threat of injury to the officer or others.
- B. **Lawful arrest:** For the purpose of a search incident to an arrest, means any arrest action to include the issuance of a citation or summons if the person is taken into physical custody.
- C. **Protective Sweep** A quick and limited search of premises, incident to an arrest or the conduct of a search, to protect the safety of police officers or others. It is confined to a cursory visual inspection of those places in which a person might be hiding.
- D. **Search:** An examination of a person, place or object, including motor vehicles, with the intent of discovering contraband, evidence of a crime or the fruits of a crime, to be used in the prosecution of a criminal action.
- E. **Seizure:** The taking of a person or physical piece of evidence, including a motor vehicle, audio or video recording, into custody.
- F. **Stop:** A temporary detention for questioning based upon reasonable suspicion that the person stopped is committing, has committed, or is about to commit a crime. The detention must occur in the vicinity of the stop and the stop must not exceed a reasonable duration.

PROCEDURE

Search / Seizure may occur under any of the following conditions:

1. Pursuant to a valid search warrant;
2. Incident to a lawful custodial arrest;
3. As authorized under established judicial exceptions;
 - a. public places, open fields, plain view, inventory searches, abandoned objects, and
 - b. automobile searches.
 - c. exigent circumstances
 - d. crime scenes
4. With consent of the person the officer reasonably believes has the authority to give such consent;
5. Within the scope of a lawful inspection; or
6. Pursuant to a stop and frisk situation.

A. Consent Search

1. A search warrant is not necessary when a person the officer reasonably believes has authority or control over the thing/ place to be searched **consents** to the search.
 - a. Generally, such authority extends to a person who possesses shares use, has access to, or has control of the property.
 - b. If two people have joint ownership, possession or control of the property, either may give consent, however, if either retract the consent the search must stop (Georgia V. Randolph 2006).
2. Valid consent must be given freely and without coercion.
3. A person who initially gives consent may withdraw it at any time. Officers shall then secure the premises and seek a warrant.

B. Stop and Frisk

See Policy & Procedure 1.13

C. Automobile Search

1. It is preferable to search a motor vehicle under the authority of a warrant whenever it is practical to obtain one. A motor vehicle may be searched without a warrant if the following conditions exist:
 - a. Probable cause exists to believe that the vehicle contains contraband, evidence of a crime or the fruits of a crime.
 - b. The vehicle is moving or capable of being moved quickly so that if the officer does not search immediately, the contraband or evidence could be destroyed or lost.
2. When Officers have probable cause to believe that contraband, evidence or the fruits of a crime are concealed somewhere within a vehicle; they may conduct a warrantless search of the entire vehicle, including all containers and packages that may conceal the object of the search. If probable cause is directed at a specific container within the vehicle, the officer may seize the container and obtain a warrant before searching it.
3. A warrantless vehicle may also occur under the following circumstances:
 - a. Incident to a lawful arrest.
 - b. As part of a lawful "stop and frisk"
 - c. With consent.

D. Crime Scenes

1. Officers who are on private property investigating a crime without a search warrant may only perform a search for evidence if a recognized exception to the search warrant requirement exists. Even if an exception to the search warrant requirement exists, it is strongly recommended that a search warrant be obtained prior to conducting a search.
2. If custody of the crime scene is relinquished by police, consent of the person lawfully in control of the premises or a search warrant must be obtained to re-enter private property.

E. EXIGENT CIRCUMSTANCES

1. A warrantless search or entry may be made if circumstances exist that would lead a reasonable police officer to conclude that life or public safety would be endangered, or evidence or a crime destroyed if immediate action is not taken.

F. VEHICLE INVENTORY SEARCH

2. Vehicles seized or taken as evidence and towed at the direction of department personnel shall undergo an inventory search of contents, as specified below, to be conducted by the Department. The inventory search is conducted for the purposes of protecting personal property of those persons whose vehicles are towed under circumstances where they cannot arrange for the safekeeping of items contained in the vehicle, defending against allegations of theft directed at the Department and protecting evidence.
3. Vehicles towed at the direction of a police officer shall undergo an inventory search of contents, as specified below. Inventory should usually be completed by the arresting officer, or officer requesting tow if non-arrest situation. The inventory search is conducted for the purposes of: protecting the personal property of persons whose vehicles are towed under circumstances where they cannot arrange for the safekeeping of items contained in the vehicle; defending against allegations of theft directed at the Police Department and; protecting evidence.
 - a. Circumstances requiring a vehicle inventory search.
 - i. All safekeeping tows, except cases where the vehicle owner or operator is present at the time the vehicle is towed and is capable of arranging for the safekeeping of items of personal property contained in the vehicle. For example, vehicles shall not be inventory searched in cases of towing from the scene of a traffic accident unless the owner, authorized operator, or someone on their behalf is not present at the scene to arrange for the safekeeping of personal property when the vehicle is towed from the scene. Vehicles in violation of 48 parking and deemed abandoned do not require an inventory search.
 - ii. All vehicles being held as evidence or subject to forfeiture.
4. Location and scope of inventory search
 - a. Vehicles subject to inventory search shall be searched prior to removal from the scene unless the vehicle is being towed to a police facility for storage.
 - b. The scope of the inventory search shall include the interior of the vehicle and areas which can be readily entered without the use of force. The glove compartment, console, or trunk is within the scope of the search if unlocked or if keys are available and entry can be made. Containers found in the vehicle shall be opened if the contents cannot be determined without opening same. The inventory search shall be conducted in a manner to avoid any damage to the vehicle or its contents.
5. Storage of Items Discovered During the Inventory Search
 - a. Towing companies under agreement with the Police Department are responsible for the vehicle and its contents in their custody until retrieved by the owner or otherwise disposed of by law. Consequently, items discovered during the course of the inventory search will normally remain in the vehicle until retrieved by the owner from the storage facility. Contraband, or items constituting evidence of a crime shall be removed by the officer conducting the inventory search for storage in the property room pending proper disposition.
 - b. If the officer conducting the inventory has reason to believe that items of value located in a vehicle to be towed will not be adequately protected while at the storage facility, the officer shall remove the items for storage in the property room.
6. Documentation of Inventory
 - a. All vehicles being held as evidence shall have a case number assigned to them and properly tagged as evidence. Contraband or evidence located in the vehicle should be removed from the vehicle and placed in evidence.
 - b. Items located in a vehicle that is being towed for safekeeping, and are not being removed by the officer for property inventory, shall be recorded in the officer's notes or squad video/audio for future reference. The officer will inform the tow truck operator of the presence of the items noted.

G. STRIP SEARCHES

1. Strip Searches shall only be conducted in accordance with [Policy Procedure 1.11](#).

H. PLAIN VIEW

1. An officer may seize items in plain view when the officer is in a place where s/he has a lawful right to be and there is probable cause to believe that the items to be seized are contraband, evidence of a crime, or the fruits of a crime.
2. It must be immediately apparent to the officer that the items represent contraband, evidence, or other items subject to seizure. The officer may not move items, look underneath, inside, or behind items for serial number or identifying marks, etc.

I. OPEN FIELDS

- A. Contraband or evidence observed on private property that is not considered part of the curtilage of a building or dwelling may be seized without a search warrant.
- B. Officers making such observations may still elect to obtain a search warrant and should weigh the need to immediately seize the items as opposed to obtaining a warrant. A warrant should be obtained in all cases where there is any doubt as to whether or not the property to be seized is within the curtilage of the property or when the officers cannot articulate exigent circumstances demanding immediate seizure.

J. PUBLIC PROPERTY

- A. No search warrant is required for an officer to search public property or seize evidence on public property where no other reasonable expectation of privacy exists.
- B. Examples include public lands or public buildings that have not been leased or otherwise placed under the control of an individual or group.

K. PRIVATE PROPERTY HELD OPEN TO THE PUBLIC

- A. No search warrant is required for an officer to seize evidence or contraband in plain view on private property held open to the public.

L. ABANDONED PROPERTY

1. A Search warrant is not required for property that has been abandoned.
2. To constitute abandoned property, two conditions must apply:
 - a. The property was voluntarily abandoned;
 - b. The property was discarded outside the area in which someone has a reasonable expectation of privacy.
3. Examples of abandoned property include an automobile that has been left unattended in a public place for an extended period of time or left by a suspect in flight, or an item dropped or thrown by a suspect in flight.

M. LAWFUL INSPECTION

- 1) Certain licensed premises, such as taverns and restaurants, are subject to unannounced inspections.
- 2) An officer may search the business premises without a warrant, although this authority does not extend to the owner's private office or, if applicable, private attached apartment.

N. SEARCH INCIDENT TO A LAWFUL ARREST

- 1) Section 968.10(1), Wisconsin Statutes, authorizes officers to conduct searches "incident to a lawful arrest."
- 2) "Incident to a lawful arrest" requires that the search shall occur as soon as practical after the arrest. Further, the search shall be made at or near the place of the arrest. Searches "incident to a lawful arrest" 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. If it is not practical or safe to search the vehicle at the scene the vehicle can be moved to a safe area prior to the search. A

search of the arrested person “incident to a lawful arrest: may occur after the person has been transported to the police department or a detention facility.

- 3) Section 968.11, Wisconsin Statutes, establishes the scope of a search incident to a lawful arrest. It permits an 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; or
 - b. Preventing the person from escaping; or
 - c. Discovering and seizing the fruits of the crime; or
 - d. Discovering and seizing any instruments, articles or things which may have been used in the commission of, or which may constitute evidence of, the offense.”
- 4) The area within an arrested person’s immediate presence can be further defined as that area within lunge, reach, or grasp of the person at the time of the arrest.
- 5) If the area within the arrested person’s lunge, reach, or grasp includes a motor vehicle, the search may include the entire passenger compartment of the vehicle when the subject is still present at the scene.
 - a. The search may include a locked or unlocked glove box or containers if present in the passenger compartment.
 - b. The 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.
- 6) 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 bonds are subject to search incident to a lawful arrest.

V. SEARCH WARRANTS

1. Obtaining a search warrant
 - 1) An officer requesting a search warrant must provide sufficient information from which a judge may find probable cause to believe that the objects sought are currently in the location to be searched. Officers shall confer with the district attorney prior to seeking a search warrant.
2. Execution of Search Warrants
 - 2) Section 968.15(1), Wisconsin Statutes, requires that a search warrant be executed and returned within 5 days of the date of issuance.
 - 3) Search warrants not executed within 5 days of issuance shall be considered void and returned to the issuing judge/clerk of courts.
 - 4) A case report shall be completed after the execution of a search warrant documenting the officer’s activities and seizure of any property and/or other evidence.
 - 5) Prior to executing a search warrant, officers shall knock and state their identity and purpose and allow a reasonable amount of time for the occupant to permit entry. If the officer notes activity within the premises that reasonably leads him/her to believe that the officer(s) or other persons within the premises are in imminent danger of bodily harm, evidence is being destroyed or escape attempted, officer(s) may use reasonable force to enter the premises. Section 968.14, Wisconsin Statutes, provides that officers may use, “all necessary force” to execute the search warrant.
 - 6) When obtaining a search warrant, officers may request a “No-Knock” warrant authorizing initial entry to the premises without announcing the officers’ presence. Such requests for “No-Knock” search warrants should only be made if the officer can present to the magistrate sufficient specific facts that indicate one or more of the following circumstances are present:
 - i. information, beyond the mere possibility that evidence may be destroyed, which establishes that there is reasonable cause to believe evidence may be destroyed if officers announce their presence such as prior attempts to destroy evidence or information that the suspects have stated their intent or established plans to destroy evidence; or
 - ii. Information which establishes reasonable cause to believe there is a danger to officers or others on the premises if officers announce their presence; or

- iii. Information which establishes reasonable cause to believe there is a likelihood of escape if officers announce their presence.
- 7) Damage which occurs during the execution of a search warrant shall be photographed and documented in a general report. Regardless of whether damage occurs, photographs may be valuable in the event that damage claims are made at a later date.
- 8) Section 968.16, Wisconsin Statutes, provides a person executing a search warrant, "may reasonably detain and search any person on the premises at the time to protect him/herself from attack or to prevent the disposal or concealment of any item particularly described in the search warrant."
- 9) While executing a search warrant, officers shall be careful to record a description of and the location from where items were seized. In addition to a written record, photographs may be used to show the location from which property was seized.
- 10) The number of officers conducting the actual search shall be limited to ensure that each item seized is properly recorded and a chain of evidence is maintained.
- 11) An officer may legally seize anything described in a search warrant. Officers may search any location, within the parameters established in the warrant, in which an item described in the warrant may reasonably be secreted.
- 12) Items not identified in a search warrant may be seized if they meet all of the following requirements:
 - (1) The evidence must be discovered in the course of a lawful search; and
 - (2) The evidence must be readily recognized as contraband or, in conjunction with facts known to the officer before the search, the officer recognizes property as evidence of or the fruits of a crime; and
 - (3) The property was discovered in the physical area properly subject to search by authority of the warrant; and
 - (4) The evidence was found prior to the time that all specifically named items in the warrant were found.
 - (5) Officers must terminate the search when all described warrant items are found.
- 3. Return of a Search Warrant
 - a. After a search warrant is executed, the officer to whom the warrant was directed shall be responsible for returning the warrant to the court designated therein with a written inventory of the property seized. This must occur within 5 days of the date of issuance and 48 hours of the time of execution of the warrant.
 - b. Within 5 days after the execution of the warrant, the officer responsible for obtaining the search warrant shall ensure the affidavit or complaint made in support of the issuance of the warrant and a transcript of any testimony taken in support of the issuance of the warrant shall be filed with the Clerk of Courts.

VI. INVENTORY OF PROPERTY OTHER THAN VEHICLES.

- i. Property seized, recovered, found or abandoned and brought into police custody is subject to an inventory search, particularly noting items of value. Packages or items that may contain or hold multiple items should be inventoried with the contents documented in a property report.

VII. DISPOSITION OF SEIZED PROPERTY

- ii. Any property seized by officers under this Order shall be entered into evidence/property. All items shall be receipted with the proper department forms and the facts surrounding the seizure shall be documented in a report.

Chief Shane Collins