

TITLE 4

Criminal Process

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Title 4 ► Chapter 1

Arrest

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Sec. 4-1-1 Arrest Policy.

POLICY:

(a) Arrest in General.

- (1) Arrest is the act which takes an individual into custody with the intention of instituting or furthering criminal proceedings against the individual. It is a restraint on liberty.
- (2) An arrest is a serious action that may have repercussions in an individual's life, even if he/she is eventually found not guilty or never brought to trial. Consequently, the

Officer should make the arrest decision carefully and cautiously so that the power is exercised in a fair and impartial manner. An arrest is made for the protection and preservation of life, liberty, and property or where applicable under the Wisconsin Statutes.

- (3) It is the responsibility of the arresting Officer that, if possible, the individual understands he/she is under arrest. This understanding must include knowledge that criminal proceedings are to be undertaken or furthered against him/her. If criminal proceedings are not intended, it should be made clear to the detained individual that he/she is not arrested.

- (b) **Basic Authority.** The basic authority for law enforcement officers to make arrests is derived from Sec. 62.09(13), Wis. Stats., which makes it a duty for a peace officer to arrest, with or without a warrant and with reasonable diligence, and to take before the court every person found engaged in any disturbance of the peace or violating any law of the state or local ordinance.

- (c) **Statutory Authority.** This authority to arrest is further broadened by Sec. 968.07, Wis. Stats., which states as follows:
 - (a) "A law enforcement officer may arrest a person when:
 - (1) The officer has a warrant commanding that such person be arrested; or
 - (2) The officer believes, on reasonable grounds,* that a warrant for the person's arrest has been issued in this state; or
 - (3) The officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or
 - (4) There are reasonable grounds to believe that the person is committing or has committed a crime.**

 - (b) A law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer."

* The terms "probable cause" and "reasonable grounds" are used interchangeably. Mere "suspicion" alone is never sufficient to authorize an arrest without a warrant. Where an officer, in good faith, believes that a crime has been committed and that the person in question committed it, and his/her belief is based on such grounds as would induce an ordinary prudent and cautious officer, under these circumstances, to believe likewise, then the officer has such probable cause for his/her belief as will justify him/her in arresting without a warrant.

- ** Section 939.12, Wis. Stats., defines a crime as conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by forfeiture is not a crime.
- (d) **Alternatives to Arrest.** Sworn officers shall exercise enforcement alternatives consistent with the following processes:
- (1) **Citation; Forfeitures and Traffic Crimes.** Wisconsin Uniform Traffic Citation and complaint process shall be exercised in the enforcement of all applicable statutes and ordinances concerning traffic offenses (forfeitures) and misdemeanor traffic crimes. The defendant shall be provided with an appearance date for arraignment purposes in the appropriate court.
 - (2) **Citation; Civil.** Wisconsin Uniform Municipal Court Citation process shall be exercised in the enforcement of all municipal ordinance violations, except state traffic laws Chs. 340 through 348, Wis. Stats., adopted. The defendant shall be provided with an appearance date for arraignment purposes in municipal court.
 - (3) **Summons.** The Summons process shall be exercised through the District Attorney's office where sworn Officers have probable cause to support a criminal complaint as a result of an investigation.
 - (4) **Referral.** Sworn Officers may, subject to approval, refer to other law enforcement agencies, social services agencies, or other public or private referral service agencies those investigations or cases where the referral agency is better suited to dispose of the case.
 - (5) **Informal Resolution.** Sworn Officers are called upon frequently to mediate disputes which are considered civil in nature. However, frequently there are ordinances or other laws which could take jurisdiction over the issue of dispute. The process of informal resolution is recognized as an avenue of disposition in those instances where the Officer is in mediation as a third party, and disposition by other lawful authority would be unreasonable.
- (e) **Probable Cause Affidavit.**
- (1) A prisoner cannot be held longer than forty-eight (48) hours without a warrant. To help assure that this does not happen a "Probable Cause Affidavit" has to be filled out when the person is incarcerated. The affidavit will then be sent to the Court Commissioner, by the jail staff, to be reviewed.
 - (2) The "Probable Cause Affidavit" is located on the Police Department desktop computers, squad laptop computers, and available in person at the County Jail. The affidavit original stays with the prisoner and a copy gets attached to the incident report.

(f) **Alternatives to Prearrest Confinement.**

- (1) The City of Stanley Police Department recognizes not all individuals who are defendants, as a result of enforcement action, need to be held in custody or confined until the time of court arraignment. Accordingly, the following circumstances *shall require* the prearrest confinement in the County Jail, subject to bail procedures pursuant to state law.
 - a. Any felony arrest.
 - b. Any misdemeanor arrest.
 - c. Any warrant arrest.
- (2) The following *may require* the prearrest confinement in the County Jail, subject to bail procedures pursuant to State law:
 - a. Any misdemeanor traffic crime which has a mandatory jail sentence.
 - b. Any traffic offense (forfeiture) or municipal ordinance (forfeiture) where the defendant cannot post bail (i.e., out-of-state licensed driver or resident, no valid driver's license).

(**Note:** County authorities may not do jail confinement; subject may be given later jail date.)

(g) **The Alternatives to Confinement.**

- (1) Felony arrest—Consult with District Attorney.
- (2) Misdemeanor arrest—Bail procedures pursuant to state law.
- (3) Warrant arrest (body only)—Consult with District Attorney.
- (4) Warrant Arrest (forfeiture/misdemeanor)—Bail procedures pursuant to state law.
- (5) Misdemeanor traffic crime—Bail procedures pursuant to state law.
- (6) Traffic offense (forfeiture) — Issue citation and release with no bail/bond.
- (7) City ordinance (forfeiture) —
 - a. Release if defendant has a County residential address.

PROCEDURES:

- (a) Arrests shall be made primarily for the protection and preservation of life, liberty and property.
- (b) Officers shall be duty-bound to facilitate arrests when proper and appropriate under the guidelines of this policy and the Constitution of the United States.
- (c) Alternatives to arrest shall be considered whenever the employment of an acceptable alternative would facilitate a departmental objective or community need and remain within the confines and requirements of the law. Mediation is appropriate in cases such as:

- (1) Juvenile offenses of a minor nature.
 - (2) Disputes between family members, neighbors, friends, and customers and business persons when no violence is involved.
 - (3) Misdemeanors in which the victim states that restitution would be satisfactory and the offender is sufficiently chastised by a warning.
- (d) The Police Department shall view arrest as a serious action that may have severe repercussions throughout an individual's life, even if he/she is later found not guilty or never brought to trial. Officers shall bear in mind that arrest is the most severe sanction that society can exercise against those suspected of engaging in socially defiant conduct.
- (e) A summons may be used in all misdemeanors where the offender is a local resident with community ties and where there is no reason to believe that the individual will not appear. Previous failures to appear or a transient-type of residency may be reason to forego using a summons. A summons may also be used in a felony where the above policy conditions are met and the alleged crime did not involve bodily harm, the destruction of property or a threat of either.
- (f) An individual may be referred to human services agencies when that may be more effective in ensuring that future similar violations would not occur. Examples of appropriate cases for referral to social service agencies are marital problems, juvenile offenses, alcoholism and other drug abuse problems and chronic unemployment.

DEFINITIONS:

- (a) **Arrest.** The taking or detaining of a person by word or action into custody, so as to subject his/her liberty to the actual control and will of the person making the arrest, the arresting person having the intention of instituting or furthering criminal proceedings against the arrested individual.
- (b) **Crime.** Conduct prohibited by law, punishable by fine, imprisonment, or both. Conduct punishable by forfeiture only is not a crime.
- (c) **Custodial Arrest.** Depriving a person of his/her liberty by legal authority for the purpose of holding/detaining him/her to answer a criminal charge or civil forfeiture action.

COMMENTARY:

- (a) An arrest shall be considered the initial stage of a criminal prosecution. *Terry v. Ohio*. An arrest occurs whenever the will of an officer is imposed over the freedom of a person. *Hueber v. State of Wisconsin*.

- (b) The State Supreme Court also held in *State v. Dimaggio*, 49 Wis. 2d 565 (1971), that while a warrantless arrest based on probable cause requires that the Officer have more than a mere suspicion, the quantum of evidence necessary for a conviction is not necessary, but only information that would lead a reasonable officer to believe that the suspect's guilt is more than a possibility.

- (c) In making an arrest decision, the Officer shall determine whether there is probable cause which is more than good faith suspicion but less than proof beyond a reasonable doubt that the person has committed or is committing a crime. Probable cause means that there are reasonable grounds to believe that the person is committing or has committed a crime. Reasonable grounds to believe refers to the judgment that an ordinary prudent man or woman would make on the basis of all the facts available to him/her at the time he/she is faced with the decision. The facts are drawn from:
 - (1) Personal observations of the arresting Officer, including inquiry by the Officer after his/her suspicions have been aroused.
 - (2) Informer's tips. Whenever possible, the Officer should make an independent inquiry. The reliability of the informer is to be judged by the length of time the Officer has known or dealt with the informer, his/her general character and reputation, the number of tips received from him/her in the past, the accuracy of the information previously given and whether the informer is a volunteer or is paid for his/her knowledge.
 - (3) Information received from within the Department or from other agencies, including information received over the law enforcement communications systems.
 - (4) Past criminal record. This may only be used in conjunction with other evidence.
 - (5) Physical evidence found at the scene of the crime. Whether this is sufficient in itself for probable cause depends on the quality of the physical evidence.
 - (6) Report of victim or eyewitness.

- (d) Although an Officer should weigh the evidence necessary for probable cause (not the amount of evidence necessary for conviction), he/she should be aware of potential weaknesses in the evidence he/she is relying on. For example, if the sole witness is unlikely to appear in court, in some cases the Officer should consider alternatives to arrest.

- (e) The Officer should try to retain community support in the arrest process. The Officer should be familiar with community sentiment so that laws may be vigorously enforced against serious crimes in response to community needs. Also, crimes that the community legitimately considers minor should not be rigorously and relentlessly enforced.

- (f) The best practice is to obtain an arrest warrant whenever practical. This is especially true when the officer suspects a search incident to the arrest may be necessary. The courts will

be more likely to uphold a search incident to an arrest if there has been a judicial determination of probable cause. When there is an arrest warrant, the court will be less likely to think that the arrest was merely a pretext for a search or that the probable cause for the arrest was for the fruit of a prior illegal search.

- (g) In order to preserve the criminal justice system, the Officer should consider:
- (1) Whether the individual's conduct encourages violations of the law by others.
 - (2) Whether the individual is physically or verbally resisting the law enforcement Officer's authority—in particular, if the individual is fleeing.

Sec. 4-1-2 Arrested Person to Be Informed.

POLICY:

The arresting Officer is responsible for informing the subject that he/she is under arrest. Arresting Officers shall be responsible for advising the arrested person that he/she is under arrest and the reason he/she is being arrested.

COMMENTARY:

Informing the person arrested that he/she is under arrest is important for two reasons:

- (a) It is one factor used in pinpointing the moment in which the individual may be apprised of his/her constitutional rights pursuant to the *Escobedo* and *Miranda* decisions.
- (b) It is a crucial factor in determining whether or when a sequence of events occurred which gave rise to probable cause for arrest.

Sec. 4-1-3 Arrest Warrant Validity.

POLICY:

- (a) If there is an arrest warrant which is valid on its face in the possession of the Officer, the Officer shall arrest the person named in the warrant with due regard to the safety of any bystanders and victims, the safety of any peace officer at the scene and the safety of the apparent offender. An arrest warrant is "valid on its face" if it:
 - (1) Is in writing, signed by the judge or court commissioner, states the name of the judge or court commissioner who issued it, together with the title of his/her office, and states the date when issued.

- (2) States the name of the crime, the section charged and the number of the section alleged to have been violated.
 - (3) States the name of the person to be arrested, if known, or, if not known, designates the person to be arrested by a description by which he/she can be identified with reasonable certainty.
 - (4) Commands that the person against whom the complaint was made be arrested and brought before the judge or court commissioner issuing the warrant or, if he/she is absent or unable to act, before some other judge or court commissioner in the same county.
 - (5) States the name of the county and of the city, village or town in which the offense is alleged to have been committed.
 - (6) Conforms in all essential particulars to the facts set forth in the complaint.
- (b) Omission of any of the above requirements in Subsection (a) renders a warrant void on its face.
- (c) If the Officer is shown an arrest warrant which is valid on its face or is told by a Wisconsin law enforcement officer or by the Communications Center that such a warrant exists or is directed by a superior officer that such a warrant exists, he/she shall arrest that person named in the warrant with due regard to the safety of any bystanders and victims, the safety of any peace officer at the scene or the safety of the apparent offender.
- (d) A bench warrant is a valid order by a judge and should be executed in the same manner as a Wisconsin arrest warrant.
- (e) If a person insists that he/she has satisfied the warrant, the Officer should give special attention to attempting to verify the status. This may include checking with the Clerk of Courts' office, when possible, or allowing the person to call someone to provide documentation that the warrant has been satisfied.

Sec. 4-1-4 Release of Arrested Person.

POLICY:

- (a) **Insufficient Grounds for Issuance of Criminal Complaint.** An Officer having custody of a person arrested without a warrant may release the person arrested without requiring him/her to appear before a judge if the law enforcement officer is satisfied that there are insufficient grounds for the issuance of a criminal complaint against the person arrested.
- (b) **Release from Custody — Misdemeanors.**
- (1) The decision to release a subject from custody when there is a misdemeanor is determined by the court. Persons arrested for a misdemeanor may be released from custody without cash bond *unless*:

- a. Does not have proper ID, refuses to identify himself/herself, or refuses to submit to booking procedures authorized under Sec. 165.83, Wis. Stats.
 - b. Appears to represent a danger of harm to himself/herself, another person or property.
 - c. Not a Wisconsin resident.
 - d. Cannot show sufficient evidence of ties to the community.
 - e. Accused has previously failed to appear in court or failed to respond to a citation.
 - f. Arrest/detention is needed to carry out legitimate investigative action in accordance with policy.
- (2) All persons not released for a 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.
- (3) 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 Chippewa and Clark Counties.
- (c) **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:
 - a. Seriousness of the offense.
 - b. Seriousness of bodily injury to victim(s).
 - c. Previous criminal record of the arrestee.
 - d. Danger posed to others.
 - e. Likelihood of fleeing to avoid prosecution.
 - f. As directed by written judicial orders.
 - (2) Further investigative requirements (i.e., line-ups, handwriting samples, bodily fluids, hair samples, etc.).
- (d) **Mandatory Incarceration.** Arrested persons are held in custody upon verification of any of the following:
- (1) An arrest warrant exists for the person who is unable to post required bond and the issuing agency requests the person detained.
 - (2) An apprehension request has been issued by Corrections or Probation and Parole.
 - (3) A state/federal judge has issued a *capias* for the individual in custody.
 - (4) As directed by written judicial orders of Chippewa and Clark Counties Circuit Court Judges.
- (e) **Non-Release Due to Condition of Arrested Person.** 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/her own safety or would constitute, because of his/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 Secs. 969.07 and 970.01, Wis. Stats.)

Sec. 4-1-5 The Elements of Arrest.

PROCEDURES:

- (a) **Intent.** There must be purpose of intention on the part of the Officer to effect an arrest.

COMMENTARY:

The intention of the arresting Officer to take the person into custody is the basic element which distinguishes an arrest from a lesser form of detention. To be an arrest, the detention must be for the purpose of taking the person before a court or other official body or agency in connection with the administration of the law. Notice of arrest should be given either expressly or by implication and unless the subject has such notice, no amount of physical restraint can constitute an arrest. A forcible seizure of one's person without any pretense of taking him/her into legal custody does not amount to an arrest.

A person is not arrested when he/she is merely approached by a law enforcement Officer and questioned as to his/her identity and actions, nor is a momentary detention to issue a traffic citation an arrest since, in these situations, there is no intent to take the person into custody of law or deprive him/her of his/her liberty.

- (a) **Authority.** An Officer must be acting under real or assumed legal authority in taking the person into custody.

COMMENTARY:

The purpose of this requirement is to make sure that the taking is not a mere abduction, without pretense of legality. Thus, when a person is seized by kidnappers, it is not an arrest because the abductors do not pretend to act under any authority of law.

- (a) **Custody.** There must be an actual or constructive seizure or restraint of the person to be arrested by the arresting Officer.

COMMENTARY:

The necessary control may be assumed without force and in any manner to bring the person arrested under the power or control of the arresting Officer. But if there is no restraint of the

person's liberty, there is no arrest. One who voluntarily accepts the good faith invitation or suggestion of an Officer that he/she go to the police station for questioning or investigation is not under arrest since there is (1) no intention or purpose on the part of the Officer to effect an arrest; and (2) no seizure of the person, either actual or constructive. Compliance in this cause is not the result of official "force" exercised over the person, but the result of his/her voluntary act.

"Constructive seizure" of the person falling short of actual seizure and physical domination may be accomplished "by touching the person of the accused, or by his/her voluntary submission to the authority of the arresting officer." If an Officer having authority to make an arrest merely lays a finger upon the person of the accused, however slightly, with the announced intention to take him/her into custody, it is an arrest even though he/she may not succeed in stopping or holding him/her even for an instant. The theory underlying a constructive seizure by touching the person, even though the Officer fails to stop or hold him/her, lies in the following legal function: the officer having been close enough to the accused to touch him, the accused is considered to have technically come within the power of the law, as represented by the Officer, and, other elements of arrest having been shown, is held to have been arrested at that time.

The theory of constructive seizure by touching holds true even though the hand laid on be that of one assisting the Officer and acting in concert with him/her and under his/her direction, although the Officer may not be immediately present.

If the other elements of arrest are present and the person sought to be arrested submits his/her person to the control of the Officer and recognizes that he/she is in his/her custody, the arrest will be complete even though no actual touching occurs.

- (a) **Recognition.** There must be an understanding by the arrested person that he/she is being arrested.

COMMENTARY:

This element is ordinarily shown when the Officer notifies the other person that he/she is arresting him/her, or when the circumstances are such that the person cannot help knowing he/she is being arrested, as where he/she is handcuffed or otherwise physically restrained. In all cases where there is no manual touching or actual seizure, the intention of the parties to the action becomes especially important, since there must have been intent and purpose on the part of one to arrest the other and intention of that other to submit, under the belief and impression that submission was necessary.

When an Officer detains a suspect by holding him/her at gunpoint or takes him/her to headquarters without his/her consent, it is generally held that an arrest has taken place. But the

mere stopping of a pedestrian or motorist and commanding him/her to step out of his/her automobile without other steps being taken ordinarily does not constitute an arrest.

Whether or not a felony suspect had been placed under arrest may become an all-important question when it is sought to use his/her incriminating statements against him/her at his/her trial. If arrested, he/she must have been fully warned of his/her constitutional rights as required by *Miranda* before the interview/interrogation.

"Hands up!" has been held insufficient to inform a person he/she is under arrest. Also, it has been held there was no arrest when the Officer merely yelled "Stop!"

It might be doubted that an unconscious person or an extremely intoxicated person could be arrested, he/she having no present ability to understand that he/she is in custody. But it is only when there is no actual manual seizure of the arrested person that his/her intention or understanding takes on controlling significance.

There is no absolute test as to when an arrest occurs. The action of a police officer must be evaluated in the context of the circumstances in which it takes place. The intention of an Officer either to make or not make an arrest generally will be the controlling factor.

If the actual arrest is to be deliberately delayed, it is a good practice for the Officer to make a point of advising the person that he/she is not under arrest. Such advice is good evidence to show that no *Miranda* warnings were necessary prior to any questioning, since the suspect was not in custody.

Sec. 4-1-6 Mechanics of Arrest.

POLICY:

- (a) The purpose of an arrest is to bring the arrested person before the court to answer to the violation for which he/she was arrested. The Department maintains custody of arrestees following their arrest until they are transferred to the custody of the Jail or other law enforcement agency or released from custody on fixed bail, their own recognizance or without being charged.
- (b) Arrestees will be treated with as much dignity as possible and with a minimum of embarrassment.

DEFINITIONS:

The terms "probable cause" and "reasonable grounds" are used interchangeably. Mere "suspicion" is never sufficient to authorize an arrest without a warrant. Where an Officer, in good faith, believes that a crime has been committed and that the person in question committed it and the Officer's belief is based on such grounds as would induce an ordinarily prudent and cautious man, under these circumstances, to believe likewise, then the Officer has such probable cause for his/her belief as will justify him/her in arresting without a warrant.

Section 939.12, Wis. Stats., defines a crime as conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by forfeiture is not a crime.

COMMENTARY:

The most frequent type of incident where the question of legality of an arrest arises is in the general area of breaches of the peace and disorderly conduct. In many of these cases, the Officer is dispatched to a location in answer to a complaint received by telephone at the Communications Center. Though the Officer arrives at the scene within a few minutes, the offense has already been concluded. In these cases, a physical arrest can be made only if existing conditions provide "probable cause" or "reasonable grounds" for the Officer to believe that an ordinance or a misdemeanor statute was violated and that the person to be arrested committed the violation and at least one of the following conditions existed:

- (a) The subject does not properly identify self and, therefore, the element of not being apprehended, unless immediately arrested, is present. (Original Violation.)
- (b) In the presence of the Officer, the subject threatens to fight with another, even though no fight actually takes place in the officer's presence. (Disorderly Conduct.)
- (c) In the presence of the Officer (public or private place), the subject engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance. (Disorderly Conduct.)
- (d) By the subject's apparent condition, attitude and/or previous disorderliness, the Officer believes it likely that the subject will cause personal injury or property damage if not immediately arrested. (Original Violation.)
- (e) The subject was observed by the Officer trespassing on property or in the building of another person without permission of the lawful owner or occupant.

Sec. 4-1-7 Physical Arrest for Violation of City Ordinances.

POLICY:

- (a) Normally the Officer issues a citation to a person who is in violation of a City ordinance and does not take the subject into custody. However, a physical arrest of a person found in violation of City ordinances is an option:
 - (1) Appropriate in some situations when the person has been charged with a City ordinance violation which has a corresponding State statute, e.g., injury to property, unlawful trespass to property, etc.
 - (2) Appropriate when a citation has been issued, but
 - a. The person involved refuses to cease behavior which is in violation of the ordinance.
 - b. The Officer cannot determine the identity of the violator.
- (b) Whenever a person is physically arrested and charged with a City ordinance violation, the person will be eligible to bail in accordance with the following:
 - (1) A resident of Wisconsin may post the cash bail which has been set in accordance with the current bail schedule. At the Officer's discretion, a violator may be apprehended and released if he/she has area ties.
 - (2) An out-of-state violator may post the cash bail which has been set in accordance with the current bail schedule.

Sec. 4-1-8 Criminal Vehicle Code Violations.

POLICY:

If a person is arrested without a warrant for violation of a traffic regulation, the arresting Officer shall issue a citation under Sec. 968.05, Wis. Stats.

Sec. 4-1-9 Noncriminal Vehicle Code Violations.

POLICY:

- (a) If a person is arrested without a warrant for the violation of a traffic regulation, the arresting Officer shall issue a citation under Sec. 345.25, Wis. Stats., and release the subject with no deposit/bond. Jail is normally an option if the incident involves a criminal traffic offense.

- (b) If the alleged violator is not released as outlined above, the alleged violator shall be brought without unreasonable delay before a judge.

COMMENTARY:

Most nontraffic City ordinance violations are processed by the issuance of a municipal citation and complaint. The deposit amounts to be used have been established by the governing body of the City and are indicated by ordinance number in the bond schedule for City ordinance violations.

In instances where a citation is appropriate, Officers should, in most cases, release the person after the citation has been issued in accordance with bond posting procedures. An Officer's report must be completed when the citation resulted from a citizen's complaint..

Sec. 4-1-10 Arrest Techniques.

POLICY:

There is no such thing as a routine arrest. People do not react similarly when faced with the prospect of losing their freedom. Common sense demands that the arresting officers remain alert to this fact at all times. In all arrest situations, the arresting Officers have a responsibility to themselves, fellow Officers and innocent bystanders as well as the person being arrested. That responsibility is to plan and control the arrest by using the safest and most effective techniques available under the circumstances.

PROCEDURES:

- (a) **Effecting the Arrest.** There are several elements essential to effect a valid arrest. These are authority, intent, control by the Officer and understanding by the arrested person.
- (b) **Officer Identification.** Nonuniformed employees shall always verbally identify themselves and exhibit their badge and credentials to prevent any unnecessary resistance.
- (c) **Planning the Arrest.** This can range from a few seconds to hours, as circumstances permit. Factors to be given consideration are:
- (1) Time.
 - (2) Location.
 - (3) Proximity of other members of the public.

- (4) Superiority of manpower.
 - (5) Known characteristics of the person being arrested.
- (d) **Use of Force to Effect Entry into Dwellings.** Since a person's home is to be regarded as his/her "castle", every effort should be made to make other arrangements to effect an arrest for misdemeanors or other crimes of a less serious nature. Force may be used only for felonies as follows:
- (1) Forcible entry will not be permitted without a warrant, absent exigent circumstances.
 - (2) An officer may use only such amount of force as he/she reasonably believes to be necessary to make a lawful arrest.
 - (3) The Officer *must* first identify himself/herself, explain his/her purpose and demand admittance. (Except when there are exigent circumstances, such as threat to personal safety.)
 - (4) When exigent circumstances exist permitting a warrantless entry, the arrest must be for a serious crime, and the Officer must be in the process of attempting to recapture on fresh pursuit a person who has been arrested for a felony or who is a fugitive criminal.
- (e) **Positioning for Arrest.**
- (1) Always attempt to approach a subject, vehicle or premise so that the Officer has the tactical advantage. Never stand directly in front of doors or windows of dwellings or buildings. Always eliminate positioning that may cause cross-fire problems. Remain far enough away from a fellow Officer to eliminate the possibility of the subject attacking both Officers simultaneously.
 - (2) An Officer arresting with or without a warrant shall act in a way most likely to protect the safety of the Officer, bystanders, victims, other Officers and/or apparent offenders. Whenever possible, Officers shall attempt to make potentially volatile arrests *away* from the bystanders and/or victims.
- (f) **Barricaded Subjects.** Arrest situations involving barricaded subjects who are or may be armed should not be handled by one or two arresting Officers, unless the situation demands immediate action. The goal of law enforcement is to neutralize the situation without injury if possible. Once contained, the situation can be waited out; time is on the side of the arresting Officers. Therefore, assault by specifically trained personnel should occur only as a last resort.
- (g) **Protection of Arrested Persons.** The Officer has a responsibility to the subject once in custody. The arrested person must be protected from all individuals who would attempt

any physical harm to his/her person. The arrested person must be transported in a safe manner to the lockup facility.

- (h) **Post-Arrest Search.** An immediate field search of prisoners must be conducted whenever the arrest is for a criminal violation and the arrested person is to be transported.

Sec. 4-1-11 Arrest With a Warrant.

POLICY:

A valid arrest warrant eliminates the Officer's discretion to employ alternatives to arrest; the person named must be arrested. A teletype from another agency (hard copy) naming the suspect may be considered a valid arrest warrant.

Sec. 4-1-12 Wisconsin Arrest Warrant in Officer's Possession.

POLICY:

If a Wisconsin arrest warrant valid on its face is in the possession of an Officer, the Officer shall arrest the person named in the warrant with due regard to the safety of any bystanders and victims, the safety of any peace officer at the scene, the safety of the apparent offender and the danger of future bodily harm.

PROCEDURES:

An arrest warrant is "valid on its face" if it:

- (a) Is in writing and signed by the judge.
- (b) States the name of the crime, the statutory section charged and number of the section alleged to have been violated.
- (c) States the name of the person to be arrested, if known, or, if not known, designates the person to be arrested by a description by which he/she can be identified with reasonable certainty.
- (d) States the date when issued and the name of the judge who issued it, together with the title of his/her office.

- (e) Commands that the person against whom the complaint was made be arrested and brought before the judge issuing the warrant or, if he/she is absent or unable to act, before some other judge in the same county.
- (f) Has attached to it (or on the same form) a copy of the complaint.

COMMENTARY:

A valid arrest warrant shall eliminate the Officer's discretion to employ alternatives to arrest. The person named on the warrant must be arrested. If an Officer has a valid Wisconsin arrest warrant in his/her possession, the Officer shall arrest the person named therein with due regard for the safety of any Officer at the scene, the safety of the offender and the danger of future bodily harm.

According to 6 Op. Atty. Gen. 342 (1917), the issuance of a valid arrest warrant diminishes the Officer's discretion in determining whether or not to serve or execute it. In Wisconsin, seldom is a person named in a warrant allowed to make a court appearance voluntarily despite the issuance of the warrant. LaFave, *Arrest* at 33 (1965).

Sec. 4-1-13 Wisconsin Arrest Warrant Not in Officer's Possession.

POLICY:

If the Officer is shown an arrest warrant which is valid on its face or is told by a Wisconsin law enforcement officer that he/she possesses such a warrant or is directed by a superior officer that such a warrant exists, the Officer shall arrest the person named in the warrant with due regard to the safety of any bystanders and victims, the safety of any peace officer at the scene, the safety of the apparent offender and the danger of future bodily harm. Teletype verification of a warrant is sufficient grounds for arrest.

PROCEDURES:

The following are factors that an Officer should weigh before making a warrantless arrest:

- (a) **"Gravity of Offense" Considerations.** The Officer shall determine the seriousness of the offense by establishing whether:
 - (1) Bodily harm was actually inflicted;
 - (2) Deadly force was used, implied or threatened.
 - (3) Nondeadly force was used, implied or threatened.
 - (4) An individual's civil rights were compromised.

- (5) Coercion was used or fear was instilled due to the offense.
- (6) Any damage to property was large in amount or permanent in effect.
- (7) Future victims and/or their property are in danger.
- (8) A victim exists.

(b) **Evidentiary Considerations.**

- (1) Officers shall consider whether there are reasonable grounds to believe the person to be arrested has committed or is committing a crime.
- (2) In establishing reasonable grounds, Officers shall consider:
 - a. Personal observations.
 - b. Informer's tips.
 - c. Information from fellow Officers and other law enforcement agencies.
 - d. Past criminal activity by the suspect (may be used only in conjunction with other evidence).
 - e. Physical evidence at the scene.
 - f. Reports from victim and/or eyewitnesses.
- (3) Officers shall be mindful of the quality of evidence establishing probable cause.
- (4) As the quality of evidence increases, so shall the likelihood of arrest.
- (5) *Guilt beyond a reasonable doubt is not necessary for establishing cause for a valid arrest.*

(c) **Criminal Justice Considerations.** Officers shall be *required* to arrest if:

- (1) The suspect's conduct encourages others to violate the law.
- (2) The suspect is physically resisting the officer's authority.
- (3) The suspect is fleeing or attempting to flee.

(d) **Community Support Considerations.** Officers shall maintain awareness of community needs and utilize selective enforcement against serious crime in response to those needs.

(e) **Search Considerations.** Whenever a situation permits, Officers may secure a search warrant rather than searching incident to lawful arrest. This does not preclude inventory, which is required by Department policy.

COMMENTARY:

In *Schill v. State*, 50 Wis. 2d 473 (1971), the Wisconsin Supreme Court held that an officer need not have a warrant in his/her possession to make a valid arrest of the person named in the warrant. A bench warrant is a valid order by a judge and should be executed in the same manner as a Wisconsin arrest warrant.

Sec. 4-1-14 Out-of-State Arrest Warrant.

PROCEDURES:

- (a) If the Officer has information that an out-of-state felony warrant has been issued, the Officer shall arrest the person named in the warrant with due regard to the safety of any bystanders and victims, the safety of any peace officer at the scene, the safety of the apparent offender and the danger of future bodily harm.
- (b) No arrest shall be made on an out-of-state misdemeanor warrant until a fugitive warrant has been issued in Wisconsin.

COMMENTARY:

The authority for this action is derived from the Uniform Criminal Extradition Act, Sec. 976.03(14), Wis. Stats.

Sec. 4-1-15 Warrantless Arrests.

POLICY:

- (a) An arrest warrant should be obtained whenever possible.
- (b) An arrest may be made without a warrant when there are reasonable grounds to believe the person has committed or is committing a crime. A warrant is necessary to arrest an individual in his/her dwelling unless there are emergency circumstances.

PROCEDURES:

In making an arrest without a warrant, Officers shall conduct themselves according to Department policies, the latest Supreme Court rulings and constitutional requirements.

COMMENTARY:

This is based on Sec. 968.07, Wis. Stats. (1977).

Sec. 4-1-16 Evidentiary Considerations.

POLICY:

The Officer must consider whether there are reasonable grounds to believe the person to be arrested has committed or is committing a crime.

PROCEDURES:

In determining whether reasonable grounds exist, the Officer must consider all the facts available at the time of decision, which are drawn from:

- (a) Personal observations, including inquiry after the Officer's suspicions are aroused.
- (b) Informer's tips, whenever possible corroborated by independent inquiry.
- (c) Information from within the Department and other police agencies, including that received over communication networks.
- (d) Past criminal activity by the suspect which, however, may be used only in conjunction with other evidence.
- (e) Physical evidence at the scene.
- (f) Reports of victims or eyewitnesses.

COMMENTARY:

The arresting Officer, of course, does not need to establish guilt beyond a reasonable doubt. Although the Officer needs evidence enough for probable cause only and not for conviction, the quality of the evidence establishing probable cause should be considered.

Sec. 4-1-17 Arrest Immunity.**POLICY:**

Ambassadors, foreign ministers, their families, members of their official households, civil and military attaches, personal secretaries, personal servants and other foreign nationals working for diplomatic missions shall be immune from arrest.

COMMENTARY:

U.S. citizens working in a foreign mission, foreign nationals employed as clerical staff or janitors, consuls-general, consuls and vice-consuls do not have immunity, except when on official diplomatic business. Ordinary foreign nationals (aliens) are subject to arrest.

POLICY:

U.S. Senators and Representatives may not be arrested, except in cases of treason, felony and breach of the peace, during their attendance at a session of Congress and while going to or returning from the same.

COMMENTARY:

This congressional immunity is in effect from the opening day of a session until that legislative session has adjourned and not just during the working hours of Congress.

POLICY:

Members of the Wisconsin Legislature shall, in all cases except treason, felony and breach of the peace, be privileged from arrest, nor shall they be subject to any civil process during the session of the Legislature, nor for fifteen (15) days next before the commencement and after the termination of each session.

COMMENTARY:

This policy is from Article IV, Section 15, of the Wisconsin Constitution.

POLICY:

During the time the state military forces (National Guard) are performing military duty pursuant to proper orders issued by the Governor or by his/her authority, all members thereof while going to, remaining at or returning from a place of duty shall be exempt from arrest or service of any process issued by a civilian court.

COMMENTARY:

This policy is found in Sec. 21.12, Wis. Stats.

Sec. 4-1-18 Miranda Warning Required.

POLICY:

- (a) Whenever a suspect is in police custody and is to be questioned, that person shall be given the *Miranda* warnings. An intelligent waiver must be obtained before proceeding with the questioning.
- (b) Even when *Miranda* is fully complied with, a statement must be voluntarily given. The statement must not be the product of force, threats, harassment or improper inducements.
- (c) Except for questions about identity, no questions will be asked the accused before he/she is informed of and understands his/her rights.

PROCEDURES:

- (d) **Warnings.** The investigator shall warn the person, prior to any questioning, that:
- (1) The suspect has the right to remain silent.
 - (2) If the suspect does make a statement, anything said may be used against him/her in court.
 - (3) The suspect has the right to consult with an attorney and to have one present during the time of the interrogation.
 - (4) If the suspect cannot afford an attorney, one will be appointed prior to any questioning if he/she so desires.
- (e) **Waiver.** After the warnings are given, the suspect must knowingly, voluntarily and intelligently waive these rights before questioning can begin. The investigator must:
- (1) Determine that the suspect understands the rights.
 - (2) Determine whether or not the suspect agrees to waive these rights by answering questions and/or discussing the matter.
 - (3) Insure that the suspect understands that the waiver of rights may be revoked at any time.
 - (4) Any waiver of rights by an arrested person must be:
 - a. Voluntary.
 - b. Made in a knowing and comprehending fashion.Spontaneous declarations and/or excited utterances do not fall under this Section.
 - (5) Not question the suspect unless a waiver is obtained, or stop questioning the suspect if the waiver is revoked. No questions will be asked the suspect once he/she has indicated he/she does not wish to answer questions.
- (f) Suspects shall be allowed reasonable access to water, food and restroom facilities.
- (g) Suspects will not be questioned for more than two (2) hours at one time without a break.

DEFINITIONS:

"Custodial interrogation" is questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his/her freedom in any significant way.

COMMENTARY:

The *Miranda* warnings are required by the Supreme Court to be given prior to any "custodial interrogation," which may occur at a suspect's home, on the street or at the station house. This

situation occurs, said the Court, whenever an investigation has moved from the investigatory to the custodial stage, either actual or constructive custody. Constructive custody may occur prior to any arrest. The critical factor is that point in time at which the suspect's freedom is restricted in any significant way. If officers surround the suspect and refuse to allow the suspect to leave, this would be constructive custody. It is better to warn too early than too late.

The warnings are not required to be given when interrogation is not "custodial." When a crime is committed, a person may be interrogated as a part of the officer's investigation without such interrogation being custodial. Finally, the warnings are not required when a person's statement is volunteered. Some of the factors the courts will consider in determining whether a situation is "custodial" include time of day, number of officers involved in questioning, manner of questioning, place of questioning, length of questioning and persons present with the suspect. Even when *Miranda* is fully complied with, the statement must be voluntarily given, that is, not the product of force, threats, harassment or inducements.

Complying with the *Miranda* guideline warnings is a safeguard for helping to insure the admissibility, as evidence in court, of statements obtained from a defendant questioned while in custody or otherwise deprived of his/her freedom of action in any significant way. Under the Supreme Court's ruling in *Miranda*, the government has to show "by clear and convincing evidence" that a person who has made a confession explicitly waived his/her Fifth Amendment right against self-incrimination.

In Wisconsin, the procedure detailed in *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244 (1965), is utilized in deciding whether a confession was truly voluntarily. *Miranda* concerns are only a segment of the totality of circumstances considered. The *Goodchild* rule provides for a separate hearing before the trial judge alone on the issue of voluntariness with the judge's determination being final, the jury's consideration being limited to the confession's weight and credibility. A *Goodchild* hearing considers the totality of the circumstances.

If the trial judge finds that the confession is involuntary, that is the end of the matter, and the jury never considers the confession. If the judge determines that the confession was voluntarily made, the confession is admitted.

Miranda warnings, including the right to counsel, are not required when an arrested driver is asked to submit to a breathalyzer or other chemical tests pursuant to Sec. 343.305, Wis. Stats. If officers do interrogate the driver as to his/her driving or intoxication, any answers would be testimonial in nature and *Miranda* warnings would be required. *State v. Bunders*, 68 Wis. 2d 129.

If the suspect indicates in any manner and at any stage of the interrogation that he/she wishes to consult with an attorney before speaking, there can be no questioning. If the individual

indicates in any manner that he/she does not wish to be interrogated, officers may not question the suspect.

The fact that a suspect may have answered some questions or volunteered some statements does not deprive the suspect of the right to refrain from answering any further inquiries until the suspect has consulted with an attorney and thereafter consents to be questioned.

If interrogation of a suspect is stopped, for example, late at night or by one team and resumed the next morning by a different team of interrogators, the warnings should be repeated before the questioning is resumed. Here, interrogation "presupposes a series of authoritative demands for answers, intended to expand the scope of the investigation rather than merely clarify." The booking process with routine questioning does not constitute interrogation. An arrested person might ask, "How much time can I get for this?" and the officer responds, "For what?" and be answered, "For the robbery." This would not constitute interrogation.

Complying with the guidelines of *Miranda* is important to safeguard for evidentiary purposes that a confession is voluntary.

Sec. 4-1-19 Off-Duty Arrests.

STATEMENT OF PURPOSE:

The purpose of this policy is to provide guidelines to law enforcement officers regarding acceptable criteria for effecting off-duty arrests.

POLICY:

Off-duty law enforcement officers are often faced with situations involving criminal conduct that they are neither equipped nor prepared to handle in the same manner as if they were on duty. This may lead to unnecessary injuries to off-duty Officers, and confusion for those on-duty Officers arriving at the scene trying to correctly assess the facts. In order to promote safety and efficiency, it is the policy of this Department to determine and regulate those situations and locations within which a sworn law enforcement officer is permitted to make an arrest while on duty.

DEFINITIONS:

As used in this policy, an Officer is deemed "personally involved" where the off-duty Officer, a family member, or a friend becomes engaged in a dispute or incident involving a personal matter with the person to be arrested or any other person connected with the incident. This is inapplicable to situations where the law enforcement officer is a victim of crime.

PROCEDURES:

- (a) **Liability Protection.** Officers of this Department have liability protection for both the on-duty and off-duty performance of official duties. This protection does not extend to acts intended to cause injury or damage, or to those actions that the Officer knew, or reasonably should have known, were in conflict with the law or the established policies of this Department.

- (b) **Permitted Off-Duty Arrests.** When off-duty and within the legal jurisdiction of this law enforcement agency, an Officer may make an arrest only when the following four (4) factual circumstance exist:
 - (1) The arresting Officer is not personally involved in the incident underlying the arrest; and
 - (2) There is an immediate need to prevent a crime or apprehend a suspect; and
 - (3) The crime would require a full custodial arrest; and
 - (4) The arresting officer possesses appropriate police identification.

- (c) **Off-Duty Responsibilities.**
 - (1) While off-duty, the law enforcement Officer is responsible for immediately reporting any suspected or observed criminal activities to on-duty authorities.
 - (2) Except as allowed by this policy, off-duty Officers should not enforce minor violations such as harassment, disorderly conduct or other nuisance-type offenses. On-duty personnel shall be contacted to respond to the situation where an off-duty Officer becomes aware of such violations.

- (d) **Prohibited Off-Duty Arrests.** Officers shall not make an arrest off-duty:
 - (1) When the arresting Officer is personally involved in the incident underlying the arrest.
 - (2) When engaged in off-duty employment of a non-police nature, and the Officer's actions are only in furtherance of the interests of the private employer. [Example: An Officer who has an authorized off-duty job at a theater is summoned by the theater manager to throw someone out of the theater office. The person reacts violently, and the Officer makes an arrest. In such a fact situation, the off-duty Officer used law enforcement authority for the benefit of the employer, not for the benefit of the community].
 - (3) When the arrest is made solely as enforcement of a minor traffic regulation. Despite the fact that a law enforcement officer has police powers and responsibilities twenty-four (24) hours a day throughout the jurisdiction, the off-duty Officer should not enforce minor traffic violations.

COMMENTARY:

Many law enforcement agencies have some limitations on off-duty arrests due to the higher associated risks to those officers in those situations and to reduce the likelihood of civil or criminal liability lawsuits. First, many off-duty Officers do not have ready access to normal on-duty equipment. Many off-duty Officers lack direct emergency communications with their department, do not have immediate access to officer assistance, and are much less likely to be wearing body armor or have access to equipment like a Department-provided shotgun, baton or OC spray. Second, off-duty Officers out of uniform and carrying no or inadequate identification run a higher risk of not being identified as Officers, and even being mistaken for criminal perpetrators during armed encounters.

Off-duty Officers also have a higher probability of being present in situations where "personal involvement" may be a factor. For example, an off-duty Officer could be visiting a relative's home when the relative becomes involved in an angry dispute with a neighbor. The off-duty Officer intervenes in the situation and argument and gets shoved by the neighbor. The Officer then responds by arresting the neighbor for harassment or disorderly conduct, creating a risk for future false imprisonment litigation due to the Officer's family relationship with the neighbor, a personal interest.

Title 4 ► Chapter 2

Stop and Frisk

4-2-1	Field Interrogations
4-2-2	Stops
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Sec. 4-2-1 Field Interrogations.

STATEMENT OF PURPOSE:

It is the policy of the City of Stanley Police Department that field interrogations will be conducted in a manner which not only promotes the public safety and safeguards law enforcement officers from harm, but also holds invasions of personal rights and privacy to a minimum.

POLICY:

In performing his/her responsibilities, a law enforcement Officer must often approach individuals who appear to be engaged in some activity calling for investigation. Such activities may cover a wide range of situations; in some, the Officer will be preventing or detecting crime; in others, the Officer will be providing assistance to persons in need. Depending on the nature of the situation encountered, the police response may at times constitute a "stop," and possibly a "frisk," as defined in these guidelines. Unless an Officer concludes that an arrest should be made or that a stop is justifiable, communications with a private citizen should begin with a contact. (A contact consists of making an inquiry of a citizen in which the citizen's liberty is not restrained.)

PROCEDURES:

- (a) After identifying himself/herself as a law enforcement officer, an Officer may initiate a contact with a person in any place where the Officer has a right to be present.

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- (b) Persons contacted may not be halted or detained against their will or frisked. They may not be required to answer questions or to cooperate in any way if they do not wish to do so.
- (c) An Officer may not use force or coercion in initiating a contact or in attempting to obtain cooperation once the contact is made.
- (d) If persons contacted refuse to cooperate, they must be permitted to go on their way. Since a contact is not a stop or an arrest and those persons contacted may be innocent of wrongdoing of any kind, Officers should take special care to act in as restrained and courteous a manner as possible.

Sec. 4-2-2 Stops.

DEFINITIONS:

A "stop" is the temporary detention of a person for investigation. A "stop" occurs whenever an officer uses his/her authority to make a person halt, or to keep him/her in a certain place or to compel him/her to perform some act. If a person is under a reasonable impression that he/she is not free to leave the Officer's presence, a "stop" has occurred.

POLICY:

(a) **Reasons for a Stop.**

- (1) **Probable Cause.** An Officer may stop a person in a public place, after having identified himself/herself as a law enforcement officer, if the Officer reasonably suspects that a person has committed, is committing, or is about to commit any crime. Both pedestrians and persons in vehicles may be stopped.
- (2) **Reasonable Suspicion.** The term "reasonable suspicion" is not capable of precise definition; however, it is more than a hunch or mere speculation on the part of an Officer, but less than the probable cause necessary for arrest. Every Officer conducting a stop must be prepared to cite the existence of specific facts in support of his/her determination that a "reasonable suspicion" was present.

- (b) **Stopping Vehicle at Roadblocks.** If authorized to do so by the Officer-in-Charge, an Officer may order the drivers of vehicles moving in a particular direction to stop. Authority to make such stops shall be given in those situations where such action is necessary to apprehend the perpetrator of a crime who, if left at large, can be expected to

cause physical harm to other persons, or to discover the victim of a crime whose physical safety is presently or potentially in danger. Once a vehicle is stopped pursuant to this Section, it may be searched only to the extent necessary to determine if the perpetrator or victim is present in the vehicle, and such search shall be made as soon as possible after the stop.

- (c) **Police Conduct During a Stop.** Proper justification for a stop does not permit unreasonable conduct during the stop. Every phase of the detention must be reasonable, for the United States Supreme Court has stated in *Terry v. Ohio*, 392 U.S. 1, 28 (1968), that the manner in which stops and frisks are conducted is "as vital a part of the inquiry as whether they were warranted at all."
- (d) **Duration of Stop.**
- (1) **Detention.** A person stopped pursuant to these rules may be detained at or near the scene of the stop for a reasonable period of time. Officers should detain a person only for the length of time necessary to obtain or verify the person's identification, or an account of the person's presence or conduct, or an account of the offense, or otherwise determine if the person should be arrested or released. If the person stopped has been operating a motor vehicle, the Officer may demand to see the person's operator's license and vehicle registration.
 - (2) **Explanation to Detained Person.** Officers shall act with courtesy towards the person stopped. *At some point during the stop, the Officer shall, in every case, give the person stopped an explanation of the purpose of the stop.*
- (e) **Rights of Detained Person.** The Officer may direct questions to the detained person for the purpose of obtaining his/her name, address and an explanation of his/her conduct. The detained person may not be compelled to answer questions or to produce identification documents for examination by the Officer; however, the Officer may request the person to produce identification and may demand the production of an operator's license if the person has been operating a vehicle. During the questioning, the detained person need not be advised of his/her *Miranda* rights until probable cause to arrest develops, or until the questioning becomes sustained and coercive rather than brief and casual. When either of these events occurs, the Officer should immediately halt the questioning and advise the detained person of his/her *Miranda* rights.
- (f) **Effect of Refusal to Cooperate.** Refusal to answer questions or to produce identification does not, by itself, yield probable cause to arrest, but such refusal may be considered along with other facts as an element adding to probable cause.
- (g) **Effecting a Stop and Detention.** Officers shall use the least coercive means necessary under the circumstances to effect a stop and to detain a person.

(h) **Use of Force.** (See "Use of Force" policy in this Manual.)

(i) **Stopping Witnesses Near the Scene of a Crime.**

- (1) An Officer who has probable cause to believe that any felony or a misdemeanor involving danger to persons or property has just been committed and who has probable cause to believe that a person found near the scene of such offense has knowledge of significant value to the investigation of the offense may order that person to stop.
- (2) The sole purpose of the stop authorized by this Section is the obtaining of the witness's identification so that he/she may later be contacted by the Officer's agency. Officers shall not use force to obtain this identification.

COMMENTARY:

Pursuant to Sec. 968.24, Wis. Stats., after having identified himself/herself as a law enforcement officer, an Officer may stop a person in a public place for a reasonable period of time when the Officer reasonable suspects that such person is committing, is about to commit, or has committed a crime and may demand the name and address of the person and an explanation of his/her conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

Sec. 4-2-3 Frisks.

DEFINITIONS:

A "frisk" is a limited protective search for concealed weapons or dangerous instruments.

POLICY:

- (a) **When to Frisk.** A law enforcement Officer may frisk any person whom he/she has stopped when the Officer reasonably suspects that the person is carrying a concealed weapon or dangerous instrument and that a frisk is necessary to protect himself/herself and others. The frisk may be conducted at any time during the stop—whenever a "reasonable suspicion to frisk" appears.
- (b) **Reasonable Suspicion for Frisk.** "Reasonable suspicion" for a valid frisk is more than a vague hunch and less than probable cause. If a reasonably prudent Officer, under the circumstances, would be warranted in believing his/her safety or that of other persons in the vicinity was in danger, a frisk is justified. Every Officer conducting a frisk must be

prepared to cite the existence of such factors in support of his/her determination that "reasonable suspicion" for a frisk was present. These factors may include:

- (1) The demeanor of the suspect.
- (2) The manner of the suspect.
- (3) Knowledge of the suspect's background or character.
- (4) The manner in which the suspect is dressed, including any bulges in his/her clothing.
- (5) The time of day or night the suspect is observed.
- (6) The particular location.
- (7) Information received from third parties.
- (8) Any conversation of the suspect that is overheard.
- (9) Whether the suspect is consorting with others whose conduct is reasonably suspect.

PROCEDURES:

- (a) The Officer should begin the "pat-down" frisk at the area of the person's clothing most likely to contain a concealed weapon or dangerous instrument. Usually an Officer should begin the frisk with a pat-down of the outside of the person's outer clothing, and the Officer should not reach inside the clothing unless he/she first feels an object he/she reasonably believes to be a weapon or dangerous instrument. If the outer clothing is too bulky to allow the Officer to determine if a weapon or dangerous instrument is concealed underneath, the outer clothing may be opened to allow a pat-down directly on the inner clothing. If the Officer has a reasonable belief, based on reliable information or his/her own knowledge and observations, that a weapon or dangerous instrument is concealed at a particular location on the person, such as a pocket, waistband or sleeve, then the Officer may reach directly into the suspected area. This is an unusual procedure, and any Officer so proceeding must be prepared to cite the precise factors which led him/her to forego the normal pat-down procedure.
- (b) If the person is carrying something immediately separable from his/her person, e.g., a purse, shopping bag, briefcase, it should be taken from him/her. The Officer should not immediately search inside the object, but he/she should place it in a safe location out of the person's reach for the duration of the detention.
- (c) If, during the stop or the stop and frisk, an Officer reasonably suspects that he/she may be harmed should he/she return an unsearched item to the person, the Officer should not return the item without first briefly inspecting it, *unless* there is another reasonable method through which the Officer can ensure his/her safety.
- (d) An Officer may also frisk those areas that the person could reach to obtain an object that could be used to harm the Officer, if the Officer reasonably suspects that he/she might be harmed should he/she fail to do so.

- (e) If, during the course of a frisk, the Officer discovers an object which is a container capable of holding a weapon or dangerous instrument and if the Officer reasonable believes that it does contain such an item, the Officer may look inside the object and briefly examine the contents.

COMMENTARY:

Pursuant to Sec. 968.25, Wis. Stats., when a law enforcement officer has stopped a person for temporary questioning pursuant to Sec. 968.24, Wis. Stats., and reasonably suspects that he/she or another is in danger of physical injury, he/she may search such person for weapons or any instrument or article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law-abiding persons. If the Officer finds such a weapon or instrument, or any other property possession of which he/she reasonably believes may constitute the commission of a crime, or which may constitute a threat to his/her safety, the Officer may take it and keep it until the completion of the questioning, at which time he/she shall either return it, if lawfully possessed, or arrest the person so questioned.

Sec. 4-2-4 Discovery of Weapon, Instrument or Other Property During Frisk.

POLICY:

- (a) If a frisk or search discloses a weapon or instrument or any other property, possession of which the Officer reasonably believes may constitute the commission of a crime, or which may constitute a threat to his/her safety, the Officer may take it and keep it until the completion of the questioning, at which time he/she shall either return it, if lawfully possessed, or arrest the person so questioned.
- (b) If, during a frisk/patdown, an Officer feels an object concealed in the suspect's pocket, or otherwise, if the Officer can, through sense of touch and experience, determine *immediately*, without further search, that the object is contraband, it may be seized. This "plain feel" doctrine was affirmed by the U.S. Supreme Court in *Minnesota v. Timothy Dickerson* and the Wisconsin Supreme Court in *State v. Guy*. If a frisk or search discloses contraband, such items shall be seized and an arrest made in accordance with the law.

Sec. 4-2-5 Procedure Following Unproductive Frisk.

POLICY:

If the frisk discloses nothing justifying removal or seizure and nothing providing probable cause for arrest, an Officer may continue to detain while concluding his/her investigation.

Sec. 4-2-6 Recordkeeping—Stop and Frisk Activity.

STATEMENT OF PURPOSE:

Adequate records of stop and frisk activity will serve to insure the proper exercise of police authority. Records will also greatly enhance an Officer's ability to reconstruct what occasioned a stop or frisk and what took place during this contact. Such records are vital not only when the stop and frisk results in immediate arrest, they also may be valuable as "leads" in other investigations. Further, such records serve as protection against groundless civil suits.

POLICY:

Officers should consider the filing of a report any time there is a stop and subsequent frisk to protect themselves, the Department and the community.

Sec. 4-2-7 Stop Based on Informant's Tip.

POLICY:

- (a) If the stop or frisk was based in whole or part upon an informant's tip, the Officer making the stop or frisk shall make every reasonable effort under the particular circumstances to obtain and record the identity of the informant.
- (b) The Officer shall record the facts concerning such tip, e.g., how it was received, the basis of the informant's reliability and the origin of his/her information.

Sec. 4-2-8 Explanation of Reasonable Suspicion Requirement.

COMMENTARY:

- (a) **Factors to Establish Reasonable Basis for a Stop.** This Department's policy on the issue of "stop and frisk" indicates that every Officer conducting a *stop* must be prepared to cite the existence of specific facts in support of his/her determination that a "reasonable suspicion" was present. Some factors which—alone or in combination—may be sufficient to establish reasonable suspicion for a *stop* are as follows:
 - (1) **The person's appearance.** Does he/she generally fit the description of a person wanted for a known offense? Does he/she appear to be suffering from a recent injury or to be under the influence of alcohol or drugs? Does he/she, in some specific way,

- fit the description of a perpetrator gained from a victim, from police headquarters or from other reasonably reliable sources of information?
- (2) **The person's actions.** Is he/she running away from an actual or possible crime scene? Is he/she otherwise behaving in a manner indicating possible criminal conduct? If so, in what way? Were incriminating statements or conversations overheard? Is he/she with companions who themselves are reasonably suspicious?
 - (3) **Prior knowledge of the person.** Does he/she have an arrest or conviction record, or is he/she otherwise known to have committed a serious offense? If so, is it for offenses similar to one that has just occurred or which the officer suspects is about to occur? Does the officer know of the person's record?
 - (4) **Demeanor during a contact.** If he/she responded to questions during the contact, were his/her answers evasive, suspicious or incriminating? Was he/she excessively nervous during the contact?
 - (5) **Area of stop.** Is the person near the area of a known offense soon after its commission? Is the area known for criminal activity (a high-crime area)? If so, is it the kind of activity the person is thought to have committed, be committing, or about to commit?
 - (6) **Time of day.** Is it a very late hour? Is it usual for people to be in the area at this time? Is it the time of day during which criminal activity of the kind suspected usually occurs?
 - (7) **Police training and experience.** Does the person's conduct resemble the pattern or *modus operandi* followed in particular criminal offenses? Does the investigating Officer have experience in dealing with the particular kind of criminal activity being investigated?
 - (8) **Objects in the suspect's possession.** Is he/she carrying anything? Are there bulges in his/her clothing?
 - (9) **Police purpose.** Was the Officer investigating a specific crime or specific type of criminal activity? How serious is the suspected criminal activity? Might innocent people be endangered if investigative action is not taken at once?
 - (10) **Source of information.** If the basis of the Officer's reasonable suspicion is, in whole or in part, information supplied by another person, what kind of person is the information source? Is he/she a criminal informant, a witness or a victim of a crime? How reliable does the person appear to be? Has he/she supplied information in the past that proved to be reliable? Is he/she known to the officer? Did the Officer obtain the information directly from the person? How did the person obtain his/her information? Was that part of the information corroborated prior to making the stop?
- (b) **Factors to Establish Reasonable Basis for a Frisk.** This Department's policy on stop and frisk indicates that every Officer conducting a *frisk* must be prepared to cite the existence of specific facts in support of his/her determination that "reasonable suspicion" for a *frisk* was present. Some factors which—alone or in combination—may be sufficient to establish suspicion for a *frisk* are as follows:

- (1) **The person's appearance.** Do his/her clothes bulge in a manner suggesting the presence of any object capable of inflicting injury?
 - (2) **The person's actions.** Did he/she make a furtive movement, as if to hide a weapon, as he/she was approached? Is he/she nervous during the course of the detention? Are his/her words or actions threatening?
 - (3) **Prior knowledge.** Does the Officer know if the person has a police record for weapons offenses? For assaults (on police officers or others)? Does the Officer know if the person has a reputation for carrying weapons or for violent behavior?
 - (4) **Location.** Is the area known for criminal activity—a "high-crime" area? Is the area sufficiently isolated so that the Officer is unlikely to receive aid if attacked?
 - (5) **Time of day.** Is the confrontation taking place at night? Does this contribute to the likelihood that the Officer will be attacked?
 - (6) **Police purpose.** Does the Officer's suspicion of the suspect involve a serious and violent offense? An armed offense? (If so, the same factors justifying the stop also justify the frisk.)
 - (7) **Companions.** Has the Officer detained a number of people at the same time? Has a frisk of a companion of the suspect revealed a weapon? Does the Officer have assistance immediately available to handle the number of persons he/she has stopped?
- (c) **Judicial Test.** Every governmental intrusion upon personal privacy, when challenged, must be justified by the intruding agency.

"In justifying the particular intrusion, the Officer must be able to point to specific and articulable facts, which taken together with rational inferences from these facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. at 21.

It is hoped that this analysis will be helpful in understanding how much evidence is needed to justify a stop. While it is possible that a single consideration may be sufficient justification to conduct a stop and frisk, most often two or more factors will coalesce to create a reasonable suspicion.

Title 4 ► Chapter 3

Searches; Warrants; Vehicle Searches and Inventories

4-3-1	Search Warrants
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Sec. 4-3-1 Search Warrants.

PROCEDURES:

- (a) **Obtaining a Search Warrant.** 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.
- (b) **Execution of Search Warrants.**
- (1) Section 968.15(1), Wis. Stats., requires that a search warrant be executed and returned within five (5) days of the date of issuance.
 - (2) Search warrants not executed within five (5) days of issuance shall be considered void and returned to the issuing judge/clerk of courts.
 - (3) 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.
 - (4) 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, Officers may use reasonable force to enter the premises. Section 968.14, Wis. Stats., provides that law enforcement officers may use "all necessary force" to execute a search warrant.

- (5) When obtaining a search warrant, Officers may request a "No-Knock Search 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 judge sufficient specific facts that indicate that one (1) or more of the following circumstances are present:
 - a. 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
 - b. Information which establishes reasonable cause to believe there is a danger to law enforcement officers or others on the premises if Officers announce their presence; or
 - c. Information which establishes reasonable cause to believe there is a likelihood of escape if law enforcement officers announce their presence.
- (6) Damage which occurs during the execution of a search warrant shall be photographed and documented in an incident report. Regardless of whether damage occurs, photographs may be valuable in the event that damage claims are made at a later date.
- (7) Section 968.16, Wis. Stats., provides that a person executing a search warrant "may reasonably detain and search any person on the premises at the time to protect himself/herself from attack or to prevent the disposal or concealment of any item particularly described in the search warrant."
- (8) While executing the search warrant, Officers should 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.
- (9) The number of law enforcement officers conducting the actual search shall be limited to ensure that each item seized is properly recorded and a proper chain of evidence is maintained.
- (10) An Officer may legally seize anything described in a search warrant. Officers may search any location within the parameters established by the warrant in which an item described in the warrant may reasonably be secreted.
- (11) Items not identified in a search warrant may be seized if they meet all of the following requirements:
 - a. The evidence must be discovered in the course of a lawful search; and
 - b. 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

- c. The property was discovered in the physical area properly subject to search by authority of the warrant; and
 - d. The evidence was found prior to the time that all specifically named items in the warrant were found.
- (12) Officers must terminate the search when all described warrant items are found.

(c) **Return of a Search Warrant.**

- (1) 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 five (5) days of the date of issuance and forty-eight (48) hours of the time of execution of the warrant.
- (2) Within five (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.

Sec. 4-3-2 Searches and Seizures.

STATEMENT OF PURPOSE:

It is the policy of the City of Stanley Police Department that any searches, seizures or inventories of motor vehicles shall be performed with due regard to those involved and in accordance with the law and to protect the personal property found in the vehicles.

POLICY:

- (a) **Permissible Searches/Seizures.** 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;
 - 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;

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- (5) Within the scope of a lawful inspection; or
- (6) Pursuant to a stop and frisk situation.

(b) Search Incident to a Lawful Arrest.

- (1) Section 968.10(1), Wis. Stats., authorizes law enforcement 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.

(c) Statutory Criteria.

- (1) Section 968.11, Wis. Stats., establishes the scope of a search incident to a lawful arrest. It permits law enforcement officers 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 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."
- (2) 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.

DEFINITIONS:

- (a) **Seizable Items.** Contraband, a weapon, anything used in committing a crime, fruits of a crime, or other evidence of a crime.
- (b) **Plain View or Open View.** Anything which may be seen from a purely visual observation; such observation may be made with the use of a flashlight.

PROCEDURES:

- (a) **Seizure of Items in Plain View or Open View in a Vehicle.** See Section 4-3-6.

(b) **Seizure of Items in Plain View or Open View on Property.**

- (1) An Officer may seize items in plain view when the Officer is in a place where he/she has a lawful right to be and there is probable cause to believe that the items to be seized are contraband, evidence of the 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.

(c) **Searches of Open Fields.**

- (1) 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.
- (2) Officers making such observations may still elect to obtain a search warrant and should weight 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.

(d) **Searches of Public Property.**

- (1) 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.
- (2) Examples include public lands or public buildings that have not been leased or otherwise placed under the control of an individual or group.

(e) **Searches of Private Property Held Open to the Public.** No search warrant is required for an Officer to seize evidence or contraband in plain view on private property held open to the public. (Example: the parking lot of a store).

(f) **Searches of Abandoned Property.**

- (1) A search warrant is not required for property that has been abandoned.
- (2) To constitute abandoned property, two (2) 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.

(g) **Searches of 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 law enforcement authorities, consent of the person lawfully in control of the premises or a search warrant must be obtained to re-enter private property.

(h) **Lawful Inspections.**

- (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.

(i) **Consent Searches.**

- (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 shared use, has access to, or has control of the property.
 - b. If two (2) people have joint ownership, possession or control of the property, either may give consent.
- (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.

Sec. 4-3-3 Strip Searches.

POLICY:

- (a) **Statutory Provisions.** Pursuant to Sec. 968.255, Wis. Stats., no person may be the subject of a strip search unless he or she is a detained person and if:
 - (1) The person conducting the search is of the same sex as the person detained;
 - (2) The detained person is not exposed to the view of any person not conducting the search;

- (3) The search is not reproduced through a visual or sound recording;
- (4) A person conducting the search has obtained the prior written permission of the Sheriff or Chief of Police of the jurisdiction where the person is detained, or his or her designee, unless there is a probable cause to believe that the detained person is concealing a weapon; and
- (5) A person conducting the search prepares a report identifying the person detained, all persons conducting the search, the time, date, and place of the search and the written authorization required by Subsection (a)(4) and provides a copy of the report to the person detained.

(b) **Factors to Consider Prior to Authorizing a Strip Search.**

- (1) Reasons for search.
- (2) Nature and seriousness of the offense.
- (3) Does the person have a criminal record?
- (4) Reasonable suspicion to believe person has contraband, drugs or weapons.
- (5) Length of time person may stay in custody.
- (6) Is the person being held alone or with others?
- (7) Did the person resist arrest or was he/she violent?
- (8) Does the person have a history of violence, contraband or drugs?
- (9) Is the person a danger to himself/herself or others?

(c) **Special Strip/Body Cavity Search Situations.**

- (1) Strip or body cavity searches of adults and juveniles (if applicable) shall be conducted only upon specific written authorization of the Chief of Police or supervisor and only when special circumstances defined in Sec. 968.255(1)(a)1, 2, 3 and 4, Wis. Stats., exist and there are indications that these extreme searching measures are necessary to retrieve evidence.
- (2) A strip or body cavity search of a juvenile shall only be conducted if there are reasonable grounds to believe that the juvenile has committed a violent felony, which if committed as an adult, would be within the parameters of Sec. 968.255, and meets the criteria in Subsection (a) above.
- (3) Special consideration should be taken regarding the age and mental capacity of the individual being searched.
- (4) The mouth, nose and ears are not considered to be a body cavity for search purposes, and, as such, may be searched by an Officer possessing lawful authority to search a person.
- (5) Whenever it appears that any of the foregoing should be modified or suspended because of special circumstances, specific authorization to do so should be obtained from the District Attorney's Office.

(d) **Patient Disrobement at Hospitals and Clinics.** The following shall govern Officer assistance of medical personnel at hospitals and clinics:

- (1) Pursuant to Sec. 968.255(7)(c), Wis. Stats., the statutory provisions regarding strip searches do not apply to any person who is committed, transferred, or admitted to a medical facility under Ch. 51, (mental health commitments) or Ch. 975, Wis. Stats. Officers responding to such requests for assistance are acting at the direction of medical personnel.
- (2) Officers may be directed by on-scene medical personnel to assist in disrobing a patient to remove anything that may be used by the patient to harm himself/herself or someone else. This is not a search.
- (3) In all instances in which Officers are asked to assist hospital/clinic medical personnel with the physical control of a patient, the Officer shall complete a report. If Officers are asked to assist in disrobing a patient, this shall be noted in the report, along with the name of the medical professional making the request.

PROCEDURES:

- (a) No person other than a physician, physician's assistant, or registered nurse licensed to practice in Wisconsin may conduct a body cavity search. No Department members are allowed to conduct body cavity searches.
- (b) Failure to strictly conform with the statutory requirements and Department policies carries the same penalty and liability as an unlawful strip search. A person who intentionally violates Sec. 968.255, Wis. Stats., may be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned not more than ninety (90) days, or both.
- (c) This Section does not limit the rights of any person to civil damages or injunctive relief.

DEFINITIONS:

(a) **Detained.** Arrested for a felony or the following misdemeanor statutes:

167.30	Use of Firearms Near Park
940.19	Battery
940.20(1)	Endangering Safety — Dangerous Weapon
941.23	Carrying Concealed Weapon
941.24	Possession of a Switchblade
948.60	Possession of Dangerous Weapon by Child
948.605(2)(1)	Possession of Firearm in a School Zone
948.61	Dangerous Weapon in a School Zone

- (b) **Strip Search.** A search in which a detained person's genitals, pubic area, buttocks/anus, or a female's breasts are uncovered *and* exposed to view or touched by a person conducting a search.
- (c) **Body Cavity Search.** A search in which a detained person's vagina and/or anus are probed.

COMMENTARY:

An opinion of the Attorney General advises that the mouth, ear and nose are not body cavities envisioned by the statutes, but extreme care should be exercised in searching these areas.

Sec. 4-3-4 Search of Physically Disabled Person.**POLICY:**

Pursuant to Sec. 968.256, Wis. Stats., a search of a physically disabled person shall be conducted in a careful manner. If a search of a physically disabled person requires the removal of an assistive device or involves a person lacking sensation in some portion of his or her body, the search shall be conducted with extreme care by a person who has had training in handling physically disabled persons.

Sec. 4-3-5 Officer Action Requirements.**POLICY:**

- (a) There is to be compliance with the provisions of Sections 968.24, 968.25, 968.255, and 968.256, Wis. Stats., by all employees of the Police Department, with no exceptions.
- (b) The statutes provide that the person conducting the search must obtain the prior written permission of the Chief of Police. It will be the practice of the Department to designate the first-line supervisor as the person to conduct strip searches. In the absence of the Chief of Police, the Officer-in-Charge shall be designated; however, a command/supervisory officer must be notified as soon as practical. For searches of female suspects, female police or deputy sheriffs will be designated as the persons to conduct strip searches or the Department matron. These designated persons are to submit a report as specified under statute and are to provide as copy to the person being searched.
- (c) The body cavity searches as provided under statute shall be conducted in hospitals or doctors' offices under sanitary conditions by authorized medical personnel.

- (d) Searches of physically disabled persons are to be conducted by a person who has had training in handling physically disabled persons.

Sec. 4-3-6 Searches and Seizures of Vehicles.

STATEMENT OF PURPOSE:

It is the policy of the City of Stanley Police Department that any searches, seizures or inventories of vehicles shall be performed with due regard for the safety of those involved and in accordance with the law and to protect the personal property found in the vehicles.

DEFINITIONS:

The following definitions shall be applicable in this Chapter as they pertain to searches and seizures involving vehicles:

- (a) **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, including boats. 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.
- (b) **Plain View or Open View.** Anything which may be seen from a purely visual observation; such observation may be made with the use of a flashlight.
- (c) **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). A vehicle search may also be conducted to determine the vehicle identification number or the ownership of the vehicle.
- (d) **Seizable Items.** Contraband, a weapon, anything used in committing a crime, fruits of a crime, or other evidence of a crime.

POLICY:

- (a) **Fourth Amendment Warrant Considerations; Exception.**
 - (1) The Fourth Amendment to the United States Constitution generally requires a warrant before a search can be conducted unless an exception exists. Depending on the

circumstances, a vehicle inventory search is one such exception to the warrant requirement due to the inherent qualities of a vehicle. See *South Dakota v. Opperman*, 428 U.S. 364, 374-76 (1976); *Colorado v. Bertine*, 479 U.S. 367, 372 (1987).

- (2) There is a difference between a "vehicle inventory search" and other vehicle searches, such as a "search incident to an arrest" or a "search based on officer safety where no arrest has been made."
- (b) **Search Incident to Arrest.** A search incident to an arrest allows Officers to 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 offense which serves as the basis for the arrest. *Arizona v. Gant*, 129 S.Ct. 1710 (2009).
- (c) **Search Based On Officer Safety Where No Arrest Has Been Made.** Searches based on officer safety where no arrest has been made are constitutional if the Officers reasonably believe the "suspect is dangerous and . . . may gain immediate control of weapons." *Michigan v. Long*, 463 U.S. 1032, 1049 (1983); *Arizona v. Gant*, 129 S.Ct. 1710 (2009). In no-arrest situations, the possibility of access to weapons in the vehicle exists, since the driver and/or passenger will be permitted to return to the vehicle when the interrogation is completed.
- (d) **Vehicle Searches Based on Probable Cause.** Vehicle searches based on probable cause, as distinct from inventory searches, are constitutional if there is probable cause to believe that a vehicle contains evidence of any criminal activity (as distinct from the search incident to arrest), in which case Officers are authorized to search any area of the vehicle in which the evidence might be found. *United States v. Ross*, 456 U.S. 798, 820-821 (1982).

COMMENTARY:

- (a) Pursuant to the *Arizona v. Gant* decision, Officers may search a vehicle incident to arrest *only* if:
 - (1) The arrestee is unsecured and within reaching distance of the passenger compartment when the search is conducted; or
 - (2) It is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle.
- (b) Regarding the first circumstance, the Supreme Court in *Gant* stated that it would be a rare case in which an Officer is unable to fully effectuate an arrest so that an arrestee has a realistic possibility of access to a vehicle. Thus, for example, the typical situation in which

an Officer secures the arrestee with handcuffs and places the arrestee in a patrol vehicle will not satisfy this *Gant* circumstance. Even if a handcuffed arrestee is not placed in a patrol car, it is not likely that the arrestee has realistic access to the vehicle absent unusual circumstances. This first *Gant* circumstance means that law enforcement officers cannot search inside a vehicle at the arrest scene once the arrested person is away from the vehicle, unless the Officers have reason to believe that evidence of the crime might be found in the vehicle, thus meeting the second *Gant* circumstance.

- (c) The applicability of the second circumstance under the *Gant* decision depends on the facts of the situation. For example, for motor vehicle criminal offenses such as driving with a revoked license, driving without a valid driver's license, misdemeanor speeding, etc., it would be very unlikely that this second *Gant* circumstance would exist to permit a search of the vehicle. However, for other motor vehicle offenses, such as impaired driving, there may be valid grounds for believing that the evidence relevant to the offense may exist in the vehicle (for example, impairing substances or containers used to drink or otherwise ingest them). For arrests based on outstanding arrest warrants, it is also highly unlikely that this *Gant* circumstance would exist to permit a search of the vehicle pursuant to arrest, unless incriminating facts concerning the offense charged in the warrant exist at the arrest scene or the offense is one for which evidence of the offense likely would still be found in the vehicle. How recent the offense was committed may be an important factor considered by a court in determining the "reasonable to believe" standard in this context.
- (d) The *Gant* decision does not affect the ability of Officers to conduct an inventory search of a vehicle that has been impounded and towed post-arrest to an impoundment facility, done consistently pursuant to Department policies ("tow and inventory").
- (e) It is important to note that if neither *Gant* circumstances exist at an arrest site involving a vehicle, there may still be other Fourth Amendment justifications that may authorize a warrantless search of a vehicle:
 - (1) Probable cause to believe that evidence of criminal activity exists in the vehicle.;
 - (2) Reasonable suspicion that a person, whether or not the arrestee, is dangerous and might access the vehicle to gain immediate control of weapons ("car frisk");
 - (3) Impoundment and inventory of a vehicle, which must be conducted under standard operating procedures that are reasonable under the Fourth Amendment;
 - (4) Consent to search; or
 - (5) After stopping a vehicle for a traffic violation and the driver has left the vehicle, entering the vehicle to remove papers that obscures the vehicle's Vehicle Identification Number (VIN).
- (f) The use of canines is not addressed by this decision. If an Officer has made an arrest and has a reasonable suspicion that there might be, for example, drugs in the vehicle, the

Officer may call in a canine unit for a "sniff". Under Wisconsin law, a dog sniff of the exterior of a vehicle is not a search within the meaning of the Fourth Amendment. After the arrest, the canine may do a non-search sniff, and, if the dog gives an alert, the Officer may then search the vehicle under the *Carroll* doctrine or by obtaining a search warrant based on the dog's alert.

PROCEDURES:

(a) Seizure of Items in Plain View or Open View in a Vehicle.

- (1) An Officer lawfully in any place may, *without* obtaining a search warrant, seize from a vehicle any item which is a seizable item.
- (2) If the vehicle is locked and keys are not available, the Officer shall notify the Chief of Police or his/her supervisor in order to determine what method of entry into the vehicle shall be used in order to effect the seizure.

(b) Searches Connected with Arrests Involving Vehicles.

- (1) Whenever an Officer makes full-custody arrest of a person in a vehicle, the Officer may conduct a full warrantless search of the arrested person's garments and the surface of his/her body in a manner designed to reveal the presence of seizable items.
- (2) Officers may conduct a search of a vehicle incident to a valid arrest of the operator or occupants of the vehicle only if the arrestee is unsecured and within reaching distance of the vehicle's passenger compartment, or if it is reasonable believe that the vehicle contains evidence of the offense of arrest. Pursuant to Policy Subsection (a)-(d) above and associated Commentary, an Officer may conduct a warrantless search limited to those areas of the vehicle within which the arrested person might readily reach for a weapon or other seizable items at the time of his/her arrest, including the entire passenger compartment, glove box and any container in the passenger area. The trunk, engine compartment, and locked compartments within the passenger compartment normally may not be searched incident to arrest.
- (3) Generally, any searches made under this Section are conducted at the time and place of arrest in the immediate presence of the arrested person.
- (4) When a full custody arrest is made of a vehicle's occupant (including a person who has just departed or is about to enter a vehicle) *and* the arresting Officer has probable cause to believe the vehicle contains seizable items, the vehicle may be searched without a warrant and every part of the vehicle where the seizable items might be stored can be inspected:
 - a. It is not necessary to keep the prisoner near the vehicle during this type of search; however, the search should be conducted at the scene of the arrest as soon as the prisoner is placed in secure custody.

- b. Whenever possible, locked compartments shall be opened by the use of a key rather than force. If keys are not available, instruction shall be obtained from a supervisor as to the method to be used in opening the locked compartment.

(c) **Search for Weapons.**

- (1) Where there is an objectively reasonable belief that a driver or occupant of a vehicle is potentially dangerous, Officers may conduct a search of the vehicle for weapons.
- (2) Searches for weapons normally must be confined to the passenger area of the vehicle and those areas of the passenger compartment in which a weapon could be hidden. Areas may not be searched for weapons that are not immediately accessible to the vehicle's occupants, such as a locked glove compartment.

- (d) **Vehicle Identification Number or Vehicle Ownership.** Where 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 to obtain this information. Entries made to examine the vehicle identification number or to determine ownership of the vehicle must be limited to actions reasonably necessary to accomplish these goals.

(e) **Emergencies.**

- (1) 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.
- (2) Search of a vehicle under emergency circumstances not otherwise covered under warrant exceptions must be co-extensive with the nature of the emergency. The proper extent of the search must therefore be determined by the Officers searching in each specific situation, but in no event will the extent of the search exceed that necessary to respond properly to the emergency.
- (3) 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.

(f) **Vehicle Stop Followed by a Citation.**

- (1) A person who is stopped by an Officer and then is given a warning or issued a citation (but who is *not* placed under full custody) should not be searched, nor should any vehicle used by such person be searched *unless* the Officer reasonably suspects the person to be armed. In that case, an Officer may "frisk" the person for weapons.

- (2) Normally, Officers do not take a subject to the police station unless there is an outstanding warrant. Traffic violators and other persons who are asked to follow an officer to a police facility (for example, nonresident drivers), but who are not placed under full-custody arrest should not be searched, nor should their vehicle be searched *unless* the officer reasonably suspects the person to be armed. In that case, an Officer may "frisk" the person for weapons.
- (g) **Use of Search Warrant With Vehicle Searches.** Whenever possible, Officers desiring to search a vehicle shall first obtain a warrant. Warrantless searches are to be conducted only when lack of time or other exigencies make it impractical for a warrant to be obtained. When searching with a warrant, an Officer may search all areas of the vehicle unless the warrant states otherwise. A search warrant should be obtained before searching a vehicle in connection with an arrest in the following circumstances:
- (1) **Arrest and Search of Vehicle Preplanned.** A search warrant shall be obtained when there is adequate time to obtain a warrant before the arrest of the suspect *and* it is anticipated that the "target" vehicle specified in the warrant will be at the location where the arrest and search will occur.
 - (2) **Ease of Obtaining Warrant.** A search warrant shall be obtained when the "target" vehicle has come into police custody *and* can be readily secured while the warrant is sought and delaying the search will not be detrimental to the investigation.
 - (3) **Immovable Vehicles.** A search warrant shall be obtained when:
 - a. The vehicle does not appear to be movable or easily rendered movable by minor repairs.
 - b. The vehicle is on private property.
 - c. The Officer concludes there is adequate time in which to obtain a search warrant before the vehicle is moved or seizable items removed.
- (h) **Searches of Vehicles Not Connected with an Arrest – Obtaining a Search Warrant.** Unless there are exigent circumstances, such as indications that evidence will be lost because a vehicle will be driven out of the municipal jurisdiction, a search warrant shall be obtained beforehand. A search warrant should be obtained when there is adequate time before the arrest of suspects and if the Officer has probable cause to believe that evidence of a specific crime will be present in the vehicle at the same time and place of arrest. A search warrant should be obtained when:
- (1) The vehicle does not appear to be movable or easily rendered movable by minor repairs;
 - (2) The vehicle is on private property; and
 - (3) The Officer concludes there is adequate time in which to obtain a search warrant before the vehicle is removed or the seizable items removed.

(i) **Consent Searches of Motor Vehicles.**

- (1) A constitutional warrantless search may be made by an Officer if the Officer receives the consent of the individual whose premises, personal property or person are to be searched.
- (2) Whenever an Officer desires to make a motor vehicle search, the Officer should request oral or written consent to search from the person(s) in control of the vehicle. Generally, consent to search must be given by the person against whom the search is directed.
- (3) No consent search may be made *unless* the Officer is satisfied that the consent was knowing and voluntary. The consent search must be limited to the area to which consent was given. Consent must be "voluntarily" given and, when available, written consent forms should be used to protect against later challenges. Officers shall not obtain consent by any form of coercion or duress. As in other consent searches, if consent is withdrawn at any point, the Officer shall stop the search immediately unless the Officer has a basis other than consent for continuing.
- (4) The person giving consent must have the standing to consent. This is normally the owner or person in rightful possession of the property, such as the vehicle operator.
- (5) The Officer shall limit the search to those areas which the consenting person has expressly given the Officer permission to search.
- (6) During the search, an Officer may seize contraband or fruits or instrumentalities of a crime in plain sight.

Sec. 4-3-7 Seizure of Vehicles; Inventory Searches.

DEFINITIONS:

- (a) **Seizure or Impoundment.** A vehicle is seized or impounded when an Officer takes custody of it and either removes it to a police facility or arranges for its removal to a private storage facility.
- (b) **Inventory.** An administrative process by which items of property in a seized vehicle are listed and secured.

NOTE: An inventory is not to be used as a substitute for a search.

(c) **Classes of Vehicles Coming into Police Custody.**

- (1) Seizures for forfeiture.
- (2) Seizures as evidence.

- (3) Prisoner's property.
- (4) Traffic impoundments.
- (5) Abandonments.
- (6) Other noncriminal impoundments.

POLICY:

(a) **Vehicle Impoundments and Inventory Searches Generally.**

- (1) **Decision to Impound.** Any Officer having a vehicle in lawful custody may impound said vehicle. The Officer will have the option not to impound said vehicle when there is a reasonable alternative; however, the existence of an alternative does not preclude the Officer's authority to impound. A valid impoundment is a necessary first step before an inventory search can be conducted and be legally defensible.
- (2) **When Vehicle Inventory Search Permissible.** A vehicle inventory search is permissible provided that:
 - a. The impoundment of the vehicle was reasonably necessary;
 - b. The inventory search followed standardized policies and procedures; and
 - c. The inventory search was conducted in good faith. [Note: The courts have held that inventory searches are invalid if the search was conducted for the sole purpose of investigation; the courts will review whether a legitimate administrative reason for the impoundment existed, such as whether Officers had a caretaking reason to impound the vehicle.]
- (3) **Vehicle to Be Secured When Driver is in Custody.** It is the policy of the Department that when a driver of a vehicle is taken into custody, the vehicle must be secured since the owner/driver is no longer free to care for his/her property.
- (4) **Driver Requests Regarding Vehicle Disposition.**
 - a. When the operator of any vehicle is taken into custody, reasonable requests for accommodation involving vehicle impoundment will try to be honored. Such accommodation includes, but is not limited to: properly parking the vehicle, or turning the vehicle over to an unimpaired driver who is readily available. These vehicles will not be impounded or inventoried. Requests for accommodation which are unreasonable or unsafe will not be granted; in such a case, the vehicle will be inventoried.
 - b. The driver/owner will be given an opportunity to state his/her preference on the disposition of his/her vehicle. The driver/owner must be able to make an intelligent and knowing decision immediately, and the requested action must be able to be accomplished in a reasonable period of time. Normally, a request to wait until another party can respond to take custody will be denied because the Officer cannot be detained for extended periods. The option to leave the vehicle

parked at the scene will be weighed against the safety of the vehicle and the probability of property loss if so parked. No vehicle will be permitted to be left where it is illegally parked.

(b) **Vehicles Seized for Forfeiture.**

- (1) **Seizures for Forfeiture – Vehicle Used Illegally; When Permitted.** The following vehicles may be seized for forfeiture:
 - a. All vehicles which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in Sec. 961.55(1)(a) and (b) or for the purpose of transporting any property or weapons used or to be used or received in the commission of any felony under Sec. 961.55, Wis. Stats., but subject to the exceptions set forth in that statutory section;
 - b. All vehicles used or employed to aid in or to facilitate the unlawful manufacture or commercial transfer of gambling devices enumerated in Sec. 945.05(1), Wis. Stats.;
 - c. All vehicles used to transport any property or weapon used or to be used or received in the commission of any felony as set forth in Sec. 973.075(1)(b)1m.a; and
 - d. All vehicles subject to forfeiture under any other state or federal law provisions.
- (2) **Seizures for Forfeiture – Vehicles Used Illegally; Guidelines.** In determining whether to seize a vehicle for forfeiture under the above-described provisions, Officers shall consider:
 - a. Seriousness and nature of the suspected criminal activity involving the vehicle;
 - b. Value of the vehicle;
 - c. Existence of any bonafide security interest in the vehicle;
 - d. Potential costs associated with seizure and impoundment of the vehicle;
 - e. Whether a legitimate law enforcement interest supports seizure and impoundment of the vehicle;
 - f. The likelihood that a forfeiture action will be filed; and
 - g. The fact that upon sale of any forfeited vehicle, fifty percent (50%) of the proceeds are required to be deposited into the State School Fund. The remaining fifty percent (50%) may be retained for administrative expenses including storage fees and cost of prosecution.
- (3) **Follow-Up Notifications.**
 - a. As soon as practicable, but no later than five (5) business days following seizure and impoundment of any vehicle for a forfeiture, Officers shall inform the County District Attorney's Office, in writing, of the seizure and impoundment and request a determination as to whether a forfeiture action should be filed, with a copy submitted to the Chief of Police.

- b. Within ten (10) business days of the end of the thirty (30) day time period running from the date of vehicle seizure, during which a forfeiture action may be filed, Officers shall contact the District Attorney's Office to determine whether an action has been filed. Officers shall also attempt to obtain periodic updates regarding the status of filed forfeiture actions.
- (c) **Vehicles Not Seized for Forfeiture.** Any vehicle for which a forfeiture action has not been filed shall be returned to the rightful owner unless its continued impoundment is necessary for criminal evidentiary purposes as set forth in Section 4-3-2(e).
- (d) **Vehicles on Private Property – Necessity for a Search Warrant.** An Officer shall obtain a search warrant prior to making a seizure or forfeiture whenever the vehicle to be seized is on private property *and* it is not likely that the vehicle will be removed or tampered with while a warrant is being obtained.
- (e) **Seizure as Evidence.**
- (1) **Probable Cause – Seizure as Evidence.** Whenever an Officer has probable cause to believe that a vehicle has been stolen, used in a crime or is otherwise connected with a crime, the Officer may take the vehicle into custody and classify it as "seizure as evidence."
 - (2) **Vehicles In Minor Traffic Offenses.** A vehicle involved in a minor traffic offense shall not be seized as evidence merely because it was used to commit the traffic offense.
 - (3) **Vehicle Inventory; Release.** A vehicle seized as evidence shall be completely inventoried accordingly, as soon as it is practicable after its arrival at the police facility. Vehicles seized as evidence shall not be released to any person until the appropriate official has signed a release.
- (f) **Impoundment of Abandoned Motor Vehicles.**
- (1) **Abandoned Vehicles to Be Taken Into Custody.** A presumed abandoned vehicle shall be towed and stored by an authorized agent or taken into police custody under Sec. 342.40, Wis. Stats., and/or local ordinance (See Policy on Abandoned Property).
 - (2) **Inventory.** An Officer taking an automobile into police custody under this Subsection shall have the vehicle inventoried pursuant to Department policy.
- (g) **Storage of Impounded Motor Vehicles.**
- (1) **Department-Authorized Storage Sites.** Whenever a vehicle is impounded, it shall be stored in a Department-authorized storage site. Acceptable locations where a motor vehicle may be stored include:

- a. An enclosed or fenced secure area at the City shop.
 - b. A secure garage serving the Police Department..
 - c. Other locations deemed appropriate by the Chief of Police.
- (2) **Use of Private Storage Sites.** If a location on secured City property is not immediately available, the vehicle may be transported to a private garage storage facility on a temporary basis until arrangements can be made to secure the vehicle on City property, if possible. No temporary private storage shall occur without prior approval of the Chief of Police.
- (h) **Other Noncriminal Impoundments.**
- (1) **Definition.** "Noncriminal vehicle impoundment" means a vehicle taken into police custody because there is reason to believe that it is part of the estate of a deceased person, or the property of an insane person or of a person taken to the hospital, or because it is property turned over to an Officer at the scene of a fire or disaster.
 - (2) **Inventory Process for Noncriminal Impoundments.**
 - a. A vehicle taken into police custody under any other circumstance, such as the result of a motor vehicle accident, shall be secured for safekeeping only and a full inventory or search of the vehicle shall not be made unless subsequent events indicate that the vehicle should be reclassified as "abandoned."
 - b. The Officer shall close and lock the doors and the trunk following an inventory. The keys for the vehicle shall be taken to the Department office, labeled and stored.
 - c. No other inventory or search of the vehicle shall be made unless subsequent events indicate that the vehicle should be classified as abandoned.
- (i) **Procedure for Any Vehicle Inventory Search.**
- (1) **Roadside Inventories.** An Officer may conduct an inventory of a vehicle on the side of the road as long as the vehicle is taken into police custody. When a vehicle, per the request of the owner/driver, properly requests that his/her vehicle not be towed or impounded, there is no authority for an inventory of the vehicle and its contents.
 - (2) **Permissible Inventory Areas.** Whenever an Officer is authorized to inventory a motor vehicle, the Officer may examine the passenger compartment, the glove box and the trunk, whether or not locked.
 - (3) **Inventory of Unlocked Impounded Vehicle.** If an unlocked vehicle is impounded, the impounding Officer shall remove from the passenger compartment all containers (such as boxes or suitcases, etc.) and items of value which are likely to be tampered with or stolen. All such containers shall be sealed to insure the security of their contents. All such property shall be inventoried and placed in the vehicle trunk. The Officer shall prepare a written record of the contents of the vehicle.

- (4) **Search of Items and Containers in Vehicle.** Any Officer conducting an inventory search shall search all items and containers, locked or unlocked, in the vehicle. This serves to prevent careless handling or theft of items of personal property and safekeeping of dangerous instrumentalities, such as razor blades, drugs, or explosives, that might be concealed within innocent-looking articles. [See Section 4-3-3 for specific policies and procedures regarding containers found in vehicles].
- (5) **Similar Items.** An Officer inventorying a vehicle containing a large number of containers of the same or similar configuration and content may open only a few of the items if no purpose would be served in opening the rest.
- (6) **Written Inventory List.** Any Officer conducting an inventory search shall complete a written inventory list of all the property recovered in the vehicle. The Officer shall then make one (1) copy of the inventory list which is to be filed in the case file and the original is to be filed with the Chief of Police.
- (7) **Securing Vehicle Post-Inventory.** Upon completion of the inventory, all windows will be rolled up and secured. The trunk and doors shall be locked.

COMMENTARY:

In *State v. Clark*, 265 Wis.2d 557 (Wis. App. 2003) reviewing the reasonableness of a tow, the Wisconsin Court of Appeals held that the towing of a legally parked, undamaged vehicle, without an attempt to contact the owners, was not reasonable and could not qualify as part of the police community caretaking function. The court ruled the subsequent inventory search to be unconstitutional.

Under different facts and circumstances, a different court decision resulted. In *State v. Spencer*, 724 N.W.2d 703 (Wis. App. 2006), the appellate court upheld the seizure of a vehicle where the driver had recently been arrested on OWI charges, the vehicle was illegally parked, the known owner of the vehicle had recently been evicted from his residence, and the time was 2:40 a.m.

The courts will review the facts of each incident in determining the reasonableness of impoundment.

Sec. 4-3-8 Searches of Containers Found in Vehicle.

PROCEDURES:

In any otherwise lawful search of a vehicle is being conducted, containers found in the vehicle may be opened and searched as follows:

- (a) **Unlocked Containers.** Authority to search unlocked containers found in a vehicle is determined by the nature of the search:

- (1) **Probable Cause Searches.** In a probable cause search, containers such as paper bags, cardboard boxes, wrapped packages, etc., wherever found in the vehicle, may be opened, provided that they could contain the items being searched for.
 - (2) **Consent Searches.** Containers discovered during a consent search of the vehicle may be opened provided that they could contain the items being searched for.
 - (3) **Incident to Arrests Searches.** When the passenger compartment of a vehicle is being searched incident to an arrest, unlocked containers found within the passenger compartment may be opened, provided that they could contain the items being searched for. Searches of cellphones found in a vehicle require a warrant.
 - (4) **Other Considerations.** Unlocked containers discovered in a vehicle under circumstances that do not justify an investigatory search of the container under any of the exceptions to the search warrant requirement described in this Chapter should be secured but not searched until a warrant is obtained to search them.
- (b) **Locked Containers.** Locked containers such as brief cases, suitcases and footlockers found during a vehicle search should be opened only in the following cases:
- (1) **Warrant Search.** The search is being conducted under a warrant.
 - (2) **Evidence/Contraband Probable Cause.** There is probable cause to believe that a container located in the motor vehicle contains contraband or evidence.
 - (3) **Valid Prior Consent.** A valid consent to open the locked containers is first obtained. In other types of searches, locked containers should be secured by the Officers conducting the search and opened only after a warrant has been obtained.
- (c) **Items Belonging to Passengers.** Items belonging to passengers (i.e., wallets, handbags, purses, etc.) may be examined *only* the following cases:
- (1) **Probable Cause to Search.** Officers have probable cause to search the vehicle, and the belonging(s) in question is capable of concealing the item or items being searched for. Searches of cellphone belonging to passengers require a search warrant.
 - (2) **Valid Prior Consent.** Officers have received valid consent to search the item.
 - (3) **Passenger Has Been Arrested.** A passenger has been placed under arrest, and the arrested passenger's belongings are being lawfully searched incident to that arrest.

Sec. 4-3-9 Warrantless Searches and Seizures Considerations.

PROCEDURES:

The following considerations shall govern procedures associated with warrantless searches and seizures by Department members:

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- (a) **Report Requirement.** Officers shall document any warrantless search that has been conducted.
- (b) **Search Upon Being Taken Into Custody.**
- (1) Persons should be searched as soon as possible when taken into custody. As a safety precaution, everyone in police custody who is placed in a Department or police facility shall be searched immediately upon entry to the facility. This search is mandatory for safety reasons even though a preliminary search has been conducted in the field prior to transport. Any item that may be used as a weapon by the person in custody is to be seized; evidentiary material is to be seized and held. This search can include, but is not limited to:
 - a. A pat down of clothing and the emptying of all pockets;
 - b. Inspection of all packages, luggage, book bags, backpacks, wallets or purses; and
 - c. Removal of boots and shoes for inspection.
 - (2) All persons in custody who are left unattended in a temporary detention room shall have their shoes, boots, belts, and other items that could be used for self-harm or as a weapon removed from their person and clothing.
 - (3) Officer discretion will be used as to whether any of these items are returned when, and if, the person is released from custody. Contraband will be destroyed in the presence of another Officer and documented if not used as evidence.

WAIVER AND CONSENT TO SEARCH

The undersigned, _____, D.O.B. _____,
residing at _____,
hereby authorizes the following law enforcement officers: _____

to search the _____

(Insert description of place or auto to be searched)

owned by or in possession of the undersigned.

I do hereby waive any and all objections that may be made by me to said search and
declare that this Waiver and Consent is freely and voluntarily given of my own free will and
accord.

Signed this _____ day of _____, 20____, at _____ A.M.
_____ P.M.

Signed _____

Witnessed: _____

Title 4 ► Chapter 4

Evidence

- 4-4-1 Collecting, Marking and Packaging Physical Evidence;
Property Custody Receipts; Photographic Evidence
- 4-4-2 Preservation of the Chain of Custody
- 4-4-3 Cellular Telephone Seizure and Handling
- 4-4-4 Property/Evidence Custodian/Property Storage
- 4-4-5 Release, Destruction and Disposition of Property

Sec. 4-4-1 Collecting, Marking and Packaging Physical Evidence; Property Custody Receipts; Photographic Evidence.

POLICY:

Four (4) kinds of physical evidence need to be collected:

- (a) The fruits of the crime.
- (b) The instrumentalities of the crime.
- (c) Other evidence identifying the elements of the crime or actual perpetrator of the crime.
- (d) Other evidence from serious injuries or fatalities.

COMMENTARY:

The following Wisconsin Statutes govern custody of seized property:

Sec. 969.18, Wis. Stats., Receipt for Seized Property. Any law enforcement officer seizing any items without a search warrant shall give a receipt as soon as practicable to the person from whose possession they are taken. Failure to give such receipt shall not render the evidence seized inadmissible upon a trial.

Sec. 969.19, Wis. Stats. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer, who may leave it in the custody

of the Chief of Police and take a receipt therefor, so long as necessary for the purpose of being produced as evidence on any trial.

Physical evidence may be defined as articles and material which are found in connection with an investigation and which aid in establishing the identity of the perpetrator or the circumstances under which the crime was committed. Indeed, physical evidence will assist the Officer in making a proper disposition at the scene and later assist in the prosecution of the criminal.

The potential of physical evidence exists at nearly every type of call answered by the Department. Therefore, all officers should be alert to identify and protect such materials at a crime scene. This initial interpretation of significant physical evidence is the mark of a trained professional.

Only approved methods of obtaining evidence will be utilized by members of this Department. Evidence can be gathered at the complainant's request, with consent to search, incident to a lawful arrest or by search warrant. It is imperative that Officers keep abreast of criminal law pertaining to the rules of evidence at all times.

Great care must be exercised when recovering physical evidence. Even a seemingly irrelevant piece of evidence might prove very important at a later date; therefore, diligent handling of any and all evidence is required from all personnel.

Avoid contamination at all costs! The validity of information derived from examination of the physical evidence depends entirely upon the successful documentation of protection from extraneous factors.

PROCEDURES:

The following general guidelines for the collection, marking and packaging of evidence shall be followed:

- (a) **Felony and/or Death Situations.** A Department (or Sheriff's Department) evidence technician may be contacted in all felony and/or death situations.
- (b) **Crime Scene Evidence Security.** Officers shall clear all persons except essential and authorized persons from the crime scene area. All persons within the crime scene shall complete a written statement/report of their actions while within the crime scene area. The crime lab will be contacted.
- (c) **Maximum Number of Officers for Evidence Collection.** One (1) or at most two (2) Officers should collect all evidence.

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- (d) **Photographic/Videotaping Requirement Prior to Securing or Moving Evidence.** Photographs and/or videotapes should be taken prior to moving or securing items of evidence.
- (e) **Evidence Collection Notes.** Notes or other records shall be prepared as items are collected (date, time, place, by whom).
- (f) **Marking of Evidence.** Marking of evidence shall follow State Crime Laboratory guidelines; if such guidelines are insufficient, guidelines in this Subsection are to be utilized. Permanent and distinctive marks should be placed directly on the objects collected for identification purposes if this is possible without damaging the evidentiary value or defacing valuable property. When the object cannot be marked itself, place the evidence in a suitably marked container. Wrap adhesive tape completely around the package or container and back to the point of origin.
- (g) **Seized Property Custody Receipts.**
- (1) The City of Stanley Police Department employees shall utilize Department Evidence/Property/Custody Lists and Receipts with seized property. These forms comply with the standards required in Sections 968.18 and 968.19, Wis. Stats. These forms shall be carried by Officers while on patrol duty.
 - (2) In any instance in which property is seized, the property owner shall be given a copy of the form. The Officer shall ask the property owner to sign the form; if the property owner refuses to sign, the Officer shall still give the property owner a copy of the form and note the property owner's refusal in subsequent reports. When a receipt is provided to the property owner, the Officer shall note such action in his/her report and include the document serial number in the report narrative.
 - (3) The Officer shall place a second copy of the form with any other related documents in the incident file; this copy shall not be left in the property/evidence room. This procedure satisfies the receipt requirements of Sections 968.18 and 968.19, Wis. Stats.
- (h) **Chain of Custody Data.** The date, time and the initials or name of the Officer collecting the evidence and each person having it in his/her possession must be clearly marked for purposes of preserving the "chain of custody." Label the container in ink with the pertinent data:
- (1) Case number.
 - (2) Date and time.
 - (3) Initials.
 - (4) Property tag number(s).

- (5) Description.
- (6) Source or location.
- (7) Item number, if applicable.

(i) **Photographic Evidence.**

- (1) **Photographic Evidence Generally.** Photographs are an indispensable part of the physical evidence and should be taken before anything is touched or retained as evidence. Careful consideration should be given to the subject matter. Again, photographs should be taken when the evidence is in its original state. When major incidents occur, the Department may request that other agencies be brought in to take, or assist in taking, photographs.
- (2) **Statutory Requirements Regarding Photographic Evidence.** According to Sec. 270.202, Wis. Stats., all photographs received in court as evidence must be properly identified as follows: "Unless deemed impracticable by the trial judge, each photograph received in evidence shall have either upon its face or upon its reverse side or upon a slip attached to it, a statement of the position of the camera, the distance from the object photographed, the direction in which the camera was pointed, and such further information as may be appropriate."
- (3) **Photographic Data Information Card.** For this reason, it is necessary that a Photographic Data Information Card be recorded for each photograph, listing as much of the following information as practical (it may not be done with every incident):
 - a. Case number.
 - b. Date.
 - c. Offense.
 - d. Complainant.
 - e. Location.
 - f. F-stops (may not be applicable with digital cameras).
 - g. Speed (may not be applicable with digital cameras).
 - h. Distance.
 - i. Lighting.
 - j. Direction.
 - k. Time.
 - l. Name of Officer.
- (4) **Digital Camera/Image Use.** The following guidelines are intended to assist in the handling and storage of digital images, reduce delays when handling digital images, and preserve the integrity of photographs intended for evidentiary use. The following guidelines should be employed in the capture, processing, handling, storage and archiving of digital photographs taken in the course of patrol and investigative operations:

- a. No digital photograph captured in a sequence shall be deleted whether in the field or at the office. Even if a captured image is blurred or has insufficient exposure, that image must be retained and remain in its position in the sequence of scene photographs.
- b. Digital photographs shall initially be stored on a Department computer, identified by case number. At the earliest possible convenience, all of the captured digital images in the photographic sequence shall be transferred and "burned" to a CD or DVD disk (write-once type shall be used) from a Police Department computer without in any way modifying the image files, file names, or EXIF Header information. The finished CD or DVD disk shall be completed in "read-only" format to prevent the contents of the CD or DVD from being overwritten or modified.
- c. For all cases involving digital photographs of evidential value, the original CD or DVD shall be sealed, logged and properly placed into evidence custody in the property/evidence room. The evidence property listing shall include a notation which lists the beginning and ending file numbers of the photographs in the sequence (example: A12345 through A12350).
- d. If the case photographs are not of evidential value, the original CD or DVD disk shall be added to the incident file folder. For cases in which the original disk was placed in evidence, a second "working copy" CD or DVD identical to the original first CD or DVD shall be made; this copy shall be added to the incident file folder.
- e. For the purposes of identification and Officer recall of each photograph, it is recommended that a photograph log form be generated and added to the incident file; this, however, is not mandatory.
- f. No physical printed copies of captured images shall be generated or disseminated unless expressly authorized by the Chief of Police.

Sec. 4-4-2 Preservation of the Chain of Custody.

PROCEDURES:

This will be accomplished by maintaining an unbroken "chain of custody" by Officers who supervise or control the handling of evidence.

- (a) An Officer charged with custody of evidence shall insure that it never leaves his/her custody and that no person has an opportunity to tamper with the evidence.
- (b) The evidence shall remain on government property while in custody of the Department.

- (c) Representations by photograph or otherwise shall be made of all evidence which cannot be preserved in its condition as of the time of seizure.
- (d) The Officer making representation shall be able to testify in court as to the accuracy of what is portrayed.
- (e) All individuals who play a role in the procedures for developing representational or technical evidence shall be able to testify in court as to what they did to the evidence and the validity of the procedures that they used.
- (f) An individual who can testify in court as to the continuity of custody over the evidence shall, at all times, supervise the development of technical and representational evidence.
- (g) Evidence shall be turned over to outside agencies only after assurances that they will maintain a chain of evidence and a receipt is obtained for the transferred property.
- (h) The number of Officers having control over the "chain of custody" of an article of evidence shall be kept as small as possible.

Sec. 4-4-3 Cellular Telephone Seizure and Handling.

PROCEDURES:

Data from a cellular telephone and its SIM card can be captured in a forensically secure manner. If a seized cellular telephone is intended to be utilized as part of an investigation, the following best practice techniques shall be followed:

- (a) Upon seizing a cellular telephone, the Officer shall immediately disable the telephone by removing the battery. If the Officer is unable to determine how to remove the battery from that particular telephone model, the telephone should be powered down. It is acceptable for the Officer to ask the owner of the telephone to explain how to turn the telephone off, assuring the owner that this to prevent the battery from expiring.
- (b) Upon seizing a cellular telephone, the Officer shall complete complete a Evidence/Property Form, ask the owner to sign the form, and provide the telephone owner with a receipt copy. [Note: The owner may decline to sign the form.]
- (c) The Officer shall package the cellular telephone as evidence, recording the manufacturer, model and serial number of the cellular telephone.

- (d) In writing the incident report pertaining to the incident, the Officer shall take care to be as specific as possible in reporting the date, time and manner in which the cellular telephone was disabled. This step is very important to safeguarding for forensic evidenciary purposes the contents of the electronic device; it must be possible to offer a trial court a benchmark date and time after which it became impossible to write new information to or delete old information from the cellular telephone.
- (e) In order to search a cellular telephone or computer device, a search warrant may be necessary; however, the person may give permission. To assist in requesting a search warrant, probable cause must be demonstrated that evidence of a crime will likely be found on the device. When initiating a seizure of a cellular telephone, the Officer should keep this standard in mind, that the Officer will need to be able to articulate his/her probable cause for a requested search warrant for the cellular telephone.

Sec. 4-4-4 Property/Evidence Custodian/Property Storage.

POLICY:

- (a) **Property/Evidence Custodian.** The Chief of Police is the Evidence Custodian, who is responsible for centralized control of property in custody and for found, recovered, and evidential property. All references in this Manual to "Property/Evidence Custodian" shall mean the Chief of Police or his/her designee.
- (b) **Property Custodian; Accountable for Control.** The Property/Evidence Custodian(s) shall be accountable for control of all property accepted by or stored in the secure property storage area(s).
- (c) **Property Storage; Secure Area.**
 - (1) **Property/Evidence Room Storage Required.** To ensure that all property stored by this Department is properly controlled, all property shall be stored in the designated property/evidence room, with some exceptions below.
 - (2) **Over-sized Items.** Items of property too large for the property/evidence room shall be stored in a general storage area (i.e., bicycles, motorcycles, etc.). Motor vehicles can be stored in the Public Works Department garage or other areas deemed appropriate by the Chief of Police.
 - (3) **Release Exceptions.** Items or evidence that may be released prior to trial, may be stored in a locked/secure Police Department office on an interim basis, and subsequently released to the owner, after photographing.

- (d) **Inspections.** The Chief of Police may conduct regular inspections for adherence to procedures used for the control of property. The inspection includes, but is not limited to, determination that the property/evidence room is maintained in a clean and orderly fashion, that provisions of written directives are followed, that property is protected from damage or deterioration, that accountability is maintained, and that property having no further evidentiary value is disposed of promptly.
- (e) **Inspection; New Property/Evidence Custodian.** The Chief of Police shall require, whenever a new Property/Evidence Custodian is designated, an inventory of property to insure that records are correct and properly annotated, is conducted jointly between the newly designated Property/Evidence Custodian and the outgoing Property/Evidence Custodian.
- (f) **Inspection; Unannounced.** The Chief of Police may conduct unannounced inspections of property storage areas. The spot inspection should address a random comparison of records with physical property held in custody.
- (g) **Property/evidence room Access.**
 - (1) **Access Procedures.** Only the Chief of Police can access the general areas of the property/evidence room. Evidence or other items requiring special security may be placed by Officers in temporary lock boxes/drawers. When evidence is placed in a lock box/drawers, written notification should be given to the Property/Evidence Custodian(s).
 - (2) **Authorization.** Officers seeking to access the secured evidence room may only do so after first receiving authorization from the Chief of Police and/or his/her designee. The Chief of Police (and/or his/her designee) is the only person permitted to move secured evidence. Only the Chief of Police (or his/her designee) will have a master key for the evidence storage area.
- (h) **Security.** The Property/Evidence Custodian shall ensure that items of property requiring added protection to include money, precious metals, jewelry, gem stones, weapons, narcotics, and dangerous drugs are stored in a separate, locked, security cabinet located in the property/evidence room. The key to access the security cabinet should be stored in the locked key box located in the property/evidence room or maintained by the Property/Evidence Custodian(s).
- (i) **Narcotic and Dangerous Drugs; Extra Security.**
 - (1) The Property/Evidence Custodian shall ensure that containers for narcotics and dangerous drugs are inspected for tampering each time they are accepted or released from custody of this Department.

- (2) The Property/Evidence Custodian shall ensure that narcotics and dangerous drugs held as evidence are weighed as well as counted when accepted or released from custody of this Department.
- (j) **Refrigerated Storage.** If the Department has refrigerated storage available, the Property/Evidence Custodian shall ensure that perishable items of evidence are preserved by refrigeration so their properties will be as unchanged as possible while in the custody of this Department.
- (k) **Property/Evidence Room Cleanliness.** In the course of processing a case and/or trial preparation, a defense attorney may request to examine the physical evidence pertaining to that case. It is the objective of this policy to eliminate or minimize evidence suppression issues due to claims of cross-contamination of evidence by maintaining a standard of order and cleanliness in the property/evidence room:
- (1) Firearms shall not be cleaned in the property/firearms room, eliminating any possibility of cross-contamination from cleaning solvents.
 - (2) Department members shall properly clean up any debris left or created in the property/evidence room prior to leaving. Stray packaging materials, refuse, scraps, etc. shall not be left for others to clean up.
 - (3) Department members shall wipe the counter after processing any material evidence that has the potential leaving any type of residue.
 - (4) If a Department member processes any type of biohazard material, all available universal safety precautions shall be employed, including spraying the counter with a bleach solution after the packaging process has been completed. Nitrite gloves and a spray bottle of bleach solution (and probably extra PPE items) will be available in the property/evidence room.

Sec. 4-4-5 Release, Destruction and Disposition of Property.

POLICY:

The Property/Evidence Custodian(s) is responsible to coordinate the release of all property to owners.

PROCEDURES:

- (a) **Evidence Involving Arrest (Felony).**
- (1) Evidence may be released prior to trial if authorized by the prosecuting attorney and the property is photographed. An evidence release form must be completed and filed in the case file.

- (2) When the case has been disposed of, the evidence will be held pending any appeal time period unless the District Attorney authorized the release. An evidence release form shall be completed and filed in the case file.
 - (3) Videotapes, CDs, DVDs, flash drives or other recording medium with interviews of child assault victims may be retained beyond the appeal time period under guidelines set forth by the Office of the District Attorney.
- (b) **Evidence Involving Misdemeanors and Ordinance Violations.**
- (1) Evidence may be released prior to trial or disposition by authorization of the District Attorney and the property is photographed. An evidence release form shall be completed and placed in the case file.
 - (2) Evidence may be released after the disposition of the case. An evidence release form shall be completed and placed in the case file.
 - (3) Evidence planned on being released prior to trial may be stored/secured in a locked Police Department office on an interim basis.
- (c) **Evidence Without Arrest – Crimes Against Property.** Evidence may be released or disposed of after thirty (30) days if no arrest has been made and if the case is no longer under active investigation.
- (d) **Evidence Without Arrest – Crimes Against Persons.** Evidence may be released or disposed of after thirty (30) days if no arrest has been made and the case is no longer under active investigation. Exceptions will be if the case is classified as a homicide, sexual assault, armed robbery or aggravated battery.
- (e) **Evidence Without Arrest – Found Property.** Property that is considered "abandoned" per the Wisconsin Statutes may be disposed of after thirty (30) days if an owner is not located. All property considered legal and in good condition will be stored by the Police Department until ordered disposed of by the Chief of Police. All items considered illegal or unsuited will be destroyed or disposed of.
- (f) **Evidence Without Arrest – Safekeeping Property.** Property that has been held for safekeeping will be returned to the owner within ten (10) days unless the reason for taking the property is considered still existent.
- (g) **Property and/or Evidence Disposition.**
- (1) When no longer needed for evidentiary purposes, all evidence, with exception of firearms and contraband, shall be returned to its lawful owner unless title to the evidence is transferred to this Department or other jurisdiction by court order. The

Department annually reviews its evidence holdings and makes disposal arrangements accordingly. If the lawful owner fails to claim the evidence, this Department may, as permitted under state law if a case is not still pending:

- a. Destroy it;
 - b. Dispose of it by soliciting bids; or
 - c. Retain it for use by this Department.
- (2) Firearms and other non-drug contraband shall be physically destroyed unless:
- a. A court order authorizes use of the item by this Department; or
 - b. The firearm is required by state law to be returned to its lawful owner.
- (h) **Disposition/Destruction of Drugs.**
- (1) The Chief of Police shall authorize the destruction of drugs. The Chief of Police shall designate the date, time, and place for the destruction process, and shall assign a witness to the process. The Evidence Custodian shall notify the Chief of Police of drug destruction.
 - (2) All drugs shall be weighed and tested at the Department before destruction; all discrepancies shall be reported to the Chief of Police prior to the destruction of the drugs. If there are no discrepancies in the weighed and testing of the drugs, the drugs shall be burned/destroyed completely. The Evidence Custodian and the witness shall stand up wind and remain present until the drugs are completely burned/destroyed.
 - (3) Both the Evidence Custodian and the witness to the drug destruction shall complete reports to the Chief of Police including:
 - a. The date, time and location of the destruction;
 - b. An inventory of the items destroyed;
 - c. A list of those present at the destruction; and
 - d. The results of the weighing and testing made before the destruction.
 - (4) A copy of the letter/document will be placed in the case files of the respective cases.
 - (5) The location of the drug burn/destruction will be determined by the Chief of Police or his/her designee.

Title 4 ► Chapter 5

Eyewitness Identification

- 4-5-1** General Purpose; Definitions; Utilization Considerations
- 4-5-2** General Rules for All Eyewitness Identification Procedures
- 4-5-3** Confrontations
- 4-5-4** Photographs (and Other Likenesses)
- 4-5-5** Lineups
- 4-5-6** "Informal" Identification Procedures
- 4-5-7** When Identification Policies May be Disregarded

Sec. 4-5-1 General Purpose; Definitions; Utilization Considerations.

POLICY:

- (a) The City of Stanley Police Department's purpose in establishing the following uniform policies and procedures for identification of suspects by eyewitness(es) to a crime is to promote practices which will safeguard innocent persons while ensuring that justice is served. It is the purpose of this Chapter to establish procedures and guidelines for the use of eyewitness identification procedures involving photograph arrays, lineups, showups, confrontations and facial composites. It is a purpose of this Chapter to reduce the risk of wrongful conviction of innocent persons while increasing the probability of convicting the guilty person(s).
- (b) Eyewitness identification procedures are among the most important techniques for investigating, apprehending and prosecuting individuals involved in criminal activity. Eyewitness evidence can be the most important and convincing evidence in a case. However, research and nationwide experience suggest that eyewitness evidence can be fragile and that eyewitnesses can be mistaken. Eyewitnesses can make identification errors, but those errors may be difficult to detect because witnesses are sincere and typically have no motive to lie. When wrong, eyewitnesses usually are not being deceitful, but are simply mistaken. To reduce the risk of wrongful conviction and aid in the detection and apprehension of the guilty, Officers should adhere to procedures set forth herein in order to maximize the reliability of identifications, minimize unjust accusations of innocent persons and to establish evidence that is reliable and conforms to established legal procedures.

DEFINITIONS:

The following definitions shall be applicable in this Chapter:

- (a) **Photograph (Photo) Array.** The sequential showing of multiple photographs to an eyewitness for the purpose of obtaining an identification.
- (b) **Live Lineup.** The presentation of a number of individuals, including a suspect, sequentially before an eyewitness.
- (c) **Showup.** The presentation of one suspect to an eyewitness within a short time following the commission of a crime.
- (d) **Confrontation.** A limited usage identification procedure in which a suspect is presented singly to the witness.
- (e) **Informal Identification.** An identification process when an Officer arranges to take a witness to observe a suspect who is at liberty, with the suspect, generally, being unaware of the observation.

PROCEDURES:

The following general procedures and guidelines should be utilized when Officers are utilizing photo arrays, live lineups, showups and facial composites with an eyewitness:

- (a) **General Procedures for Photo Arrays and Live Lineups.** The following general procedures and guidelines should be utilized when Officers are utilizing photo arrays and/or live lineups with an eyewitness:
 - (1) Officers shall choose non-suspect "fillers" that fit the witness's description and that minimize any suggestiveness that might point toward a suspect.
 - (2) Use "double blind" procedures, in which the administrator of the procedure is not in a position to unintentionally influence the witness's selection.
 - (3) Specifically instruct eyewitnesses that the real perpetrator may or may not be present and the administrator does not know which person is the suspect.
 - (4) Present the suspects and fillers sequentially (one at a time) rather than simultaneously (all at once). This encourages absolute judgments of each person presented, because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject.
 - (5) Assess eyewitness confidence immediately following an identification; carefully document a witness's response before any feedback from law enforcement.

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- (6) Avoid multiple identification procedures in which the same witness views the same suspects more than once.
- (b) **General Considerations for Showups.** Some courts have suppressed identification evidence based on the use of showups due to inherent suggestiveness of the practice. Therefore, the use of showups should be secondary in preference to the use of photo arrays or lineups when possible. However, when exigent circumstances require the use of a showup, the following procedures and guidelines should be considered:
- (1) Document the eyewitness's description carefully prior to the showup.
 - (2) Whenever practical, transport the eyewitness to the location of the suspect. Showups should not be conducted at law enforcement facilities or any other public safety buildings.
 - (3) Specifically instruct eyewitnesses that the real perpetrator may or may not be present.
 - (4) Showups should not be conducted with more than one witness present at a time. If identification is conducted separately for more than one witness, witnesses should not be permitted to communicate before or after any procedures regarding the identification of the suspect.
 - (5) The same suspect should not be presented to the same witness more than once.
 - (6) Showup suspects should not be required to put on clothing worn by the perpetrator. They may be asked to speak words uttered by the perpetrator or to perform other actions of the perpetrator.
 - (7) Words or conduct of any type by officers that may suggest to the witness that the individual is or may be the perpetrator should be scrupulously avoided.
 - (8) Assess eyewitness confidence immediately following an identification.
- (c) **General Considerations Regarding Facial Composites.** Inaccurate information from outside an eyewitness's memory can taint development of a composite. As with photo arrays, live lineups, and showups, composites can be compromised if the witness's description relies on information learned from external sources after the crime or if the person administering the procedure unintentionally supplies the witness with information or unintentionally incorporates outside knowledge of the case into the production of the composite. For this reason, when a composite is used, double-blind concepts and principles in which both the witness and the person making the composite are unaware of external information about the case may be helpful. It may not be feasible to conduct a completely double-blind procedure for a variety of reasons, in which case witnesses should be told to rely on their independent recollection of the event — not information learned from other sources — and administrators of the procedure must be mindful of any natural tendency to incorporate prior knowledge into the process.

Sec. 4-5-2 General Rules for All Eyewitness Identification Procedures.

PROCEDURES:

- (a) **When Unnecessary.** An eyewitness identification procedure may be unnecessary when the witness:
 - (1) Would be unable to recognize the perpetrator of the offense being investigated; or
 - (2) Knew the identity of the suspect before the offense occurred or learned the suspect's identity without assistance from an officer after the offense.
- (b) **Avoiding Multiple Viewers.** A suspect—or likeness (a photograph, composite drawing or sketch) of a suspect—should not deliberately be displayed to more than one witness at a time.
- (c) **Avoiding Viewers' Suggestions.** A witness who has taken part in an identification procedure must not be permitted to state conclusions within earshot of another person who is about to be, or has been, a viewer.
- (d) **Avoiding Officer's Suggestions.** An Officer must not by word or gesture suggest opinions to any witness that the suspect committed the crime. Witnesses making inquiries about an Officer's opinion shall be informed of this restriction.
- (e) **Maintaining a Record.** A complete record of each identification procedure must be made. The time, location, and the identity of those present, including persons being viewed who are not the suspect, must be noted. Statements made by a witness viewing the suspect must be recorded, along with any significant remarks made by an Officer, lawyer or suspect. Photographic, sound and video recording devices should be used when possible.

Sec. 4-5-3 Confrontations.

POLICY:

- (a) An Officer may arrange a confrontation between a suspect and a witness whenever the suspect is arrested within a reasonable length of time (consideration should be given to the freshness of the pursuit and the total amount of time elapsed since the offense—some jurisdictions consider two (2) hours reasonable) and the witness is cooperative and states they might recognize the person who committed the offense.

- (b) One-to-one confrontations will not occur at the Department headquarters. In the event any deviation from this procedure appears appropriate because of unusual circumstances the officer-in-charge should consult with the District Attorney.

PROCEDURES:

(a) **Confrontation When Probable Cause to Arrest is Present.**

- (1) **Generally.** If there is probable cause to arrest a suspect who is located, the suspect should ordinarily be taken into custody prior to any confrontation. The confrontation must then occur, as soon as practicable after the arrest.
- (2) **Confrontation With Suspect's Cooperation.** If there is probable cause to arrest a suspect, but the suspect is cooperative and consents to take part in a confrontation, an Officer may arrange a confrontation without first arresting the suspect.
- (3) **Location of Confrontation.** Under either of the above circumstances, the suspect may be held at the location of the arrest for identification or may be taken to the viewer's location.
- (4) **Release After Confrontation.** If the suspect is not identified, the suspect should be released pursuant to appropriate Departmental procedures, unless probable cause still exists to believe the suspect committed the offense.

(b) **Confrontation Following Temporary Detention.**

- (1) **Generally.** If an Officer reasonably suspects that a person located has committed the offense, but probable cause to arrest the person is not present, the Officer may detain the person for a reasonable period of time for confrontation purposes. In exercising this authority, the Officer may use such force (see Stop and Frisk Policy) as is reasonably necessary to stop the person or to cause the person to remain in the Officer's presence.
- (2) **Location of Confrontation.** The witness should be brought to the scene of the detention as soon as possible. A suspect should not be taken to the Department for a one-to-one confrontation.
- (3) **Extending Detention.** The suspect cannot be detained for longer than a reasonable period of time unless probable cause to believe the suspect committed the offense has developed during the detention or the suspect, after being clearly informed that he/she need not cooperate, consents to take part in the confrontation.

- (c) **Impartiality During Confrontation Procedure.** When presenting a suspect to a witness for identification, an Officer should not say or do anything to lead the witness to believe that the suspect has been formally arrested or detained, that the suspect has confessed, that

incriminating items were found on the suspect when searched or frisked, or that the suspect is believed to be the perpetrator.

- (d) **Multiple Witnesses.** If there are several witnesses to a crime, and confrontation of a suspect is feasible and proper under the general policy established by this Section, arrangements should be made for each witness to confront the suspect separately.
- (e) **Cruising Area of Offense.** Nothing in these guidelines bans the common procedure of transporting witnesses in patrol cars to cruise the general area in which a crime has occurred in hopes of spotting the perpetrator and arranging a confrontation.
- (f) **Emergency Confrontations.** In emergency circumstances, such as when a witness is in danger of death or blindness, or when a suspect is in danger of death, an immediate confrontation may be arranged if medical authorities permit. In these situations, time and location limitations contained in the preceding guidelines can be disregarded. But if the suspect will be hospitalized for a length period and is not in danger of death, then it is proper to follow the informal identification procedure set out in Section 4-5-6(c).
- (g) **Right to a Lawyer.** No person has a right to have a lawyer present at any confrontation procedure.

Sec. 4-5-4 Photographs (and Other Likenesses).

PROCEDURES:

- (a) **When Photographs May be Used.** The use of photographs to identify criminal suspects is permissible only when a live identification procedure is impractical. (e.g., there is no suspect; there is a suspect, but probable cause to arrest is absent; the suspect cannot be found; a suspect or witness refuses to cooperate; or the suspect is in custody some distance from the prospective viewer.)
- (b) **Saving Witnesses to View Lineup.** Whenever a witness makes a positive identification from a photograph and probable cause to arrest the suspect is thereby established, photographs should not be displayed to other witnesses if they will later view the suspect at a lineup.
- (c) **Use of a Photograph Book.** The use of a photograph book is appropriate when there is no particular suspect. To assure an accurate photograph book identification, a reasonable number of photographs should be shown to a witness even if the suspect is selected almost immediately.

- (d) **Sketches and Composites.** When there is not a suspect and the use of the photograph book has been, or is likely to be unsuccessful, a non-photographic pictorial representation (e.g., free-hand sketch, Identi-Kit) may be used. If this leads to definite identification of a suspect, no other sketch, composite, or photograph should be displayed to any other witness. However, if probable cause for an arrest still does not exist, a photograph of the suspect should be obtained on the photograph display procedure set out below in Subsection (f) should be followed.
- (e) **Post-Arrest Photo Display.** Photograph displays may be used after the arrest of the suspect only when a lineup is impractical for one of the reasons specified in Section 4-5-5.
- (f) **Display Size and Composition.** Whenever a photograph depicting a definite suspect is displayed to a victim or eyewitness, it should be arranged at random with four (4) or more photographs of different persons. The persons depicted in the photo display—along with the photographs themselves (if several are used)—must be of substantially similar general appearance. However, if a photograph of a proper lineup that includes the suspect is available, it may be displayed singly without any other photographs.
- (g) **Recording and Preserving.** An adequate record of each photograph shown in each display must be made. Photographs must be preserved so that the display can be reconstructed at trial, and photo books should be accurately described in the event they are needed for trial.
- (h) **Right to a Lawyer.** No person has a right to have a lawyer present at any pictorial identification procedure, whether it takes place before or after arrest.

Sec. 4-5-5 Lineups.

POLICY:

- (a) **Holding a Lineup—Exceptions.**
 - (1) **Unusual Appearance of Suspect.** Lack of suitable persons to include in the lineup group.
 - (2) **Prior Knowledge.** The witness knew the identity of the suspect before the offense occurred or learns the identity without police assistance after the offense; or the prospective viewer has had an opportunity to identify the suspect in an earlier confrontation procedure.
 - (3) **Inconvenience.** The suspect is in custody at a place too far from the witness.

- (4) **Lack of Viewers.** There is no witness willing or able to view a lineup.
- (5) **Uncooperative Suspect.** The suspect threatens to disrupt the lineup. [See Subsections (f), (g) and (h), Procedures below].
- (6) **Suspect Released from Custody.** The suspect was released on bond or recognizance, before being viewed, and a court order has not yet been obtained ordering the suspect to appear in a lineup.

PROCEDURES:

- (a) **Time of Lineup.** A lineup, when conducted, should take place as soon as practicable after the arrest of a suspect.
- (b) **Right to a Lawyer.** A suspect has the right to a lawyer for any lineup and has the right to have a lawyer appointed for this purpose if he/she cannot afford one.
- (c) **Advising the Suspect of the Right to a Lawyer.** The suspect shall be told of the right to have a lawyer present to observe the lineup procedure; that if he/she cannot afford a lawyer, one will be provided free of charge; and that the lineup will be delayed until the lawyer appears.
- (d) **General Procedures.**
 - (1) **Counsel Already Retained.** If the suspect already has a lawyer—whether retained or appointed—and indicates he/she wants the lawyer to attend the lineup, he/she must be allowed to notify the lawyer about the planned lineup and the offense involved.
 - (2) **Non-Indigent Suspect Without Lawyer.** If the suspect has no lawyer but wants one to attend the lineup, and the suspect states that he/she can afford a lawyer, a reasonable time to retain a lawyer must be allowed.
 - (3) **Indigent Suspect Without Lawyer.** If the suspect has no lawyer, cannot afford a lawyer, but wants to attend the lineup, the officer conducting the lineup should contact the District Attorney's Office to provide a lawyer.
 - (4) **Reasonable Delay.** A lineup should be delayed for a reasonable time while waiting for the lawyer to appear following notification.
- (e) **Lineup Procedure.**
 - (1) **Number of Participants.** All lineups shall consist of at least four (4) persons presented sequentially besides the suspect. Whenever possible, though, the lineup shall be composed of seven (7) other persons besides the suspect.
 - (2) **Physical Similarity.** Persons placed in the lineup should have approximately similar physical characteristics. Factors such as age, height, weight, hair length and color,

- and physical build should be considered. Sex and race should be the same for all participants, except in unusual cases where the characteristic is difficult to determine (e.g., female impersonator).
- (3) **Eliminating Suggestion.** Officers should not say or do anything to distinguish the suspect from the other lineup participants.
 - (4) **Uniform Conduct of Participants.** The non-suspects in the lineup should be instructed to conduct themselves so as not to single out the actual suspect.
 - (5) **Compelled Actions.** The suspect can be instructed to utter specified words, make gestures, or assume a particular pose, if the viewer so desires. All participants should do whatever reasonable act is required of the suspect.
 - (6) **Donning Distinctive Clothing.** If a witness describes the suspect as wearing a distinctive item of clothing, and the item (or something similar) is in police custody, the suspect can be compelled to wear the item. Each participant must don the clothing in the order of their appearance in the lineup.
 - (7) **Photographs.** Photographs shall be taken of all lineups.
- (f) **Refusal to Participate.** Suspects who refuse to participate in a lineup, or to perform as required by Subsection (e) shall be informed that they have no right to refuse, and that evidence of their refusal may be used against them at trial. A record of the precise word of the refusal should be made for subsequent use.
- (g) **Continuing Refusal.** If suspects continue to refuse, they should not be physically forced to participate in the lineup or to perform a certain act. Instead, a court order should be obtained directing the suspect to cooperate and participate in the lineup.
- (h) **Role of the Lawyer.**
- (1) **General.** The suspect's lawyer shall be allowed to consult with the suspect prior to the lineup, and to observe the lineup procedure. The lawyer may make suggestions, but may not control nor obstruct the procedure.
 - (2) **Lawyer's Suggestion.** Any suggestions the lawyer makes about the procedure should be considered and recorded. Those suggestions which would render the procedure more consistent with these guidelines should be implemented.
 - (3) **Lawyer's Participation.** A lawyer should be permitted to be present when a witness states a conclusion about the lineup. However, the lawyer should be instructed to remain silent during both the lineup and the giving of the witness' conclusion. The lawyer may speak with any witness after the procedure, if the witness agrees to speak with the lawyer.
 - (4) **Communicating With the Witness.** Witnesses taking part in a lineup procedure may be told that they are under no obligation to speak with the lawyer, but that they are

free to speak with the lawyer if they wish. The witness' name and address will not be revealed to the lawyer without consent.

Sec. 4-5-6 Informal Identification Procedures.

POLICY:

An "informal" identification procedure occurs when an Officer arranges to take a witness to observe a suspect who is at liberty. Generally, the suspect will be unaware of the observation.

PROCEDURES:

- (a) **General Rule.** "Informal" identification procedures may be used when a suspect is not in custody because there has been no offense charged.
- (b) **Exceptional Circumstances—Released on Bail.** If a suspect has been charged with the offense but has been released on bail, "informal" identification procedures shall not be used, unless Subsection (c) applies. Rather a court order shall be obtained pursuant to Section 4-5-7 directing the suspect to appear in a lineup.
- (c) **Exceptional Circumstances—Hospitalization.** In addition, an "informal" identification procedure may be used when prompt identification is essential and a suspect has been charged with the offense under investigation, but the suspect is hospitalized for extended treatment under non-emergency circumstances. An attorney for the suspect shall be present if the suspect so desires.
- (d) **Specific Procedures.**
 - (1) **Single Locale.** A witness may be taken to a single locale where the suspect is likely to appear, provided the locale is a place where a large number of people of physical characteristics roughly similar to the suspect are likely to be, or pass by at random. This technique can be used when the suspect is known, or when the suspect is unknown, but is believed to frequent the locale chosen for viewing.
 - (2) **Multiple Locales.** When no single locale is likely to meet the requirement of Subsection (d)(1), then the witness may be taken to five (5) or more similar locales—at one of which the suspect is believed to be.
- (e) **Recording Informal Procedures.** A detailed record of any "informal" identification procedure must be made. Such a record should include:

- (1) The precise location of any observation;
- (2) The approximate number of people similar in description to the suspect that were viewed;
- (3) The time period during which the identifications were made;
- (4) The suspect's reaction if they became aware that they were being observed; and
- (5) The witness' reaction upon seeing the suspect.

Sec. 4-5-7 When Identification Policies May be Disregarded.

POLICY:

Whenever a situation arises in which there is a need for eyewitness identification, and none of the foregoing guidelines appear to be adequate or appropriate for the situation presented, no eyewitness identification shall be attempted until:

- (a) Authorization for the needed procedure is obtained from the District Attorney's Office; or
- (b) A court order validating the needed procedure is issued.

Title 4 ► Chapter 7

Criminal Trespass to a Dwelling

4-7-1 Mandatory Removal for Criminal Trespass to a Dwelling

Sec. 4-7-1 Mandatory Removal for Criminal Trespass to a Dwelling.

POLICY:

If probable cause of a violation of Sec. 943.14, Wis. Stats., exists, the subject must be removed from the dwelling by the City of Stanley Police Department. However, while removal is mandated, the statute does not mandate arrest.

POLICY:

Whoever intentionally enters or remains in the dwelling of another without the consent of a person lawfully upon the premises (landlord, property manager, etc.), or if no person is lawfully upon the premises without the consent of the owner of the property includes the dwelling, under circumstances tending to create or provoke a breach of the peace is to be considered in violation of Sec. 943.14, Wis. Stats.

