

**CITY OF OCONOMOWOC POLICE DEPARTMENT  
POLICIES & PROCEDURES**

DATE: May 14, 2020

HISTORY: October 1, 1999

SUBJECT: Arrest Procedures

POLICY NUMBER: 99-026

**I. PROBABLE CAUSE STANDARD:**

An officer must have sufficient Probable Cause prior to conducting the arrest of a person.

**II. DEFINITIONS:**

**Arrest:** The taking, seizing or detaining of a person by any act that indicates an intention to take the person into custody by a BPD member, and that subjects the person to the actual control and will of the member making the Arrest. An Arrest is effected (1) when the arrestee is physically restrained or (2) when the arrestee is told of the Arrest and submits. In addition, a person is seized within the meaning of the Fourth Amendment when, "In view of all the circumstances surrounding the incident, a reasonable person would have believed that they were not free to leave." An Arrest requires Probable Cause that a crime was committed, or is being committed.

**Probable Cause to Arrest:** Where facts and circumstances taken as a whole, known to the officer at the time of the arrest, would lead a reasonable member to believe that a particular person has committed or is committing a crime. Probable Cause is based upon an objective assessment of the facts and circumstances presented to the member and requires a higher level of evidence than Reasonable Articulate Suspicion (see below). For example, an officer responding to a call regarding a robbery may have Reasonable Articulate Suspicion to stop someone who matches a description of the perpetrator, but would not have Probable Cause to Arrest until obtaining some evidence, such as an identification by the victim or proceeds from the robbery.

**Reasonable Suspicion (RS):** A well founded suspicion based on specific, objective, articulable facts, taken together with the member's training and experience, that a subject has committed, is committing, or is about to commit a crime. RS required to justify a stop is a lower standard than for an Arrest. For example, an officer who suspects a driver is intoxicated may have RS for a vehicle stop based on observations that the car is swerving across lanes, and would not have Probable Cause for Arrest unless the driver failed a field sobriety test.

**Search Incident to Arrest:** Upon making an arrest, the officer shall conduct a search incident to Arrest for weapons that pose a danger to the person or others in their presence. The search shall occur at the same time as the arrest, or as soon as safe and practicable to do so.

**NOTE:** A search incident to arrest may include a weapons pat-down and search of the individual's pockets. It may also include a search of any articles of property found on the person, and the minor manipulation of clothing that does not expose a person's groin/genital area, buttocks, female breasts, or more than the waistband or upper portions of the undergarments.

The areas included in this search are the person being arrested and the area in their immediate control.

**NOTE:** Once the arrestee has been removed from the area and has been rendered incapable of gaining "immediate control" of items in that area, a search incident to arrest may no longer be conducted of that area.

If an arrestee is an occupant or was recently an occupant of a vehicle, a limited search of the passenger compartment of the vehicle (including glove box, center console or containers therein) may be done, if:

1. The arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search, or
2. There is RS that a search of the passenger compartment will uncover evidence related to the crime for which the occupant was arrested

### **III. POLICY**

Laws of arrest, search and seizure are defined by the United States Constitution, Wisconsin Statutes, and judicial interpretation to protect individual rights of all persons. It is the policy of this agency to always use legal justification and means for any arrest, search or seizure.

- A. Only sworn officers shall make arrests or serve arrest warrants. Non-sworn employees shall direct persons surrendering at the department to an officer for arrest or to serve an arrest warrant. Use caution, planning, and correct approach to help reduce dangers of making arrests.
- B. An officer may arrest when they have an arrest warrant, reasonable belief there is an outstanding arrest warrant or probable cause to believe a crime has been committed.
  1. Most arrests can be made simply by communicating verbally with the person to be arrested that he/she is under arrest.
  2. Whenever practical, it is the policy of this agency that officers making an arrest verbally advise the arrestee, "You are under arrest," or a similar phrase to ensure that the arrestee clearly understands he/she is under arrest.
  3. Fortunately most citizens who are arrested will comply with a police officer's commands and submit to arrest without incident. However, occasionally a citizen will become argumentative or violent in their refusal to submit to an arrest. In this type of arrest situation, the following guidelines will be followed:
    - a. Only the force necessary to effectively make the arrest will be used. Refer to "Use of Force Policy."
- C. In any type of arrest situation officers will exercise caution and call for backup when there is the slightest possibility that the use of force will become necessary.
- D. Sworn law enforcement personnel shall be allowed to make an arrest under Wisconsin State Statute 968.07 which states:
  1. The officer has a warrant commanding that such person be arrested; or
  2. The officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or
  3. The officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state or;
  4. There are reasonable grounds to believe that the person is committing or has committed a crime.
    - a. An officer need not have a warrant in their possession to make a valid arrest.
    - b. A police force is to be considered as a unit. Where there is police-channeled communication to the arresting officer and he acts in good faith, the arrest is based on probable cause when facts exist within the police department.
- E. An 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.

- F. If the alleged violator under s. 948.55(2) or 948.60(2)(c) is or was the parent or guardian of a child who is injured or dies as a result of an accidental shooting, no law enforcement officer may arrest the alleged violator until at least 7 days after the date of the shooting.

**IV. ARRESTS OUTSIDE JURISDICTION OF THIS AGENCY**

- A. A law enforcement officer of this agency operating outside the jurisdiction of this agency may make arrests for felony or misdemeanor offenses if the offense is committed within the officer's view, subject to the following provisions:
  - 1. This section is applicable only within the State of Wisconsin;
  - 2. That as soon as possible after the arrest the officer shall notify the Law Enforcement Agency having jurisdiction where the arrest was made.
  - 3. That the officer operating outside this jurisdiction must be doing so at the request of or with the permission of the Municipal or County Law Enforcement Agency having jurisdiction in the locale of the arrest. Refer to "Mutual Aid Policy."

**V. EXCEPTIONS TO THIS POLICY MAY BE AUTHORIZED ONLY BY THE CHIEF OF POLICE**

This policy is effective immediately  
and will supersede any directives or understandings in conflict