



CITY OF SUN PRAIRIE POLICE DEPARTMENT POLICY AND PROCEDURE



Arrest Authority & Procedure

Field Operations Policy No. F-06

Eff. Date: 10/07/16

POLICY

The Sun Prairie Police Department shall investigate violations of state law and municipal ordinances and shall make arrests for such violations in accordance with the constitution of the United States and the State of Wisconsin; Federal, State, and Municipal legislation; and Department policy. In rare instances officers may arrest for federal crimes.

This policy sets guidelines under which officers may exercise powers of arrest and the procedures to be followed when an arrest has been made. In order to promote safety and efficiency, the Sun Prairie Police Department shall determine and regulate those situations and locations within which a Sun Prairie Police Officer is permitted to make an arrest while on-duty or off-duty.

The basic authority for police officers to make arrests derives from the Wisconsin Statute 62.09(13): General Police Arrest Authority. Additionally, officers are given statutory authority to arrest in accordance with:

- Wis. Stat. 66.0513 Law enforcement mutual assistance
- Wis. Stat. 175.40 Arrests: boundaries, assisting other agencies
- Wis. Stat. 175.40 (6m) Arrests: off duty, outside employing jurisdiction
- Wis. Stat. 800.02 (6) Warrantless arrest for municipal ordinances
- Wis. Stat. 968.07 Arrest by a Law Enforcement Officer
- Wis. Stat. 968.075 Domestic Abuse Incidents: Arrest and Prosecution
- Wis. Stat. 345.22 Warrantless arrest for traffic regulations
- Wis. Stat. 29.941 DNR Assistance by law enforcement officers
- 18 U.S. Code 3041 Arrest by state officer for Federal crime

OBJECTIVE

To provide police officers with basic guidelines for conducting arrests both on-duty and off-duty.

DEFINITIONS

Adult:

For the purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age. [Wis. Stat. 938.02 (1)]

Arrest:

To deprive a person of their liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining the person to answer a criminal or civil charge. The central idea of an arrest is the taking or detaining of a person, by word or action, into custody so as to subject their liberty to the actual control and will of the person making the arrest.

Citizen Contact:

A consensual encounter between a police officer and a citizen that may be initiated by the officer for any reason and during which the citizen is free to leave the encounter.

Close Pursuit:

Pursuit of a felony suspect into another state.

Crime:

Conduct which is prohibited by state law and punishable by fine, imprisonment, or both. Conduct punishable only by forfeiture is not a crime.

Custodial Arrest:

The act of depriving a person of their liberty by legal authority for the purpose of booking, holding, or detaining them to answer a criminal charge or civil forfeiture action.

Exigent circumstances:

Conditions, facts, or events that call for immediate aid or action. Law enforcement officers invoke "exigent circumstances" in cases where they will be unable or unlikely to make an arrest or search and seizure for which probable cause exists unless they act swiftly and without seeking prior judicial authorization. Such emergency situations are those that "would cause a reasonable person to believe that entry (or relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." (*United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824, 105 S. Ct. 101 (1984)).

Fresh Pursuit:

Fresh pursuit means the continuous and uninterrupted pursuit by a law enforcement officer of someone he/she has probable cause to believe has violated any law or ordinance the officer is authorized to enforce. This means that the infraction took place within the officer's geographical jurisdiction and fresh pursuit allows the officer to follow that person outside of what normally would be his/her geographical limits. An officer may follow anywhere in the state and arrest any person for violation of any law or ordinance the officer is authorized to enforce. [*City of Brookfield v. Collar*, 148 Wis.2d 839 (1989)]

Investigative Detention:

Temporary detention for investigative purposes of a person based upon reasonable suspicion that the person has committed, is committing, or is about to commit a crime, under circumstances that do not amount to probable cause for arrest (also known as a *Terry* stop).

Legal Jurisdiction:

An officer has legal jurisdiction and authority of a police officer of the City of Sun Prairie Police Department while within the corporate limits (boundaries) of the City of Sun Prairie. This includes the entire width of a boundary highway as defined in Wis. Stat. 175.40 (4). Officers also have expanded arrest authority under Wis. Stats. 175.40 (on duty) and 175.40 (6m) [2005 Wis. Act 414] (off duty).

Non-Custodial Arrest:

The act of temporarily depriving a person of their liberty by legal authority for the purpose of issuance of a citation or referral for future prosecution.

Offense:

As used in this document, any violation of Federal, State, or Municipal law.

Personally Involved:

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 persons connected with the incident. This does not apply to situations where the police officer is a victim of a crime.

Plain Clothes:

For the purposes of this policy, plain clothes are non-uniform apparel commonly worn while off-duty; also referred to as civilian attire or street clothes.

Probable Cause:

That quantum of evidence, which would lead a reasonable police officer to believe that the defendant committed an offense. It is more than a hunch or mere suspicion, but less than the evidence required to bind over for trial. The “reasonable grounds” specified in state statute is the same as “probable cause.”

Reasonable Suspicion:

The degree of suspicion of criminal activity which justifies an investigative detention but not an arrest.

Warrant (arrest):

A written order issued and signed by a judge, and directed to a law enforcement officer, commanding the officer to arrest the person identified in the order. An arrest warrant may be for the violation of a criminal law or a municipal ordinance.

PROCEDURE**A. IDENTIFICATION OF POLICE OFFICERS**

1. The function of Police identification is to prevent misunderstanding about lawful authority. Individuals are more likely to respond favorably to authority if they are certain it exists. Furthermore, citizens have the right to be assured that lawful authority exists. The officer should be certain the citizen has no doubt that they are dealing with a peace officer. There is the added concern to provide protection to our communities from individuals who would impersonate a peace officer.
2. The [Appearance & Uniform Policy](#) addresses the uniform requirements for sworn personnel. Additionally the following considerations should be followed:
 - *Uniformed*
 - Officers will identify themselves by providing name, rank, and department when the situation requires such identification.
 - *Plain Clothes*
 - Plain clothes officers will offer their credentials for examination to all persons whom they officially contact. In addition to credentials, identification by name, rank, and department is sufficient.
 - *Exceptions - All officers will be excused from supplying any identification in the following situations:*
 - There is imminent danger of great bodily harm to the officer or other person(s).
 - Such identification could result in great bodily harm to the officer or other person(s).
 - The officer, by nature of his or her current assignment, would be imprudent in disclosing his or her identity.
 - The time element does not permit immediate identification, but after action is taken and the matter is (temporarily) resolved, such identification would be proper.

B. AUTHORITY TO ARREST

1. *WI SS 968.07 (1), permits a law enforcement officer to make an arrest when:*
 - The law enforcement officer has a warrant commanding that such person be arrested; or
 - The law enforcement officer believes, on reasonable grounds, that a warrant for the person’s arrest has been issued in this state; or
 - The law enforcement officer believes, on reasonable grounds, that a felony warrant has been issued for the person’s arrest in another state; or
 - There are reasonable grounds to believe that the person is committing, or has committed a crime.

2. A law enforcement officer shall identify him/herself by his/her official indicia of office (badge, ID card, or uniform) and generally use formal words of arrest to avoid ambiguity regarding the officer's authority/intent and thus avoid providing the suspect a potential defense to Resisting an Officer or Escape from Custody. 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. Refusal to aid an officer upon command is a misdemeanor offense under WI SS 946.40.
3. WI SS 62.09 (13) extends an officer's authority to arrest for violations of non-criminal state law and municipal ordinances of the city (forfeitures).
4. WI SS 175.40 (4) states a peace officer whose boundary is a highway may enforce any law or ordinance that he or she is otherwise authorized to enforce by arrest or issuance of a citation on the entire width of such highway and on the entire intersection of such a highway and a highway located in an adjacent jurisdiction. This subsection does not extend an officer's jurisdiction outside the boundaries of this state.
5. WI SS 175.40 (6), adopted by this policy, gives authority to an on-duty peace officer outside his or her territorial jurisdiction to arrest a person or provide aid or assistance anywhere in the state if the following criteria are met:
 - o The officer is on-duty and on official business.
 - o The officer is taking action which he or she would be authorized to take under the same circumstances in his or her territorial jurisdiction.
 - o The officer is acting to respond to any of the following:
 - An emergency situation which poses a significant threat to life or of bodily harm.
 - Acts that an officer believes, on reasonable grounds, constitute a felony.
 - o Any officer acting under this authority must immediately notify and cooperate with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken in the jurisdiction. The Officer-in-Charge from this Department shall be notified as soon as possible.
6. WI SS 66.0513 adopted by this policy provides that upon the request of any law enforcement agency, personnel from another law enforcement agency may assist the requesting agency within their jurisdiction, and upon that request the assisting officer shall have full police powers within the requesting jurisdiction, including all protections for the officer such as worker's compensation.
7. WI SS 29.941 adopted by this policy provides that all police officers are deputy conservation wardens and shall assist the DNR and its wardens in enforcement of fish and game laws or other violations of Chapter 29 of the Wisconsin Statutes whenever notice of violation thereof is given to them by the department or its wardens. This action should normally only be taken at the request of the DNR or a warden.
8. 18 U.S. Code 3041 authorizes state law enforcement officers to make arrests for Federal crimes. Officers shall not utilize this authority unless so directed by a supervisory officer.

C. SAFETY CONSIDERATIONS

1. When feasible an effort should be made to effect arrests in an environment that poses minimal danger to officers, citizens, and the defendant.
2. TRT or SET teams are available to assist with any arrest which poses a probability of a high risk situation.

D. POLICE DISCRETION

1. Police officers, of necessity, exercise professional discretion in deciding whether or not to arrest citizens for violations of the law. Other specific laws, department policies, or orders of a supervisor may further limit officers' discretion and direct an officer to effect an arrest. In general, police officers, using sound professional judgment, may take the following factors into consideration when deciding whether or not to arrest a citizen:
 - o The seriousness and nature of the offense (generally, the more serious the offense, the more likely arrest is the preferred course of action)
 - o The potential that arrest will effectively resolve a conflict;

- The availability of legal alternatives to arrest which would adequately resolve the conflict or problem;
 - The likelihood that the citizen will be deterred from future violations by warning and education;
 - The officer's belief that the citizen made an honest mistake in violation of the law;
 - The victim-witness's interest in prosecution;
 - The likelihood of formal prosecution of the offense;
 - The potential that arrest will create more serious breaches of the peace or other problems (e.g., inciting riot);
 - Legitimate competing priorities for police resources.
2. The following factors are among those which are improper for a police officer to consider in deciding whether or not to make an arrest:
- The citizen's economic status, race, ethnicity, gender, or other status for which the law prohibits legal discrimination;
 - The revenue likely to be generated by fines or penalties imposed upon conviction;
 - The personal or professional relationship that the citizen has to the police officer or to other influential citizens;
 - The personal advantage to the officer for processing or avoiding processing of the arrest (e.g. overtime compensation, desire to finish tour of duty, avoidance of paperwork, etc.)
3. Enforcement Options (also see policy F-11 Court Systems & Enforcement Options):
- Arrest (custodial or referral)
 - Misdemeanor Citation
 - Municipal Ordinance Citation
 - Uniform Traffic Citation
 - Warning Notices (Written or verbal)

E. ARREST PROCEDURES (ON-DUTY)

1. Arrests (Generally):

- While making an arrest, officers shall adhere to laws relating to making a lawful arrest.
- The arresting officer is responsible for ensuring that the arrested person knows he/she is under arrest.
- The arresting officer will inform the person of the offense that they are being arrested for as soon as practically possible.
- When the person has been taken into custody, the arresting officer shall conduct or cause to be conducted:
 - A thorough search of the individual incident to a lawful arrest. This search is made for the safety of both the officer and the individual and is permitted in accordance with Wisconsin Statute 968.10 (1) governing Searches and Seizures.
 - Prior to questioning the individual about the offense for which they are in custody, in accordance with the Miranda Ruling, they shall be informed of their Constitutional Rights.
- While taking a person into custody during an arrest, officers shall adhere to policy governing the use of force. The arresting officer is responsible for the safety and protection of the arrested person while they are in custody. The arresting officer shall notify the transporting officer and jail personnel of any injury, apparent illness, or other condition which indicates the arrested person may need special care.
- If injury treatment is necessary, the arresting officer will transport, or cause the transport of the arrested person to a medical facility for treatment and obtain a medical release of the arrested person for incarceration purposes.

2. Arrest with a Warrant:

- A police officer shall arrest a person within this jurisdiction when the officer has knowledge a lawful arrest warrant has been issued and a reasonable effort has been made to properly identify the person to

be arrested. In complying with the requirements of the warrant, an officer shall retain custody of the named defendant and promptly notify the proper authority. A person so arrested shall be transferred to the custody of the sheriff or other law enforcement agency unless release is authorized by proper authority.

- In situations where the arresting officer is not in possession of the warrant, he/she shall be responsible for confirming the existence of the warrant. All warrants shall require teletype confirmation; however, telephone confirmation shall be acceptable pending receipt of the teletype.
- Upon making an arrest, the arresting officer should inform the defendant as soon as safely practicable of the nature of the offense with which they are being charged. (For safety reasons, officers may initially mislead the defendant about the number or seriousness of the warrant(s)).
- An arrest warrant may be served at the suspect's dwelling by making a forcible entry only if the officer also has probable cause to believe the suspect is present inside the dwelling. *WI. v. Blanco*, 237 WI.2d 395, 2000 WI App 119. An arrest for a suspect residing in another's dwelling requires the consent of the owner/occupant or the issuance of a search warrant.

3. *Arrest without a Warrant:*

- An officer may arrest a person within this jurisdiction, without a warrant, whenever he/she has probable cause to believe that the suspect is committing or has committed an offense. It is not necessary that an offense be committed in an officer's presence for him/her to arrest for that offense. Thus, whenever an offense has been committed, the officer may arrest for it, except that whenever the person to be arrested is in their residence (home, apartment, etc.) in addition to probable cause, it is necessary that the officer has consent to enter the dwelling from a person legally able to give such consent OR there be exigent circumstances to authorize the officer to go into the residence without a warrant to effect the arrest. (If several occupants have equal rights in the same dwelling, any one of those actually present may forbid entry to the police. *Georgia v. Randolph*, U.S. Supreme Court, 04-1067; 3-22-06.)
 - There is no requirement that police officers must arrest an offender as soon as probable cause for the arrest exists. Hence, if there is no compelling need for an immediate arrest, officers should not be too quick to make the arrest until the best case can be put together. This may include the identification and questioning of additional victims, witnesses, and parties to the crime, or the location of additional evidence.
 - When in pursuit of a fleeing person, an officer may enter a home without a warrant if he/she has probable cause to believe the accused has fled inside the home. This hot pursuit exception is limited to a jailable situation with a chase scenario.
- The decision to make a custodial arrest shall be based on the following factors:
 - Gravity of the offense, criminal history, likelihood of flight, safety of the public, potential for further disturbance, threats by the suspect, or the need to collect and preserve evidence essential to prosecution.
 - The alternative to a custodial arrest is to complete an incident report documenting the alleged offense and refer the report to the appropriate prosecutor for review and the issuance of a warrant or summons to appear. [The Wisconsin Supreme Court has adopted the position of the U.S. Supreme Court: “. . . as long as probable cause for an arrest exists, arrest warrants are unnecessary, even where there is time to obtain them.” *Laasch v. WI.*, 84 WI.2d 587, 591 (1978) and *Sanders v. WI.*, 69 WI.2d 242, 255 (1975).] Nonetheless, obtaining an arrest warrant will increase the likelihood of apprehension if the suspect is encountered by other law enforcement agencies.

4. *Incarceration (Generally):*

- An arrested person should be incarcerated when any of the following are present:
 - The person has committed a felony (except a referral can be made with supervisor approval).
 - They are a danger or threat to others.

- There is reason to believe the person will fail to appear in court.
 - There is reason to believe the person will continue to commit illegal acts if they are released from custody.
 - If the person is arrested and charged with a misdemeanor offense, an appropriate bail amount will be set in accordance with the current bail-bond schedules.
 - If the person is arrested and charged with felony, no bail amount is set by the Officer, but is determined by a judge or court commissioner at the person's initial court appearance.
 - The arresting officer shall make sure to notify the court officer of the arrest. A copy of the booking sheet should be immediately routed to the court officer.
5. *Wisconsin Uniform Misdemeanor Citation:*
- See policy [F-11](#) for information regarding misdemeanor citations.
6. *City Ordinance Enforcement; WI Statute 800.02(6):*
- Two objectives are attained through the use of ordinances:
 - Ordinances are a vehicle whereby the City can assert control and regulation over matters not addressed in state statutes.
 - Ordinances provide a less severe sanction where ordinances have statutory counterparts.
 - When the option is available for the officer to charge under municipal ordinance or state statute, the officer should consider:
 - The severity of the offense.
 - Number of previous arrests.
 - Number of current charges.
 - Whether the violator can be positively ID.
 - Whether the violator has a permanent address.
 - Whether the violator is an out-of-state resident.
 - Officers are not to use the ordinance system indiscriminately so as to permit serious offenses or repeated violations to be treated in a manner that would not be in the best interest of the public. In some cases, the decision in which court to prosecute shall be made by a supervisor after a careful review of the facts.
6. *Uniform Traffic Citation; WI Statute 345.22:*
- In most cases where a municipal ordinance has adopted the state statute, the citation should be written for the jurisdiction of the municipal court.
 - The issuance of U.T.C.s shall generally be non-custodial in nature. An offender arrested solely on the basis of a violation of a state traffic statute or ordinance in conformity therewith is usually released upon receipt of the citation. Exceptions may include an out-of-state driver incapable of posting the required bond, an alcohol/drug related traffic offense, some criminal traffic offenses, or when further detention is necessary to carry out legitimate investigative actions.

F. ARREST PROCEDURES (OFF-DUTY)

1. Procedural Considerations:

- An off-duty officer faced with a situation involving criminal activity is usually neither equipped nor prepared to handle the situation in the same manner as if he 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 situation. An off-duty officer confronted with a situation involving criminal conduct should give consideration to notifying on-duty law enforcement personnel before deciding to take appropriate action. In some cases, the exigency of a given situation may call for

immediate action by the officer. The off-duty officer, however, should take action only after considering the tactical situation with regard to his own safety and the safety of others.

2. *Off-Duty Responsibilities:*

- While off-duty, Sun Prairie Police Officers are responsible for immediately reporting any suspected or observed criminal activity to on-duty authorities of the appropriate jurisdiction.
- Except as allowed by this policy, off-duty officers should not enforce minor violations such as harassment, disorderly conduct, or other nuisance offenses. On-duty personnel are to be contacted to respond to the situation where an off-duty officer becomes aware of such violations.
- When an arrest is necessary, the off-duty arresting officer shall abide by all departmental policies and procedures, including those pertaining to off-duty weapons.

3. *Prohibited Off-Duty Arrests:*

- City of Sun Prairie Officers are not to make off-duty arrests:
 - When the arresting officer is personally involved in the incident underlying the arrest; or
 - 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; or
 - When the arrest is made solely as enforcement of a minor traffic violation. Despite the fact that a police officer has police powers and responsibilities 24 hours a day throughout the jurisdiction, the off-duty officer should not enforce minor traffic violations; or
 - When outside of the legal jurisdiction of the City of Sun Prairie except as authorized by this procedure and WI. Stat. 175.40 (6m) [2005 WI. Act 414].

4. *Permitted Off-Duty Arrests:*

- When off-duty and within the City of Sun Prairie, an officer may make an arrest only when:
 - The arresting officer is not personally involved in the incident underlying the arrest; and
 - There is an immediate need to prevent a crime or apprehend a suspect; and
 - The crime would require a full custodial arrest; and
 - The arresting officer possesses appropriate police identification
- In addition to the requirements listed immediately above, when off-duty and outside the legal jurisdiction of the City of Sun Prairie, an officer may make an arrest only pursuant to the following:
 - WI SS 175.40 (6m) [2005 WI. Act 414] hereby adopted by this policy gives authority to a peace officer outside his or her territorial jurisdiction and while off-duty to arrest a person or provide aid or assistance anywhere in this state if the following criteria are met:
 - The officer is responding to an emergency situation that poses a significant threat to life or of bodily harm [WI SS 939.22 (4)]
 - The officer is taking action that he or she would be authorized to take under the same circumstances in the officer's territorial jurisdiction.
 - An officer electing to take action under this section shall, consistent with the exigencies of the situation, attempt to weigh reasonable responses to the situation including maintaining cover and observation, contacting the local law enforcement agency or asking others to do so, and directly intervening in the incident. In addition, the officer shall verbally identify himself as a police officer to both responding officers of the local jurisdiction as well as to bystanders. Officers shall comply with all directions given by the responding officers of the local jurisdiction.
 - Any officer acting under the authority of this section shall immediately notify and cooperate with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken within said jurisdiction. In addition, the officer shall as soon as possible notify

this Department's Officer-in-Charge and apprise him/her of the actions taken by the officer while off-duty and within another jurisdiction.

G. LIABILITY PROTECTION

1. Sun Prairie Police Officers have liability protection for the on-duty and off-duty performance of official duties. This protection does not extend to illegal 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 rules and policies of this department.

Replaces 9015.00 (10-13-03) & 9016.00 (05-14-08)