

	<b>KENOSHA POLICE DEPARTMENT</b>			
	<b>POLICY AND PROCEDURE</b>			
	<b>1.8 Arrest</b>			
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**I. PURPOSE**

The purpose of this policy is to provide officers with basic guidelines for conducting arrests.

**II. POLICY**

It is the policy of the Kenosha Police Department that all arrests shall be conducted professionally and in accordance with established legal principles. In furtherance of this policy, all officers are expected to be aware of, understand and follow the laws governing arrest.

**III. DEFINITIONS**

**Arrest:** Taking a person into custody.

**Arrest Warrant:** A written order issued by a judge, magistrate, or other proper authority that commands a law enforcement officer to place a person under 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 at any time.

**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 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 (9<sup>th</sup> Cir.), cert. denied, 469 U.S. 824, 105 S. Ct. 101 (1984))

**Investigative Detention:** Temporary detention of a person for investigative purposes 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*).

**Probable cause for arrest:** The existence of circumstances that would lead a reasonably prudent officer to believe that a person had committed a criminal offense.

**Reasonable Suspicion:** The degree of suspicion of criminal activity that justifies an investigative detention but not an arrest.

**IV. PROCEDURE**

**A. WHAT CONSTITUTES AN ARREST**

The Wisconsin Supreme Court has said:

The central idea of an arrest is the taking or detaining of a person by word or action into custody so as to subject his liberty to the actual control and will of the person making the arrest . . . there must exist the intent to take into custody and a corresponding understanding by the person arrested that he is "in custody," although no formal declaration of arrest is required.

Arrest also implies not only custody, but also the aim of bringing the person arrested into the judicial process to answer for an offense.

If you intend to make an arrest the best procedure is to clearly convey that information to the suspect. If you do not intend to arrest but merely to question, advise them of that fact and that they are not in custody. There may be questioning without an arrest, done at the officer's insistence (see 1.5 Stop and Frisk), but only in the vicinity of the public place where the person is stopped.

In order for an arrest to occur, the subject must be physically restrained or must comply with the officer's directive.

Whether or not an arrest has occurred is very important, as in false arrest, resisting arrest, or in determining if the person's Miranda rights should be read to them. If the officer intends to arrest, it should be made clear by saying "you're under arrest". When no arrest is intended, this should also be made clear by informing the person they are not under arrest, are not required to come down to the station, or that they are free to go.

The officer, if off-duty or in plain clothes, **must** make a reasonable effort to inform the arrestee of their identity, as an officer. If the person has no reason to know the officer's identity, they may assume they are being assaulted and are entitled to use force in self-defense. The Wisconsin Supreme Court has upheld a damage award against an officer for negligence in attempting to make an arrest. The officer was in plain clothes and didn't inform the plaintiff of his identity as a police officer when attempting an arrest.

**V. WISCONSIN STATUTES-ARREST**

**A. 968.07 ARREST BY A LAW ENFORCEMENT OFFICER.**

1. A law enforcement officer may arrest a person when:
  - (a) The law enforcement officer has a warrant commanding that such person be arrested;
  - (b) The law enforcement officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or
  - (c) The law enforcement officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or
  - (d) There are reasonable grounds to believe that the person is committing or has committed a crime.
2. 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.
3. If the alleged violator under §. 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.

**B. WHEN AN ARREST CAN BE MADE**

Under Wisconsin law, a law enforcement officer is statutorily authorized to make an arrest:

**1. With Warrant**

When an arrest is made pursuant to a valid warrant, the warrant is valid on its face and reasonable effort is made to properly identify the person to be arrested, the arrest itself will be valid and the officer and their department will normally be protected from any claim of false arrest or false imprisonment,.

When operating with a warrant, the officer does not have to prove their right to make the arrest at a later date, as they would have to if the arrest was made without a warrant. Obtaining a warrant prior to arrest is the best procedure whenever it is practical to do so.

An arrest warrant must be issued by a judge or properly authorized court commissioner. To obtain a warrant, the officer must present a complaint for warrant providing sufficient information for the judicial officer to find probable cause to believe: (1) that a crime has been committed; and (2) that the person to be arrested committed it.

*A. Source of Information*

(1) Police Investigation

Information discovered by one law enforcement officer is considered to be "known" to all officers. Facts discovered by another officer may be used as the basis for a complaint filed by a different officer, and the reliability of the other officers need not be shown.

(2) Victim

The uncorroborated evidence of a crime victim will usually provide probable cause to support a warrant.

(3) "Good Citizen" Informer

The information concerning a crime observed or otherwise obtained by a good citizen just doing their duty in reporting it to the police will generally support a warrant. The U.S. Supreme Court has held that to show probable cause, an officer must establish: (1) the underlying circumstances from which they conclude that the informant is reliable; and (2) the underlying circumstances or manner in which the informant obtained their information is reliable. The court will consider the totality of the circumstance to decide on the reliability of an informant. The Wisconsin Supreme Court has decided that when the informant is a victim or eyewitness rather than the unnamed police contact, the emphasis is on the second test. The reliability of a crime victim need not be established. When the informant is an eyewitness, some corroboration of their information may be required, but generally their reliability need not be shown either.

(4) Paid Informer

This confidential informant who provides information for cash or favors is considered less trustworthy than the above sources. Whenever a paid informer is utilized, the officer must exercise close supervision to protect against possible misconduct by the informer. However, once prior reliability is

## 1.8 Arrest

shown, the paid, or reliable, informant's testimony will support a warrant as fully as any of the other sources listed.

The reliable informant's name may be withheld, but past examples of their reliability must be cited. For a first-time paid informer, some corroborative information will generally be required, since no showing of reliability can be made without it, and only the "reliable informant" will support a warrant.

It is important to know these requirements because a warrant lacking in any of them will be defective. It is also important to know that a warrant may not be altered after it is issued, not even to correct an inaccurate date.

### *B. Serving an Arrest Warrant*

An arrest warrant will be directed to all law enforcement officers. It may be served anywhere in the state, but must be served by an officer with arrest power in the locality where it is served. Do not attempt to serve a warrant outside of your geographical jurisdiction.

There is no statutory provision as to time of service, but the court has said the "command" to make the arrest is not to be at the officer's leisure. "Without delay," "promptly" and "within a reasonable time" are various indications as to permissible time for service. Although it is required to be served promptly and within reasonable time, the arrest warrant does not expire after a specific time period, and is valid until executed or withdrawn. The gravity of the offense, potential for escape and for doing further damage should be considered. If a person named in a valid warrant is contacted intentionally or by coincidence there is no discretion regarding service of the warrant.

Officers must have reasonable grounds to believe that the person whom they are arresting is the person named. Officers shall make all reasonable efforts to verify any allegations made by the person arrested that they are not the person named in the warrant. It is recommended that the officer compare at least three points of identification: (1) full name(s), (2) date of birth, (3) general physical description. If the officer uses force in making the arrest, such use will be in accordance with Policy 1.3 Use of Force.

Officers making arrests under a warrant will utilize all of the information contained in Police Department files such as pictures and physical descriptions, which may include hair color, eye color, height or weight, to ascertain that the individual arrested is in fact the same person named in the warrant. Additional sources of information may be Motor Vehicle Department, driver's license files and Crime Information Bureau files.

The warrant need not be in the arresting officer's possession, so long as the officer knows it has been issued. This knowledge may be gained through a broadcast on the police radio. The warrant is served by arresting the person and informing them of the nature of the offense with which they are charged, "as soon as practicable". This does **not** mean immediately; a false reason or no reason may be given at the time of the arrest and the truth told only after the person is securely in custody in a safe area such as the jail. There may be times when the arrest may be made without danger if a minor offense is cited, whereas the true reason would evoke violent resistance. After the arrest, the officer will endorse upon the warrant the time and place of the arrest.

### *Serving Warrants at Place of Employment*

## 1.8 Arrest

Officers will normally refrain from searching for persons named in warrants while at their place of employment, if the person has to be arrested at their place of employment, the following procedure shall be followed.

- a. Identification is required before inquiries or arrest.
  1. If only a name is available additional investigation will be conducted to obtain a minimum of at least a date of birth for the person named on the warrant.
  2. If possible inquiries are to be made to security, not to personnel.
  3. Request security personnel at the business establishment bring the person to a location on the outer perimeter of the establishment's property.
  4. If there are no security personnel employed by the business establishment, request a supervisor bring the person to a location on the outer perimeter of the establishment's property.
  5. Officers will avoid attempting to serve warrants on persons at their job site unless there are extenuating circumstances, and permission to enter the premises has been received from security personnel or a supervisor on duty. A police officer who decides that the person named in the warrant must be arrested at their job site, rather than as specified in #3 and #4 above, must first have that decision reviewed by a supervisor of the rank of lieutenant or higher.

### C. *Warrants from Other Jurisdictions*

If a subject is arrested on a warrant from another jurisdiction the subject will be transported to the Public Safety Building to post bond or be taken to the Kenosha County Pretrial Detention Center to be held for pick up by the jurisdiction holding the warrant. Prisoners will not be transported to the County Line and turned over to awaiting officers. All transfers will be done through the Kenosha County Jail for officer and prisoner safety

## 2. **Without Warrant**

While perhaps the majority of arrests are warrantless, such an arrest, at least theoretically, is an exception to the rule of first obtaining a warrant. An officer may arrest whenever they have probable cause to believe the suspect is committing or has committed a crime.

It is not necessary that a misdemeanor be committed in an officer's presence for the officer to arrest for that offense. Whenever a crime has been committed, the officer may arrest for it; however, if the person to be arrested is in their residence (home, apartment, etc.), the officer must obtain consent or identify exigent circumstances that will authorize the officer to enter the residence to effect the arrest. Arrest of a person in their home, without a warrant, should be done only when exigent circumstances exist. The better practice is to have a warrant whenever it is practical.

### A. *Exigent Circumstances*

To make an arrest without a warrant in an area for which the subject has a reasonable expectation of privacy requires a showing of probable cause by the officer and the showing of reasonableness as to why a warrant was not obtained prior to the arrest. The reasonableness should be more than just inconvenience to the officer, but a basis such as a possibility of flight, not being able to properly identify the suspect, harm to other persons, destruction of evidence or matters of that nature.

## 1.8 Arrest

To make an arrest in a person's home without a warrant, the courts have been very strict on there being "exigent circumstances" in addition to probable cause. The courts have defined exigent circumstances as:

- (1) The immediate threat of escape.
- (2) The immediate threat of destruction of evidence.
- (3) The immediate threat of death or great bodily harm to the officer or the general public.

If exigent circumstances do not exist, to make an arrest of a person in their own residence, it is absolutely essential to have a warrant or consent to enter the premises by someone who is authorized to give that consent. In all other circumstances where no reasonable need for immediate action exists, a warrant should be obtained.

### *B. Probable Cause*

The Wisconsin Supreme Court has said, the probable cause required for warrantless arrest, is no less than would support a warrant. It is "that quantum of evidence which would lead a reasonable police officer to believe that the defendant committed a crime. "It is more than a hunch or suspicion, but less than the evidence required to convict at trial. The facts on which probable cause is based must be legally obtained. The test for probable cause is objective, not subjective. It may not be enough that the arresting officer believes that the defendant probably committed a crime; it must be sufficient evidence to convince the arresting officer that the hypothetical "reasonable officer" would find probable cause.

If the officer arrives at the scene of a crime in progress by chance or in answer to a call for assistance and observes the crime, there is no question that a warrantless arrest may be made then or when the suspect is apprehended after a chase.

The same is not true when an officer answers a call and upon arrival sees a person fleeing from the scene of what appears to be a just completed crime. At this point the officer certainly has basis to "stop" the person for a reasonable time and question them regarding the crime, but it is not sufficient basis to arrest without verifying some facts.

There are two requirements for valid warrantless arrest when the offense is not committed in the officer's presence: (1) there must be reasonable grounds to believe that a crime has been committed by the suspect; and (2) it is impractical to obtain a warrant under the circumstances.

Even where a valid warrantless arrest is not justifiable, the officer may sense that something is wrong. In such "suspicious circumstances," a stop and question situation may be present.

### **C. SUMMONS IN LIEU OF WARRANT**

An arrest warrant must be issued by a judge or court commissioner, but a district attorney may "in any case" after issuance of a complaint issue a summons instead of requesting a warrant. For misdemeanors subject to a maximum imprisonment of not more than six months, even if a warrant is requested, the judge must issue a summons only, unless they are convinced that the accused would not answer a summons. It is important to note that a summons, unlike a warrant, does not authorize an arrest, and does not justify a search.

The formal requirements of a summons are less demanding than for a warrant. A summons must be served by a law enforcement officer and must command the defendant

## 1.8 Arrest

to appear before a court at a certain time and place, but need only be "substantially" in the form set forth for a warrant.

### 1. *Serving a Criminal Summons*

The summons must be served by a law enforcement officer, not by professional process servers. It may be served anywhere in the state by personally handing it to the defendant, or by leaving a copy at their usual residence with a responsible person living there, or by mailing a copy to the defendant's last known address. A copy of the complaint must be attached to the summons or be on the same form. If the defendant is a corporation, a summons must be used, not a warrant.

### **D. FALSE ARREST**

Under Wisconsin law, false imprisonment is a crime which consists of intentionally confining or restraining another with knowledge that the actor has no lawful authority to do so. False imprisonment is also a tort, a civil wrong which is compensated by damages. The tort of false imprisonment results from the intentional unlawful restraint by one person of the physical liberty of another. A false arrest will result in an action for false imprisonment--the only difference being that the false imprisonment is done under an assertion of legal authority. An arrest under a warrant, void on its face, when no probable cause exists is a false arrest, as is a warrantless arrest when no probable cause exists.

#### *Defenses*

When an officer makes an arrest under a warrant that appears valid on its face, and the officer has used reasonable care to make sure the person being arrested is the one identified in the warrant, they are protected from a claim of false arrest. If they make a warrantless arrest of a person later shown not to have committed the crime for which the arrest is made, but the arrest is made on probable cause, this also is a complete defense.