

GENERAL ORDER

PORT WASHINGTON POLICE DEPARTMENT

SUBJECT:	ARREST PROCEDURES	NUMBER:	1.7.3
		ISSUED:	5/5/09
SCOPE:	All Sworn Police Personnel	EFFECTIVE:	5/5/09
DISTRIBUTION:	General Orders Manual	<input checked="" type="checkbox"/>	RESCINDS 1.7
		<input type="checkbox"/>	AMENDS
REFERENCE:	Ordinances 4.05.020, 4.06.000, 4.07.000 Wis. §968.07, 349.02, and 62.09(13)	WILEAG 3 RD EDITION STANDARDS: 1.7.4, 1.7.5	

INDEX AS: Alternatives to Arrest
 Arrest Authority
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 Citation, Arrest by
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 Warrant, Arrest With and Without

PURPOSE: The purpose of this Order is to define the authority of officers to make arrests and to establish guidelines for affecting arrests, both with and without a warrant. Such guidelines shall serve to ensure that all rights and privileges afforded citizens during arrest situations will be diligently protected.

This Order consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. ARREST AUTHORITY
- IV. ARREST WITH A WARRANT
- V. ARREST WITHOUT A WARRANT
- VI. ARREST BY CITATION
- VII. ARRESTEE RIGHTS
- VIII. SEARCH INCIDENT TO ARREST
- IX. ALTERNATIVES TO ARREST

I. POLICY

- A. It is the policy of the Port Washington Police Department that officers shall investigate violations of state laws and municipal ordinances. Arrests made for such violations shall be made in accordance with procedures imposed by the Constitution of the United States and the State of Wisconsin, federal, state, and municipal legislation, and department policy.

II. DEFINITIONS

- A. **CUSTODIAL ARREST:** The act of depriving a person of their liberty by legal authority for the purpose of holding or detaining them to answer to a criminal charge or a civil forfeiture action. A custodial arrest is that type of arrest in which the suspect would normally be brought to the police department or detained at another facility.
- B. **NON-CUSTODIAL ARREST:** The act of temporarily depriving a person of their liberty by legal authority for the purpose of issuance of citation or summons with the intent of bringing that person into the judicial process to answer for an offense.
- C. **ORDINANCE VIOLATION:** Conduct which is prohibited by city ordinance and punishable generally by monetary forfeiture or other penalties imposed by city ordinance or both.
- D. **CLOSE PURSUIT:** The pursuit into another state by a law enforcement officer of a defendant the officer has probable cause to believe has committed a felony in the State of Wisconsin.
- E. **CRIME:** Conduct which is prohibited by state law and punishable by fine or imprisonment or both.
- F. **EXIGENT CIRCUMSTANCES:** Circumstances that are required in addition to probable cause for officers to lawfully enter an area without a warrant, where a subject has a reasonable expectation of privacy, to make an arrest. These circumstances are defined as:
 - 1. The immediate threat of escape
 - 2. The immediate threat of destruction of evidence of a crime.
 - 3. The immediate threat of death or great bodily harm to the officer or the general public.
- G. **FRESH PURSUIT:** The pursuit into another jurisdiction in Wisconsin of a defendant by a law enforcement officer that the officer has probable cause to believe has violated any law or ordinance the officer is authorized to enforce.
- H. **WARRANT:** A written order issued and signed by a judge, and directed to law enforcement officers, commanding the officer(s) to arrest the person named in the order. A warrant may be for violation of a criminal law or in connection with a civil proceeding.

III. ARREST AUTHORITY

- A. Port Washington City Ordinances 4.05.020, 4.06.000, 4.07.000 and Wisconsin State Statutes 968.07, 349.02, and 62.09(13) grant law enforcement officers the authority to enforce laws and arrest under specific circumstances.

IV. ARREST WITH A WARRANT

- A. The Port Washington Police Department maintains a file of all warrants issued as a result of department action. This file is maintained in the records section of the police department and is available to all officers on a 24 hour basis.
- B. When an officer is making an arrest based on the existence of a warrant and does not have the warrant in their possession, they shall be responsible for confirming the validity of the warrant.
- C. Temporary detention of an individual for the purpose of verifying the status of a warrant is permissible.
- D. Upon making an arrest upon the existence of a warrant, the arresting officer shall inform the defendant as soon as practicable of the nature of the crime/warrant with which they are charged.
- E. Time of Service – A warrant may be lawfully served at any time. There are no statutory provisions as to time of service, but warrants are not to be served simply at the officers' discretion. Warrants should be served promptly and without delay.
- F. Warrants are directed to all law enforcement officers and may be served anywhere in the state, but must be served by an officer with arrest power in the jurisdiction where it is served.
- G. An officer receiving a request from another agency to execute a warrant on their behalf shall first confirm the warrant by checking NCIC and CIB sources. If the warrant does not appear in either of these sources, the officer shall request teletype confirmation of the warrant from the requesting agency. In exigent situations, officers may act on a telephone request from another agency. As soon as practicable, a telephone request shall be followed by a teletype confirmation.
- H. Serving arrest warrants at residences.
 - 1. Entry into a defendant's residence requires: consent from a person the officer(s) reasonably believe has authority to grant consent, exigent circumstances, or a warrant for a criminal offense and probable cause to believe the defendant is inside the residence. Consideration should always be given to the totality of the circumstances and the severity of the charged offense when deciding whether to force entry into a residence.
 - 2. Entry into a third party residence requires: consent from a person the officer(s) reasonably believe has authority to grant consent, exigent circumstances, or a search warrant listing the arrestee as the item to be seized.

3. When serving an arrest warrant at a residence, officers will, before entering, knock and announce their identity and purpose then wait for permission to enter unless exigent circumstances require immediate entry.

V. ARREST WITHOUT A WARRANT

- A. Officers may arrest without a warrant whenever it is impractical to obtain a warrant and there is probable cause to believe that:
 1. The suspect is committing or has committed a crime.
 2. The suspect is wanted for the commission of a felony in another state.
 3. The suspect is wanted in this state.
- B. Officers responding to a teletype request from another police agency to affect a warrantless arrest may conduct such an arrest if the defendant is located within the City of Port Washington and it is impractical to obtain a warrant under the circumstances.
- C. Officer may also affect an arrest on the strength of a radio or telephone request from another agency. However, teletype confirmation shall be sought, preferably before the arrest is made. Again, it must be impractical to obtain a warrant under the circumstances.
- D. Officers should be cautious of other agency requests that contain phrases such as “attempt to locate,” or “stop and detain,” and shall ascertain the clear nature of the request prior to taking “arrest” action.

VI. ARREST BY CITATION

- A. Certain warrantless arrest situations can be accomplished through the issuance of municipal ordinance citations, State of Wisconsin Uniform Traffic Citations, and Notices to Appear in Court. These situations can be categorized as follows:
 1. Violation of a City of Port Washington Municipal Ordinance.
 2. Violation of a State of Wisconsin traffic statute.
 3. Violation of a criminal statute that constitutes a misdemeanor or, in some cases a nonviolent felony.
- B. The following guidelines shall apply to the issuance of a municipal ordinance citation:
 1. The action for which the citation is being issued must constitute a violation of a municipal ordinance.

2. If the action for which the citation is being issued also represents a violation of a Wisconsin criminal statute, officers shall weigh factors such as the gravity of the offense, the demeanor of the offender, the safety of all parties involved, and previous department contacts with the offender in determining whether the offender should be issued a citation or arrested for a crime.
 3. ***In all cases where the value of the property taken exceeds \$500.00 the Officer will make a State arrest.***
 4. Officers are encouraged to personally serve municipal citations on the defendant at the time of the violation whenever possible **or** on the defendant or a competent member of the defendant's family (at least 14 years of age) at the defendant's usual place of abode if personal service on the defendant is not possible at the time of the violation. If/when service cannot with reasonable diligence be made by one of these two methods, service by mail is acceptable. This procedure substantially reduces the likelihood that a defendant will not receive notice that he/she is to appear in municipal court.
 5. The arrest shall generally be non-custodial in nature. An offender arrested solely on the basis of a municipal ordinance violation shall be released upon being properly identified and issued the citation.
 6. Arrestees who cannot be properly identified, live outside of the State of Wisconsin or have no fixed address may be held in custody at the officer's discretion unless otherwise directed by supervisory personnel. All reasonable efforts to have bond posted shall be attempted.
- C. The following guidelines shall apply to the issuance of a Uniform Traffic Citation.
1. The action for which the citation is being issued must constitute a violation of State of Wisconsin traffic statutes or a City of Port Washington Municipal Ordinance adopting the same statute.
 2. In all cases where a municipal ordinance has adopted the state statute, the citation shall be written in a manner that has the City of Port Washington as the plaintiff.
 3. The arrest shall generally be non-custodial in nature. An offender arrested solely on the basis of a violation of a traffic statute or ordinance in conformity therewith, shall be released upon the receipt of the citation.
 4. Persons cited who cannot be properly identified, live outside of the State of Wisconsin, or have no fixed address may be held in custody at the officer's discretion unless otherwise directed by supervisory personnel. All reasonable efforts to have bond posted should be attempted.
- D. The following guidelines shall apply to the issuance of a Notice to Appear in Court.
1. The action for which the Notice to Appear in Court is being issued must constitute a violation of a State of Wisconsin criminal statute.

2. If the action for which the Notice to Appear in Court is being issued also represents a violation of a municipal ordinance, the officer shall weigh the gravity of the offense, the demeanor of the offender, the safety of all parties involved, and previous department contacts with the offender in determining whether the offender should be arrested for a crime or issued a municipal ordinance citation.
3. The arrest shall generally be non-custodial in nature. An offender arrested solely on the basis of a misdemeanor state statute violation shall be released after being properly identified and processed when appropriate.
4. If an officer arrests a person on a non-violent felony charge, the officers shall confer with a supervisor and should consider such factors as the gravity of the offense, the demeanor of the offender, the safety of all parties involved, and previous department contacts with the offender in determining whether the offender should be held.
 - a) **In all cases of misdemeanor and/or felony arrests, in which the arrestee/defendant is in the presence of the officer, the arrestee/defendant shall be transported to the Ozaukee County Sheriff's Department for booking purposes – regardless of whether bond posting is required or not.**

VII. ARRESTEE RIGHTS

- A. Officers shall use only that amount of force necessary to perform his/her duties including affecting arrests (General Order 5.1.1, Use of Non-Deadly Force).
- B. After making an arrest, officers shall conform to the policies and procedures set forth in General Order (to be developed) Constitutional Requirements for Interviews and Interrogations, to assure compliance with all of the applicable constitutional rights and requirements pertaining to interviews and interrogations as well as access to counsel.
- C. When investigating incidents involving juvenile offenders, officers shall conform to the policies/procedures set forth in General Order (to be developed), Juvenile Procedures.

VIII. SEARCH INCIDENT TO ARREST

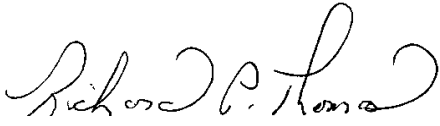
- A. When a person is arrested for a criminal violation, the officer may contemporaneously conduct a reasonable search of the person arrested and a search of the area readily accessible to the arrested person, including any items they may have in their possession for the purpose of
 1. Protecting the officer from attack;
 2. Preventing the person from escaping;
 3. Discovering and seizing the fruits of the crime; or

4. 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.
 - a) The courts have declared that the area immediately accessible to an individual is that area within reach of his/her outspread arms, or that area immediately surrounding him/her into which he/she can **lunge** to reach a weapon or destroy evidence.
 - b) The “lunge area” of an automobile has been determined to be the entire passenger compartment of the vehicle, including the glove compartment and closed containers.
 - (i) Pursuant to recent Supreme Court ruling in case of Arizona v. Gant – Police may search the passenger compartment of a vehicle incident to arrest of an occupant or recent occupant 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 of arrest.
- B. If a person is arrested for a criminal violation, and the “lunge” area is not contemporaneously searched, a search warrant is required if the officer(s) decide it is necessary to return to search for any reason unless the “lunge” area is in a place that is an exception to the warrant requirement i.e. a public place, or open field.

IX. ALTERNATIVES TO ARREST

- A. Operating within the guidelines for use of discretion, officers have the authority to explore arrest alternatives. Officers have a variety of alternatives to making an arrest that include, but are not limited to:
 1. Warn and advise: Officers give a verbal warning to the subject and advise them of possible consequences of their actions. Warnings for traffic and city ordinance violations should be documented in the notes of the call. For minor infractions involving offenders with an active probation/parole status, officers should also forward the report to the offender’s respective agent in addition to warning for the offense.
 2. Written warning: On traffic matters, officers may wish to issue a written warning to a subject for a violation.
 3. The use of discretion as outlined in General Order 1.7.4.
 4. Completing the offense report and forwarding the report and all related documents to the District Attorney’s office or the City Attorney’s office for review and the issuance of a criminal complaint and warrant or summons to appear.

APPROVED:



Chief Richard P. Thomas

DATE:

5/5/09
