



MIDDLETON POLICE DEPARTMENT

DATE
April 23, 2013

POLICY
1.7.04

SUBJECT: **Arrest Procedures & Alternatives**

REVIEWED
March 3, 2017

Refer to: [968.255](#); [968.256](#); [968.08](#); [968.085](#); [345.23](#)

History: 1995; Updated 4/2013; 02/2015; 03/2015

[WILEAG \(5th Ed.\) Standards](#): **1.7.4** (1.7.4.1; 1.7.4.2; 1.7.4.3; 1.7.4.4; 1.7.4.5); **1.7.5**

Contents

PURPOSE.....	2
POLICY	2
DEFINITIONS.....	2
PROCEDURE.....	3
Arrest Procedures.....	3
Arrests Generally	3
Arrests with a Warrant	3
Arrests Without a Warrant	3
Forcible Entry	4
Search Incident to a Lawful Arrest.....	4
Protective Sweep.....	5
Rights Upon Arrest	5
Alternatives to Custodial Arrest.....	5
Determining Criminal or Civil Charges.....	6
DNA Collection	6
Release After Arrest.....	7
Forfeiture.....	7
Misdemeanor.....	7
Felony	8
Mandatory Incarceration.....	8
Juveniles.....	8
Fingerprinting and Photographing Requirements.....	9
Reports Required	9
Supervisor Review	9

PURPOSE

The purpose of the policy is to define the authority to make arrests and provide guidelines for effecting arrests, both with and without a warrant. These guidelines ensure that rights and privileges are afforded to citizens during arrest situations. Furthermore, this policy identifies the authority of officers to use alternatives to arrest.

POLICY

It is the policy of the Middleton Police Department that officers shall investigate violations of laws and ordinances; and shall make arrests for violations in accordance with procedures imposed by the United States and Wisconsin Constitutions, Federal, State, and Municipal legislation and department policy. Officers shall also take into consideration new case law, which can affect citizen's rights. Furthermore, this policy will define authority and the circumstances when officers should exercise alternatives to arrest.

DEFINITIONS

Arrest: The act of depriving a person of his/her liberty by legal authority for a civil or criminal law violation.

Custodial Arrest: The act of depriving a person of his/her liberty by legal authority for the purpose of holding or detaining him/her to answer a criminal charge or civil forfeiture action.

Non-Custodial Arrest: The act of temporarily depriving a person of his/her liberty by legal authority for purpose of issuance of a citation or summons relating to a civil forfeiture action.

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

Pat Down/Frisk: The feeling and/or touching of outer garments of a person temporarily detained for the purpose of locating weapons or articles capable of causing injury.

Search: The feeling and/or touching of garments of a person taken into custody for the purpose of locating weapons, evidence, or personal property.

Probable Cause: The amount of evidence that would lead a reasonable police officer to believe that a crime probably has been committed and that the person in question has probably committed it. It is more than a hunch or suspicion, but is less than sufficient evidence to bind over for trial. For the purpose of interpreting Wisconsin statutes, "probable cause" is used interchangeably with "reasonable grounds."

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 (criminal arrest warrant) or in connection with a civil proceeding, e.g. failure to appear at a divorce, family support or paternity hearing, a civil arrest warrant.

Legal Standing: A person with legal standing would be a person whom the officer reasonably believes is the person with the authority to grant permission to enter/search a premise. Examples: homeowner, renter, long-term guest, or as otherwise dictated by case law.

Hot Pursuit: Pursuit by a law enforcement officer (with or without a warrant) for the purpose of preventing the escape or effecting the arrest of any person who is suspected of committing, or having committed, a misdemeanor or felony. Hot pursuit implies pursuit without unreasonable delay, but need not be immediate pursuit. It can also refer to chasing a suspect or escaped felon into a neighboring jurisdiction in an emergency, without time to alert law enforcement in that area.

PROCEDURE

Arrest Procedures

Arrests Generally

- A. In order for an arrest to occur, an officer must have the intent to take a person into custody and an understanding by the person arrested that he or she is in custody. When making an arrest, an officer should:
1. Identify him/herself as a police officer. (If it is apparent by the wearing of a uniform or other means that the person making the arrest is a police officer, no further identification is necessary.)
 2. Inform the subject that they are under arrest.
 3. Restrict the arrested subject's movements as required, using only that amount of reasonable force necessary to overcome any resistance by the person being arrested.

Arrests with a Warrant

- A. A law enforcement officer may arrest a person when any of the following exists:
1. The officer has probable cause to believe a warrant for the person's arrest has been issued in this State.
 2. The officer has probable cause to believe a felony arrest warrant for the person in this or another state. A Wisconsin officer may not arrest a person on a misdemeanor warrant issued in another state.
 3. Arrest warrants may be served at any time to the individual on the warrant in a public place. However, discretion should be used when serving a warrant to ensure serving it at a reasonable time. Factors such as the nature of the offense, potential for escape, and for further injury and damage should be considered when selecting a time to serve an arrest warrant.
 4. As soon as practicable after arresting on a warrant, the officer shall inform the person of the reason for the arrest. If the officer has the arrest warrant in hand, the officer should read the warrant to the person and endorse the warrant with arrest time/place. The warrant shall be returned to the issuing court.

Arrests Without a Warrant

- A. An officer may make an arrest without a warrant if the officer has probable cause to believe a person is committing or has committed a crime.

- B. For an officer to enter a person's own home to arrest the person without a warrant, permission by a person of "legal standing" or probable cause plus "exigent circumstances" must exist. (Exigent circumstances do not include minor traffic offenses. (Welsh v. Wisconsin) Exigent circumstances include:
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 another;
 4. Hot pursuit;
 5. The person is being pursued for a jailable offense. See State v. Ferguson, 2009 WI 50;
 6. As directed by case and/or statutory laws.
- C. If exigent circumstances do not exist, it is necessary to obtain an arrest warrant or consent to enter the premises from someone authorized to give consent to make an arrest of a person in his/her own residence.
- D. Where the target is known to be at a third party's home and the third party won't give police consent to enter, a search warrant is required to enter a third party's home to execute an arrest warrant.

Forcible Entry

- A. When forcible entry is required in the effect of an arrest, officers shall perform the following:
1. Locate and control all persons and property, which might potentially serve as a weapon.
 2. Photograph damage occurring as a result of the forced entry; complete a detailed report describing it.
 3. Make reasonable efforts to contact the owner and secure the property to prevent further damage/loss.

Search Incident to a Lawful Arrest

- A. Wis. Stats. Sec. [968.10\(1\)](#) authorizes officers to conduct searches "incident to a lawful arrest".
1. "Incident to a lawful arrest" requires that the search shall occur contemporaneously to the arrest. The search shall be made at or near the arrest location. Such searches 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 unless extenuating circumstances exist and are noted in relevant reports.
 2. A second and subsequent search of the arrested person shall also occur after the person has been transported to the Processing Center or detention.
 3. "Lawful arrest" for the purpose of a search incident to an arrest, means any arrest action, to include issuance of a citation/summons if the person is taken into physical custody.
- B. Wis. Stats. Sec. [968.11](#) defines the scope of a search incident to a lawful arrest. An officer may reasonably search the person arrested and an area within the person's immediate presence for the purpose of:
1. Protecting the officer from attack.
 2. Preventing the person from escaping.

3. Discovering/seizing instruments or things which may have been used in the commission of, or which may constitute evidence of, the offense.
4. Police may search a vehicle incident to arrest if one of two factors is present:
 - a. The arrestee is within the reaching distance of the passenger compartment at the time of the search, or
 - b. It is reasonable for the officer to believe the vehicle contains evidence of the offense of the arrest.
 - c. If these criteria are not met, a search of the vehicle will be unreasonable unless officers obtain a warrant or another exception to the warrant requirement exists.
5. Officers are not authorized to conduct searches of routine traffic violators who are merely issued citations and subsequently released unless a "Terry-type" frisk or other exception to the search warrant requirement is present.

Protective Sweep

Officers making a lawful arrest or executing a lawful search in a private residence may conduct a protective sweep of the residence if they have reasonable belief that the areas to be swept may harbor individuals posing a danger to those on the scene. Officers should be prepared to articulate the reason for the protective sweep. The sweep is limited in nature and must be specially targeted to finding people.

Rights Upon Arrest

- A. Every person placed under arrest has the right to know why he or she has been arrested. Upon any arrest, the arresting officer shall notify the arrestee the reason for the arrest. If exigent circumstances exist that prevent the officer from making the immediate notification, the arresting officer shall inform the arrestee as soon as reasonably possible.
- B. Any person placed under custodial arrest for a criminal offense shall be advised of their Miranda rights prior to any questioning.
- C. If a defendant indicates in any manner and at any time, either before or after being advised of their Miranda rights, that s/he wishes to consult with an attorney before speaking, there shall be no further police initiated questions regarding this incident. An officer may speak with the defendant only when the defendant initiates the contact.
- D. The taking of standard identification information incident to arrest and custody is a ministerial duty which does not constitute interrogation or its functional equivalent, is not reasonably likely to elicit an incriminating response, and therefore does not violate Miranda.
- E. Non-custodial arrest situations (routine traffic stops or ordinance violations) do not require Miranda warnings.

Alternatives to Custodial Arrest

- A. These guidelines do not supersede specific statutorily mandated detention.
- B. Officers of the Middleton Police Department, when attempting to resolve the various types of problems to which they respond, are encouraged to seek alternatives to custodial arrest when no hazard(s) to the community, victim or suspect will result. When the safety of the community, victim and suspect can be maintained, and no other exceptional circumstances exist, officers resolving petty or simple ordinance or misdemeanor

situations necessitating formal action may do so by SAC, Uniform Municipal Court Citations (UMCC), Uniform Traffic Citation (UTC), warning, referral or informal resolution. Arrest decisions shall not be based upon the offender's race, sex, religious affiliation, or national origin.

Determining Criminal or Civil Charges

Many state statutes are adopted by Municipal Ordinance. In these cases, officers have the option of charging under Statute or Ordinance. The preferred course of action is to charge under Municipal Ordinance for minor violations. Where a violation of a statute adopted by ordinance is the probable cause for a stop leading to a criminal charge, both should be charged as statute violations. When contemplating whether or not to charge under Statute or Ordinance consider the following:

- A. Criminal History
- B. Probation/Parole Status
- C. Level of Intent
- D. Degree of threat to persons and property
- E. Monetary value of loss or damage which exceeds the deposit amount permitted under ordinance
- F. Continuing pattern of deviant behavior

The decision to refer or issue a Municipal citation to a person shall not be based upon the offender's race, sex, religious affiliation, or national origin. Cases should not be referred for prosecution unless sufficient evidence to support the charge exists.

DNA Collection

Pursuant to 2013 Wisconsin Act 20, law enforcement officers are required to collect DNA samples for all persons arrested for violent crimes as defined in Wisconsin State Statute 165.84 (7)(ab) or for all persons found guilty of any misdemeanor on or after April 1, 2015. The collection of a DNA sample for all persons arrested under the provisions of Act 20 will be collected in the following manner:

- A. Arrested adults will be transported to the Dane County Public Safety Building as part of the normal booking process. Members of the Dane County Sheriff's Department should be notified of Act 20 and the requirements of an arrestee to provide a DNA sample. Members of the Dane County Sheriff's Department will then obtain the DNA sample and submit the sample to the Wisconsin DNA Databank.
- B. For arrested adults who are not transported to the Dane County Public Safety Building, but who still fall under the provisions of Act 20, members of the Middleton Police Department shall collect a DNA sample following the instructions, recommendations and requirements of the State of Wisconsin Department of Justice. A DNA sample shall be collected prior to the release of the arrested individual.
 - 1. If an arrested individual refuses to cooperate in the DNA collection process, the police can arrest them in violation of Wisconsin State Statute 946.52 – Failure to Submit a Biological Specimen.

2. The police can also use “reasonable force” to collect a DNA sample at the time of arrest and an immunity provision exists for when reasonable force is used. For situations where the arrested individual fails to cooperate, and where the collection of a DNA sample will be difficult to obtain, a court order should be acquired to force a blood draw.
- C. Occasionally members of the Middleton Police Department may come into contact with an individual who is required to provide a DNA sample; however, are not under arrest for any violent crime. In these situations, the individual should be provided with instructions on how to contact the Dane County Sheriff’s Department to have their DNA sample taken and should not be taken into custody.
- D. The provisions of Act 20 also apply to the arrest of juveniles for violent crimes. See 6.6.01 Juvenile Procedures for the collection of DNA from juvenile offenders.

Release After Arrest

The Middleton Police Department will comply with the release after arrest procedures and bail and deposit amounts set forth in the State of Wisconsin Revised Uniform Deposit and Bail Schedule for traffic offenses and criminal misdemeanors, and the City of Middleton Schedule of Deposits Permitted for Municipal Offenses for other ordinance violations. Where no deposit is specified for an ordinance offense, the deposit amount permitted is \$100.

Forfeiture. All persons arrested for a violation of a state or municipal **forfeiture** shall be released from custody without a cash bond if either of the following exists:

- A. They have a valid Wisconsin driver's license or can show sufficient evidence of ties to the community.
- B. The arresting officer is otherwise satisfied that the accused will make future court appearances.

All persons not released for a forfeiture shall be released upon compliance with the state deposit or misdemeanor bail schedule unless bail is otherwise set by the court.

Misdemeanor. All persons arrested for a misdemeanor, including a misdemeanor traffic offense, shall be released from custody without a cash bond unless any of the following exist:

- A. Detention is mandated by statute (domestics for example).
- B. The accused does not have proper identification.
- C. The accused appears to represent a danger of harm to himself or herself, another person or property.
- D. The accused cannot show sufficient evidence of ties to the community.
- E. The accused has previously failed to appear in court or failed to respond to a citation.
- F. Arrest or further detention is necessary to carry out legitimate investigative action in accordance with law enforcement agency policies.
- G. All persons not released for a misdemeanor or misdemeanor traffic offense shall be released upon compliance with the state deposit or misdemeanor bail schedule unless bail is otherwise set by the court.
- H. The accused may be issued a citation either in the field or at the department pursuant to ss. [968.085\(2\)](#) and [345.11](#), Wis. Stats., and may be subject to identification/booking procedures under s. [165.83](#). All officers are authorized to allow a person to post bail pursuant to Wisconsin State Statutes.

- I. Bail may be posted or accepted at the department, at another jurisdiction in the case of a Middleton warrant, or at the Dane County Jail in the case of felony and misdemeanor charges.

Felony. Officers will exercise custodial arrest powers in felony situations. Dependent upon the felony offense (non-hazardous), certain felony arrestees may be released pending arraignment, after interview, without being formally incarcerated. Persons arrested for felonies are held in custody based on any on the following:

- 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
- G. Further investigative requirements (i.e. line-ups, handwriting samples, bodily fluids, hair samples, etc.)

Mandatory Incarceration. Arrested persons will be held in custody upon verification of any of the following:

- A. Mandatory arrest is required by statute and the person is unable or ineligible to post required bond.
- B. An arrest warrant exists for the person who is unable to post required bond and the issuing agency requests the person detained. (Persons held in custody for other agencies may be transported to the jail or turned over to the issuing agency.)
- C. An apprehension request has been issued by Corrections or Probation and Parole.
- D. A State/Federal judge has issued a capias for the individual in custody.
- E. As directed by written judicial order of a Circuit Court Judge.

Juveniles may not be "arrested." However, a juvenile may be "taken into custody," but only with a capias issued by the juvenile court or a warrant, or when the juvenile has violated a state or federal law or county, or municipal ordinance and the officer believes such action necessary in the public interest; when the juvenile's surroundings or condition require he/she be taken into custody for his/her own welfare; when there is probable cause to believe he/she has committed an act which would be a felony if he/she were an adult; or when there is probable cause to believe he/she is a runaway or a fugitive from justice or has violated the terms of his/her probation or parole.

If a juvenile is taken into custody, his/her parent or guardian must be notified as soon as possible. Then, unless it is "impracticable, undesirable or has been otherwise ordered by the court," the juvenile must be released to the custody of his/her parent or guardian. If the juvenile is not to be released, there must be a written order of the juvenile court setting forth the reasons for his/her detention.

Finally, a juvenile may never be detained in a jail or other facility for adult prisoners unless it is a separate, approved room or ward completely separate from adult prisoners.

Fingerprinting and Photographing Requirements

As required by [165.84\(1\)](#), the department will obtain fingerprints and photographs, and other available identifying data, for adults and juveniles arrested or taken into custody for an offense of a type designated in s. [165.83\(2\)\(a\)](#), if that person will not be “booked” at the Dane County Jail. Please see 10.1.01 Records for specific requirements relating to Criminal Identification Records.

Reports Required

In all cases where a person is arrested, taken into physical custody, or issued a UTC or UMCC, a call number and incident number shall be assigned and the arresting officer shall be responsible for submitting the appropriate reporting documents. Parking tickets may be assigned call and incident numbers when necessary and shall be submitted on a timely basis.

Supervisor Review

Arresting officer(s) should consult with the Shift Commander with questions regarding if a person is to be detained. Discussion may include review of the investigation, charging alternatives, bail requirements, related booking procedures, and compliance with policy guidelines. Shift Commanders will ensure that each incident response and resolution by the police will be properly documented as directed by applicable policies.