

UW Whitewater Police



Arrest Procedures

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Chief Kiederlen

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I. Purpose

The purpose of this general order is to provide procedural information to UW-Whitewater Police Department sworn staff when making an arrest with or without a warrant.

II. Definitions

Arrest: Using legal authority to deprive a person of his or her freedom of movement.

III. Policy

It is the policy of the UW-Whitewater Police Department (UWWPD) that an arrest on the strength of a warrant is preferable to a warrantless arrest. An arrest warrant provides for independent prosecutorial or judicial review of an incident. Whenever time and circumstances allow, the warrant process should be used for an arrest. However, the immediacy of many police arrest situations makes it impractical to delay matters while a warrant is obtained. The decision to make a custodial arrest shall be based on the gravity of the offense, likelihood of flight, safety of the public, and the need to collect and preserve evidence essential to prosecution.

The alternative to a custodial arrest is to complete an offense report documenting the alleged criminal activity and refer the report to the district attorney for review and the issuance of a criminal complaint and warrant or summons to appear.

IV. Procedure

A. Procedures for All Arrests:

1. Wisconsin statute 968.07(1) permits a law enforcement officer to make an arrest when:
 - a. He or she has a warrant commanding that such person be arrested;
 - b. He or she believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state;
 - c. He or she believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state;
 - d. There are reasonable grounds to believe that the person is committing or has committed a crime.

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- i. Wisconsin Statute 62.09(13) expands an officer's authority to arrest for violations of noncriminal state law and municipal ordinance when it states that an officer "shall arrest with or without process... any person violating any law of the state or ordinance of the city."
 - ii. Additionally, Wisconsin statute 968.07(2) provides that "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."
2. In addition to statutory requirements, officers shall abide by all federal laws and court decisions pertaining to the following:
 - a. Use of authority;
 - b. Arrests;
 - c. Searches;
 - d. Seizures;
 - e. Interrogations; and
 - f. Due Process.
3. Use of Discretion: It is unreasonable to expect officers to enforce all laws and ordinances regardless of the circumstances encountered. Instead, officers must make discretionary choices in arrests and alternatives to arrests to effectively realize an equitable solution to the situation encountered.
 - a. Sworn officers will always act in accordance with law and UWSPD rules and regulations.
 - b. When discretion is employed, it must be reasonable, defensible and always accomplish a police purpose.
4. An incident report is required for any arrest, with or without a warrant.
5. Persons should be searched as soon as possible when taken into custody. As a safety precaution, everyone in police custody who is placed in a police facility or squad car shall be searched immediately upon entry to the facility or into the vehicle. This search can include, but is not limited to:
 - a. A pat down of clothing and the emptying of all pockets;
 - b. Inspection of all packages, luggage, book bags, wallets or purses; and
 - c. Removal of boots and shoes for inspection.
6. In accordance with Wisconsin Statute 165.83(2), UWSPD must obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:
 - a. For an offense which is a felony or which would be a felony if committed by an adult.
 - b. For an offense which is a misdemeanor, which would be a misdemeanor if committed by an adult or which is a violation of an ordinance, and the offense involves burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances or controlled substance analogs under ch.

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- 961, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks.
- c. For an offense charged or alleged as disorderly conduct but which relates to an act connected with one or more of the offenses under section (b) above.
 - d. As a fugitive from justice.
 - e. For any other offense designated by the attorney general.
7. Wisconsin law requires law enforcement agencies to obtain a DNA specimen at arrest from an adult or any juvenile taken into custody for specific violent crimes as defined in 165.84(7)(ab) unless it is verified a valid sample is already on file.
- a. Upon arrest, officers may use the E-TIME or TIME system to check whether a DNA sample is required or not. E-TIME or TIME may provide information on whether a specimen is required or not, or if the specimen required is for a previous conviction.
 - b. Collection of the biological specimens from subjects or offenders taken by UWSPD staff shall be taken as directed by the Wisconsin State Crime Lab using the kit provided by them.
 - i. Biological specimen kits shall be handled in accordance with current UWSPD property and evidence collection procedures.
 - c. If an individual refuses to provide a required biological specimen under 165.84:
 - i. An officer can use reasonable force to obtain the biological specimen under statute 165.765(2)(bm); or
 - ii. Arrest the individual and refer charges to the District Attorney's Office for failing to comply to provide a sample under statute 946.52; or
 - iii. Attempt to obtain a court order for a DNA sample from the District Attorney's Office.
8. 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.
- a. False Arrest is also a tort, a civil wrong which is compensated by damages.
 - b. The tort of false imprisonment results from the intentional unlawful restraint by one person of the physical liberty of another.
 - c. 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.
 - d. 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.

B. Arrest Procedures, Specifically Without a Warrant

1. The Wisconsin Supreme Court has said the probable cause required for warrantless arrest, is no less than would support a warrant.

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- a. It is "that quantum of evidence which would lead a reasonable police officer to believe that the defendant committed a crime."
 - b. It is more than a hunch or suspicion, but less than the evidence required to convict at trial.
 - i. The facts on which probable cause is based must be legally obtained.
 - ii. The test for probable cause is objective, not subjective.
 - c. 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.
2. There are two requirements for valid warrantless arrest when the offense is not committed in the officer's presence:
 - a. There must be reasonable grounds to believe that a crime has been committed by the suspect; and
 - b. It is impractical to obtain a warrant under the circumstances.
3. 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.
4. 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.
5. 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.
6. When officers effect an arrest without a warrant at a private residence, officers shall be required to knock, state their identity and purpose, and await permission to enter. Without permission to enter, warrantless entries are generally considered unreasonable and the On-Call Supervisor should be notified unless the following circumstances exist:
 - a. Probable cause exists to make a felony arrest and the officer has reasonable belief the suspect is engaged in the destruction of evidence.
 - b. Probable cause exists to make a felony arrest and the officer has a reasonable belief the suspect is attempting to escape.
 - c. Probable cause exists for making a felony arrest and officers are justified in the belief that they, or the persons within, are in imminent peril of bodily harm.
 - d. Officers with probable cause to make a felony arrest are in fresh pursuit of a defendant.

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7. If circumstances are met that allow for forcible entry, officers shall perform the following:
 - a. Ensure sufficient staffing and equipment is present to safely enter and secure the premise.
 - b. Announce their identity and intention to enter by force.
 - c. Allow adequate time for occupants to respond.
 - d. Upon entry, locate and control all persons on the premises and any property that might potentially serve as a weapon.
 - e. Photograph any damage occurring as a result of the forcible entry and describe in the report how the damage occurred.

C. Arrest Procedures, Specifically with a Warrant

1. In situations where the arresting officer is not in possession of the warrant, the officer shall be responsible for confirming the validity of the warrant.
2. Temporary detention of an individual for the purpose of verifying warrant status is permissible.
3. Upon making an arrest with a warrant, the arresting officer shall:
 - a. Inform the defendant as soon as practicable of the nature of the crime with which the defendant is charged; and
 - b. If available, a copy of the warrant shall be provided to the defendant.
4. When serving an arrest warrant at a residence, officers shall be required to knock, state their identity and purpose, and await permission to enter. The duty or on call supervisor may approve forced entry to service a warrant under the following circumstances:
 - a. When sufficient personnel and equipment are present to safely force entry and secure the premise.
 - b. When executing a warrant for a felony and, after announcement of identity and purpose, entry is refused.
 - c. When those within, upon being made aware of the presence of someone outside, engage in activity that justifies officers in the belief that destruction of evidence is being attempted.
 - d. When those within, upon being made aware of the presence of someone outside, engage in activity that justifies officers in the belief that escape is being attempted.
 - e. When officers have reasonable suspicion the subject or other persons within are in imminent peril of bodily harm.
5. When forcible entry is authorized, officers shall perform the following:
 - a. Announce their identity and intention to enter by force.
 - b. Allow adequate time for occupants to respond.
 - c. Upon entry, locate and control all persons on the premises and any property that might potentially serve as a weapon.

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- d. After the premise is secure, photograph any damage occurring as a result of the forcible entry and describe in the offense report how the damage occurred.

D. Acceptance of Bond Money

1. If a situation arises where bond can be posted in lieu of a formal arrest and confinement, "Allpaid" can be used to post bond.
2. Contact Info:
 - a. <https://allpaid.com/>
 - b. 1-888-604-7888

E. Alternatives to Arrest and Confinement, Pretrial Release

1. Officers may elect to exercise alternatives to arrest, pre-arraignment confinement, and/or pre-trial release when deemed appropriate. Such alternatives may include the following:
 - a. Issuing verbal and written warnings;
 - b. Referring persons to social service agencies and counseling organizations;
 - c. Referring persons to UWSPD diversion programs;
 - d. Referring persons to other UW-Whitewater departments such as Dean of Students, Housing, Center for Students with Disabilities, etc.
 - e. Issuing citations in lieu of arrest; and
 - f. Releasing persons after posting bond.
2. The use of verbal and written warnings or diversion programs may provide a satisfactory solution to many cases. When determining whether a warning or diversion program should be given in lieu of a citation, officers should consider the following:
 - a. The seriousness of the offense;
 - b. The circumstances surrounding the violation;
 - c. The likelihood that the violator will heed the warning or follow the diversion program guidelines; and
 - d. The offense history of the violator.
3. If a warrantless arrest has already been made for a non-criminal or criminal misdemeanor offense, a citation may be issued in lieu of continuing custody.