
Search and Seizure (Reviewed 10/11/2022) (Revised 10/11/2022)

311.1 PURPOSE AND SCOPE

Both the United States and the Wisconsin Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Fond du Lac Police Department personnel to consider when dealing with search and seizure issues.

311.2 POLICY

It is the policy of the Fond du Lac Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to Officers as guidance for the application of current law as well as local community standards and prosecutorial considerations to specific search and seizure situations as appropriate.

311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions to the rule that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent.
- Stop and Frisk.
- Vehicle searches under certain circumstances.
- Crime scene search.
- Exigent circumstances.
- Emergency exception.
- Inventory searches (seized vehicles or other property).
- Incident to a lawful arrest.
- Probation, parole, or extended supervision pursuant to Chapter 302 (Wis. Stat.).
- Legitimate community caretaking interests.
- Statutory authority (e.g. licensed premises inspections).

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may

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include seizure and examination of abandoned property and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and their familiarity with clearly established rights as determined by case law.

Whenever practicable, Officers are encouraged to contact a supervisor or other available resource to resolve questions regarding search and seizure issues prior to electing a course of action.

311.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes if it would not compromise the investigation or officer safety.
- (e) While a same-sex search is ideal, that is not always possible or feasible. Because ensuring the safety of both Officers and the public outweighs gender concerns in an arrest, an Officer of either sex may search a subject of either sex. When it is not practicable or feasible for an Officer of the same sex as the subject to conduct a search, the following guidelines should be followed:
 - 1. Another Officer or a supervisor should witness the search.
 - 2. Conduct in front of fleet camera(s).
 - 3. The Officer's Body-Worn Camera (BWC) shall be activated during the search.

311.5 SEARCH WARRANTS

To be valid, a search warrant must:

- (a) Be in writing and signed by the issuing judge.
- (b) Be directed to a law enforcement officer.
- (c) Command that a particularly specified place or person be searched.
- (d) Particularly describe the subject matter of the search, such as why the objects sought are subject to lawful seizure.
- (e) Be dated.

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- (f) Be before a judge or via telephone, radio, or other means of electronic communication, without the requirement of face-to-face contact, to swear to the complaint or affidavit showing "Probable Cause."

Secrecy of a search warrant:

- (a) Wisconsin statute directs that the issuance of a search warrant be done with all practical secrecy. Disclosure of information concerning a search warrant before its execution is subject to criminal sanction unless disclosure is necessary for its successful service.

Execution of a search warrant:

- (a) Designated Officers in a warrant must execute that warrant while probable cause exists, and not more than five (5) days after the date of issuance.
- (b) Once Officers complete the search and leave the property, they cannot re-enter with the same warrant.
- (c) Officers may use all necessary force when executing a search warrant or to effect any entry into any building or property or part thereof to execute a search warrant. They will photograph and document any damage that occurs during the execution of the search warrant.
- (d) Knock and Announce Requirement - When executing the warrant, Officers will take the following actions before entering the premises to be searched:
 - 1. Knock on the door of the premises.
 - 2. Announce their identity as a Police Officer.
 - 3. Announce their purpose.
 - 4. Allow a reasonable amount of time for the occupant to permit entry.
- (e) Unannounced entry (No-Knock Exception) - The Constitution requires that in most circumstances an Officer knock and announce before executing a search warrant. Exceptions to the "Knock and Announce" requirement are:
 - 1. Warrants with expressed no-knock authorization.
 - 2. Regardless of the type of warrant issued, when an Officer upon arrival at the scene, reasonably believes that knocking and announcing will create a strong likelihood of the destruction of evidence, imminent escape, or danger to the Officer or others.
- (f) Officers executing the search warrant may reasonably detain and search any person on the premises at the time to protect themselves from attack or to prevent the disposal or concealment of any item particularly described in the search warrant.
- (g) Give a copy of the warrant to the owner/renter, or leave the copy in plain view for the owner/renter to find.

Requirements of seizure under a search warrant:

- (a) The Officer may legally seize anything described in a search warrant. The Officer may seize items not described in the warrant if:

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1. Discovery of the evidence is in the course of a lawful search.
 2. The evidence by itself or with facts known to the Officer before the search, provides a connection between the evidence and any criminal activity.
 3. The discovered evidence is in the physical area properly searchable within the purposes of the issued warrant.
 4. The Officer discovers the evidence while actually searching for objects within the purpose of the issued warrant.
- (b) Officers should record the description and location of the seized items. Photographs may also be useful to show the location of seized items.
- (c) Officers will terminate the search after locating all the described warrant items.

Return of a search warrant:

- (a) Within 48 hours after execution, a search warrant shall be delivered to the clerk designated in the warrant. A written inventory of any property taken shall accompany the return.

311.6 CONSENT SEARCH

A search warrant is not necessary when a person whom the Officer reasonably believes has authority or control over the thing or place to be searched consents to the search.

- (a) Generally, such authority extends to a person who possesses, shares use, has access to or has control of the property.
- (b) If two people have joint ownership, possession or control of the property, either may give consent.
- (c) Consent given by a person who has ownership, possession or control of only a portion of the premises can allow a search of only that portion.
- (d) Where law enforcement requests consent to search a home with two co-tenants present, where one consents and one objects, a search is unreasonable under the 4th Amendment.
- (e) Landlords may not give consent to search tenant's apartment.
- (f) Parents permitting searches of a child's room depends on the facts. When there is full access to the child's room at anytime then it is allowable. When the child and parent have an agreement as to what and when the parent will enter, then the parent lacks the actual authority to consent to a search of the room.

Valid consent must be given freely and without coercion. A person who initially gives consent may withdraw it at any time. Officers should then secure the premises and seek a warrant if applicable.

Whenever possible, a written consent form should be completed before a consent search is performed. In cases where only verbal consent was given and a search was made, a written consent form should be completed as soon as possible following the search.

311.7 TERRY STOP AND FRISK

"Stop and Frisk" does not prohibit an Officer from making contact with any person in a public place. During these consensual contacts, a person is not required to answer questions, produce identification, or cooperate in any way.

Stop: An Officer, after being clearly identified as such when not in uniform, may stop a person in a public place for a reasonable time when they reasonably believe said person is committing, about to commit or has committed a crime. The officer may demand the name and address of the person and an explanation of their conduct. The Officer will conduct the stop and temporary questioning in the vicinity where the person was stopped. During the stop, the Officer should give the person stopped an explanation of the purpose of the stop.

The following are examples of some factors to consider in building reasonable suspicion for an investigative stop:

- (a) Officer has knowledge that the person has a felony record or history of police contacts of the nature the Officer is investigating.
- (b) Person fits the description of a wanted person.
- (c) Person exhibits conduct such as fleeing from the presence of an Officer or attempting to conceal an object from the Officer's view.
- (d) Person's physical description is similar to that given in an "attempt-to-locate" for a specific offense.
- (e) Vehicle description is similar to one involved in a specific offense.
- (f) Person exhibits unusual behavior.
- (g) The area and time of day that an Officer makes certain observations; for example, a person is observed in a public area which has a history of recurring crime during the same time as that of the stop.
- (h) Person displays suspicious activity/furtive movements that may indicate they are retrieving a weapon, or concealing, destroying or discarding contraband.

Frisk: If during the stop an Officer reasonably believes that they or another person is in danger of physical injury, the Officer may frisk the person for any weapons, instruments, articles or substances readily capable of causing physical injury and of a sort not ordinarily carried in public places. If an Officer finds a weapon, instrument, or any other property in the person's possession that is not reasonably believed to constitute the commission of a crime or is a threat to their safety, the Officer may take and keep it until the completion of the questioning. The officer should then return the property, if lawfully possessed, or arrest the person.

During a frisk, an Officer may lawfully seize an object not suspected of being a weapon, but based upon their training and experience, the Officer can immediately ascertain that the object felt is contraband. Under certain conditions, the protective frisk for weapons may extend beyond the person detained. The most common example involves a vehicle, where a protective frisk may extend to those areas within the lunge, reach or grasp of the person detained. Such a search must be limited to those areas where a weapon may be concealed.

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An Officer must be able to articulate the reasonable suspicion required for a "stop" independently and separately from the "reasonable fear" required for a "frisk".

311.8 AUTOMOBILE SEARCH

It is preferable to search a motor vehicle under the authority of a warrant whenever it is practical to obtain one.

A motor vehicle may be searched without a warrant if the following conditions exist:

- (a) Probable cause to believe that the portion of the vehicle to be searched contains contraband, evidence of a crime or the fruits of a crime.
- (b) The vehicle is moving or capable of being moved quickly so that if the Officer does not search immediately, the contraband or evidence could be destroyed or lost.
- (c) If a vehicle is stopped and there is reasonable suspicion that a person is armed, Officers may require that the person exit the vehicle and submit to a frisk. In such circumstances, Officers may search areas readily accessible to the driver and/or passengers in order to discover weapons.

Officers having probable cause to believe that contraband, evidence or the fruit of a crime are concealed within a vehicle, may conduct a non-warrant search of those areas to which the probable cause extends. If probable cause is directed at a specific container within the vehicle, the Officer may seize the container and obtain a warrant before searching it.

A non-warrant vehicle search may also occur under the following circumstances:

- (a) Incident to lawful arrest.
- (b) Part of a lawful "stop and frisk" situation.
- (c) With consent.
- (d) Incident to a lawful inventory search.
- (e) Plain view.
- (f) Act 79 search.

311.9 CRIME SCENE SEARCH

Under certain conditions, a protective sweep of a crime scene may be conducted for the purpose of preserving life, preventing the destruction of evidence, and securing the scene. When the crime scene is secured, absent consent or exigent circumstance, a search warrant should be obtained prior to a search.

311.10 EXIGENT CIRCUMSTANCES

A warrantless search is permitted when probable cause to search exists and the Officer has a reasonable belief that circumstances require immediate action and there is not time to get a warrant. An Officer may invade an otherwise constitutionally protected area without a warrant under any of the following exigent circumstances:

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- (a) Immediate or continuous pursuit of a suspect from the scene of a crime.
 - 1. Hot pursuit - Jailable offense.
- (b) Reasonably believe that contraband or other evidence may be destroyed or removed before a search warrant could be obtained.
- (c) To prevent escape.

The search will cease when exigency no longer exists.

311.11 EMERGENCY EXCEPTION

A warrantless entry into an area where there is a reasonable expectation of privacy is permitted when the Officer is motivated by a perceived need to render aid or assistance and reasonably believes that delay in procuring a warrant would gravely endanger life.

311.12 INVENTORY SEARCH

When Officers come into lawful custody of property they are allowed to inventory the property pursuant to established department procedures for the purpose of:

- (a) Safeguarding citizen's property.
- (b) Safeguarding the Officer from danger.
- (c) Protecting the Department against fraudulent claims of lost, stolen or damaged property.

Vehicle Inventories: Whenever possible, the individual Officer who impounds a vehicle will conduct a custodial inspection and document any significant items found. Officers may inspect the front and back seat, the floor area, the glove compartment and the trunk.

311.13 SEARCH INCIDENT TO LAWFUL ARREST

The Officer, incident to arrest, can conduct a complete search of the person arrested and a limited search of the area readily accessible to the arrested person.

The reasons for a search by the Officer incident to an arrest should be only for the following:

- (a) Protecting the Officer from attack.
- (b) Preventing the arrested from escaping.
- (c) Discovering and seizing the fruits of crime and finding instruments or objects that may have been used in the commission of a crime, or which might constitute evidence of a crime.

The readily accessible area of an arrested person can be further defined as that area within lunge, reach or grasp of the person at the time of the arrest.

Officers making a lawful arrest or executing a lawful search in a private residence may conduct a protective sweep of the residence.

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- (a) Protective sweep: A quick and limited search of a premises, incident to an arrest and conducted to protect the safety of Police Officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.
- (b) As a precautionary matter and without probable cause or reasonable suspicion an Officer, incident to arrest, may look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched.

If the area within the arrested person's lunge, reach or grasp includes a motor vehicle, the search may include the entire passenger compartment of the vehicle when the subject is present at the scene.

- (a) Under *Arizona v. Gant* an Officer may search a vehicle incident to arrest only if:
 - 1. The arrested person is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.
- (b) The search may include a locked or unlocked glove box or containers, if present in the passenger compartment.
- (c) The search may not extend to the trunk unless the trunk is readily accessible from the passenger compartment of the vehicle, or unless probable cause to search supports the search.

311.14 PAROLE AND PROBATION SEARCHES

Any member conducting a search of an individual on parole or probation under the following conditions shall ensure the search is reported to the Department of Corrections:

- (a) Released under risk reduction sentence (Wis. Stat. § 302.043(4)).
- (b) Released to extended supervision under the challenge incarceration program, (Wis. Stat. § 302.045(3m)(e)).
- (c) Released after completing substance abuse program (Wis. Stat. § 302.05(3)(c)(4)).
- (d) Mandatory release parole (Wis. Stat. § 302.11(6m)).
- (e) Released to extended supervision for felony offenders not serving life sentences (Wis. Stat. § 302.113(7r)).
- (f) Released to extended supervision for felony offenders serving life sentences (Wis. Stat. § 302.114(8g)).
- (g) Special action parole release (Wis. Stat. § 304.02(2m)).
- (h) Paroles from state prisons and house of correction (Wis. Stat. § 304.06(1r)).
- (i) Probation for a felony (Wis. Stat. § 973.09(1d)).

311.15 COMMUNITY CARETAKER

An Officer may act to assist individuals and/or motorists who appear to be in distress or in need of assistance through the community caretaker doctrine.

311.16 OTHER LAWFUL SEARCHES

Judicially recognized exceptions to the search warrant requirement include:

- (a) **Lawful Inspection:** Certain premises, such as restaurants or taverns, are subject by law to unannounced inspections. An Officer may search the business premises without a warrant, although this authority does not extend to the owner's private office or an attached private apartment.
- (b) **Public Property:** Officer requires no search warrant to search a place open to the public, except in certain situations where the person has a "reasonable expectation of privacy." This includes public lands, places of business (but not private offices within), and common areas of apartment buildings.
- (c) **Open Fields:** Officers may seize without a warrant observed contraband or evidence on private property that is not part of the curtilage of a building or dwelling. The curtilage is an area immediately surrounding a house or dwelling where an individual has a reasonable expectation of privacy. Curtilage is defined by the following factors:
 - 1. The proximity of the area to the home.
 - 2. Whether or not the area is enclosed in some fashion.
 - 3. The use of the area (e.g. if it is used for personal family reasons it is more likely to be seen as curtilage).
 - 4. Steps taken by the owner to prevent the area to be observed by people walking by.
- (d) **Plain View:** While in a place lawfully, an Officer may seize items that are in plain view and there is probable cause to believe the items are contraband, evidence of a crime or the fruits or instrumentality of a crime. Evidence in plain view is not restricted to items which can only be seen but includes the realization of items to all human senses - smell, sight, touch/feel, hearing, and taste.
- (e) **Custodial Searches:** Any person lawfully taken into custody is subject to a full search. Strip searches shall be performed in accordance with Policy 901 - Custodial Searches.
- (f) **Abandoned Objects:** Voluntarily abandoned and discarded items that are outside the area in which someone has a reasonable expectation of privacy.

311.17 DOCUMENTATION

Officers are responsible to document any search and to ensure that any required reports are sufficient including, at minimum, documentation of the following:

- Reason for the search.
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys).
- What, if any, injuries or damage occurred.
- All steps taken to secure property.
- The results of the search including a description of any property or contraband seized.

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- If the person searched is of the opposite sex, the identification of any witness Officer(s), fleet camera, and BWC recordings.

The Criminal Investigation Division Captain or designee is responsible to document required information on the execution of search warrants at physical premises (Wis. Stat. § 165.25(20)).

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.