MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

085 – CITIZEN CONTACTS, FIELD INTERVIEWS, SEARCH AND SEIZURE

GENERAL ORDER: 2022-XX **ISSUED:** May 11, 2022	**EFFECTIVE:** May 11, 2022	**REVIEWED/APPROVED BY:** Assistant Chief Nicole Waldner **DATE:** April 7, 2022
ACTION: Amends General Order 2021-24 (January 25, 2019)		**WILEAG STANDARD(S): 1.7.3, 1.7.4, 1.7.7, 6.1.8, 6.2.3, 6.2.5, 10.1.1**

085.00 PURPOSE / POLICY

The purpose of this policy is to provide general guidance for enforcement actions, particularly citizen contacts (for traffic stops, field interviews, and no-action encounters), arrests, searches and seizures of persons or property, which shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U.S. Constitution, statutory authority and applicable case law, or MPD policies and procedures.

In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support individualized, objective, and articulable reasonable suspicion for stops and frisks of individuals, and/or objective individualized probable cause for arrests, searches, and seizures of individuals.

Consistent with state and federal law, as well as MPD policies and procedures including the guiding principles of the Code of Conduct of the Milwaukee Police Department, police members shall not stop, frisk, detain, arrest, search, or attempt to search anyone based solely upon the person's race, color, sex, sexual orientation, gender expression, national origin, disability, ethnicity, age, religion or social economic status.

085.05 DEFINITIONS

A. ARTICULABLE

Members shall be able to thoroughly explain and document the details of a field interview (Terry stop), no action encounter, or traffic stop to establish reasonable suspicion that is in compliance with the Constitution, state law, department policy and ethical standards.

B. CONSENT

A clear and voluntary expression by an individual, in writing, to allow a law enforcement officer to search the person or property of the consenting party or property over which the consenting party has apparent control.

C. CONTRABAND

Property or items that are unlawfully produced, possessed, or transported.

D. EXIGENT CIRCUMSTANCES

Exceptional situations in which law enforcement agents would be unable or unlikely to effect an arrest, search, or seizure unless they take immediate action without prior judicial authorization. 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.

E. FIELD INTERVIEW (TERRY STOPS)

The brief detainment of an individual, whether on foot or in a vehicle, based on individualized, objective, and articulable reasonable suspicion of criminal activity, for the purposes of determining the individual's identity and resolving the member's suspicions concerning such criminal activity.

F. INDIVIDUALIZED

Each contact with a subject is unique and shall be treated as such. Any use of generalizations and broad statements are insufficient. Each field interview (Terry stop), no action encounter, or traffic stop, each frisk and/or search needs to be articulated separately from one another.

G. NO-ACTION ENCOUNTER

Any situation in which an MPD member briefly questions a person about that person, or that persons' own actions or behavior, but does not obtain the person's name. No-action encounters do not involve frisks or searches, and do not result in a warning, citation, summons, or arrest.

H. OBJECTIVE

The observations of a subject's behavior that which is observable (measurable) to anyone under the same circumstances. It shall not be influenced by personal feelings or opinions (and biases) in considering and representing facts.

I. PAT-DOWN SEARCH or FRISK

1. For a frisk to be warranted after a person has been stopped, the police member must be able to articulate specific facts, circumstances and conclusions that support individualized, objective, and articulable reasonable suspicion that the

person is armed and dangerous.

2. The police member must then also reasonably suspect that he/she or another is in danger of physical injury from that person.

3. Upon establishing the criteria required in subsection 1 and 2, the police member is then entitled to conduct a limited search for weapons or objects which might be used as weapons. This means a pat-down of the person's outer clothing and nothing more, unless an object is felt which the member reasonably believes might be a weapon.

J. "PLAIN FEEL" DOCTRINE

The “plain feel” doctrine applies where a police member lawfully frisks suspect's outer clothing and without manipulating the clothing feels an object, the contour or mass of which makes it immediately identifiable as contraband, thereby authorizing the police member to effect a warrantless seizure of the object.

K. PROBABLE CAUSE

Probable cause is the 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.

L. REASONABLE SUSPICION

Individualized, objective, and articulable facts that, within the totality of the circumstances, lead a police member to reasonably believe that criminal activity has been, is being, or is about to be committed by a specific person or people. This standard is also known as articulable suspicion.

M. SEARCH

A search, as defined by the Wisconsin Supreme Court, is looking into hidden places for contraband, instrumentalities of a crime, fruits of a crime or evidence of a crime with the intent of charging the individual with an offense.

N. SEIZURE

Seizure of property is limited to contraband, instrumentalities of a crime, fruits of a crime or evidence of a crime. The Fourth Amendment to the United States constitution provides a high degree of protection for individuals from searches and seizures conducted by police members. Searches and seizures carried out by police members without a warrant, even where probable cause exists, must be clearly justified by members as falling into one of the well-defined exceptions to the Fourth Amendment warrant requirement. To avoid suppression of evidence and possible personal liability, police members should always attempt to obtain a warrant whenever reasonably possible before instituting a search and/or a seizure.

O. STRIP SEARCH

A search in which a detained person's genitals, pubic area, buttock or anus, or a detained female person's breast, is uncovered and either exposed to view or touched by a person conducting the search.

085.10 CONTACT PROTOCOL (WILEAG 6.2.3)

A. Police members can expect to make numerous contacts with the public on a daily basis. These contacts form the basis for the relationship between the department and the community. While these contacts vary in nature, and each situation must be treated individually, the goal of the department is that each contact be conducted in a courteous, professional and lawful manner.

Contacts with the police and any police actions that may result from a contact are often subject to great scrutiny. Most contacts are governed by landmark court cases which define the boundaries for proper police conduct in this arena and police members must be familiar with those court cases and remain within the boundaries set forth therein.

Engaging in lawful contacts, traffic stops, field interviews (Terry stops), and arrests generate useful, proactive tools that police members can use to combat criminal activity within their areas of responsibility.

B. Members shall use proper approach considerations when contacting a person and shall not jump out as a means of surprise, immediately approach a vehicle, or engage persons at close proximity unless the member can articulate specific facts and circumstances, which support an individualized, objective, and articulable reason to do so.

C. Members shall avoid intentionally trying to provoke the flight of a person through immediate approach, surprise, or other means unless the member can articulate specific facts and circumstances, which support an individualized, objective, and articulable reason to do so.

D. INTRODUCTION

1. To the extent that safety considerations allow, police members will introduce themselves to all individuals they make contact with. A proper introduction will establish the identity of the police member, the rank of the police member, and the context surrounding the initiation of the contact. This provides the platform for the lawful actions or requests made by the police member during the contact. Introductions should be formulated so that they provide:

   a. The police member’s last name.

   b. The police member’s rank or title and badge number (if applicable).

   c. The police member’s affiliation with the Milwaukee Police Department.

d. The reason for the contact or stop.

2. The introduction shall occur as early in the contact as safety permits and will be given prior to the police member's request for identification or license and registration information from the person being contacted.

E. CLOSING A CONTACT

In an effort to prevent perceptions of biased law enforcement, police members will make every attempt to end the contact in a professional manner. This is an opportunity to ensure that the individual leaves the contact with the best possible view of the police member, the department and the profession. In closing a contact, police members will:

1. Return any identification, paper work and/or property obtained from the citizen.

2. Ensure that the person understands when they are free to leave.

3. Explain, in detail, the results of the contact especially if the contact results in the reasons for the stop being dispelled or the person being cleared of suspicion.

4. Written documentation in the form of a *Community Contact Card* (form PF-6), which provides the officer's last name, title, work location, the time and address of the stop, the number of the police district in which the encounter took place, the police district station phone number, and the procedure for filing a civilian complaint.

   Note: If the individual refuses to take the *Community Contact Card*, the member shall not force the citizen to take the *Community Contact Card* in any way. The member shall make a verbal notation on their body worn camera recording (if equipped) that the individual refused to accept the *Community Contact Card*.

5. If the contact will result in the issuance of a citation, the police member will explain the options available to the person for disposing of the case. In cases of a traffic citation being issued, police members shall also issue form MC-715 *How To Take Care of Your Citation* in addition to advising the individual verbally.

6. If appropriate, close the contact by thanking the person for their cooperation.

085.15 SOCIAL CONTACTS

A social contact is contact with a citizen for the purpose of asking questions or for information gathering.

A. Neither reasonable suspicion nor probable cause is required to initiate a social contact, but a proper introduction as stated in 085.10(A) should be utilized whenever possible.

B. A social contact is consensual or voluntary. The citizen is under no obligation to answer any questions and is free to leave at any time.

1. As with all encounters with the public, police members shall treat individuals encountered in a social contact in a professional, dignified and unbiased manner.

2. Police members should safeguard their actions and requests so that a reasonable person does not perceive the contact as a restraint on their freedom. Police members will be respectful, attempt to build rapport, and keep the contact as brief as possible.

085.20 FIELD INTERVIEWS (FI's) (TERRY STOPS) (WILEAG 10.1.1)

Field interviews, or Terry stops, are based on a police member's individualized, objective, and articulable reasonable suspicion that the subject(s) has committed a crime, is in the process of the commission of a crime or may commit a crime. Reasonable suspicion, as defined in section 085.05, is more than a hunch. A "hunch", for the purpose of this section, is an intuitive feeling or premonition "gut feeling" and therefore, on its own, is not legal justification to conduct a Terry stop.

A. JUSTIFICATION FOR CONDUCTING A FIELD INTERVIEW (TERRY STOP)

1. The following points may be considered, on their own or in combination with one another or other factors in establishing individualized, objective, and articulable reasonable suspicion (these are not all inclusive, and one or more or even other circumstances may be present when formulating justification).

   a. The actions of the subject suggest that he or she is engaged in a criminal activity.

   b. The subject is carrying a suspicious object.

   c. The subject is located in proximate time and place to an alleged crime.

   d. The individual flees at the sight of law enforcement.

2. The following points may be considered in combination with other factors in establishing individualized, objective, and articulable reasonable suspicion:

   a. The appearance or demeanor of an individual suggests that he or she is part of a criminal enterprise or is engaged in a criminal act.

   b. The hour of day or night is out of the ordinary for the subject's presence in the area.

   c. The subject's presence in a neighborhood or location is out of the ordinary.

   d. The police member has knowledge of the subject's prior criminal record or involvement in criminal activity.

e. The subject's clothing bulges in a manner that suggests he or she is carrying a weapon.

B. PROCEDURES FOR INITIATING A FIELD INTERVIEW (TERRY STOP)

Police members may initiate the stop of a suspect if he/she has individualized, objective, and articulable reasonable suspicion to believe that criminal activity has been, is being, or is about to be committed by a specific person or people. The following guidelines shall be followed when making an authorized stop to conduct a field interview.

1. When approaching the suspect, the police member shall clearly identify himself/herself as a law enforcement officer by announcing his/her identity and displaying departmental identification to include a badge except in exigent circumstances (e.g., special circumstances that demonstrate an urgent need).

2. Police members shall be courteous at all times during the contact.

3. Police members shall maintain caution and vigilance to determine if circumstances provide reasonable suspicion that the individual is armed and dangerous or that there is probable cause to support a search or arrest.

4. Before approaching more than one suspect, at a particular location, individual police members should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives.

5. Police members shall confine their questions to those necessary to resolve the police member's suspicions. The questioning may only be for a reasonable length of time. This will vary in different circumstances, but will include enough time to call in a stolen vehicle inquiry or a wanted check.

6. Police members are not required to give suspects Miranda warnings to question a person during a Terry stop unless the person is in custody and about to be interrogated.

7. During the course of the field interview (Terry stop), the police member may demand the person's name and address and an explanation for his/her conduct. However, if the person states, they do not wish to speak with the police member and there is no further information or facts which could lead the police member to "probable cause", the police member must allow the person to go on his/her way. Responding loudly to an officer or refusing to answer a police member's questions in and of itself is not "obstructing an officer."

8. The temporary detention for questioning must be in the vicinity of the initial stop. It may, for example, be out of the rain, but not at the police station six miles away.

9. Police members shall return any property temporarily seized (outside of what would be considered contraband) from a detainee as soon as it is reasonable to

do so.

C. REPORTING OF FIELD INTERVIEWS (FI'S) (TERRY STOPS)

1. After conducting a Terry stop, the police member will record the facts of the Terry stop in the Records Management System (RMS). Terry stops recorded in the RMS may be first recorded on the Terry Stop Form (form PF-4). All records of Terry stops shall indicate whether a warning, citation, or arrest resulted from the encounter, and if so, the identified offense. All Terry stops shall be recorded and the outcome noted (e.g., warning, citation, arrest, and or no outcome).

2. All Terry Stop Forms (or Field Interview reports in RMS) shall be completed by a police member prior to the end of their tour of duty.

3. Terry Stop Forms (or Field Interview report in RMS) are to be reviewed by a supervisor for completeness and accuracy. Terry Stop Forms (or Field Interview report in RMS) found to be incomplete or inaccurate are to be returned to the submitting police member who will make the necessary corrections and re-submit the Terry Stop Form (or Field Interview report in RMS) within 24 hours.

4. If a police member completes a Terry Stop Form in lieu of a Field Interview report in RMS, the work location from which the Terry Stop Form originated will be responsible for entering the data from the Terry Stop Form into the RMS FI module. Data entry must be completed within 72 hours of receipt.

5. Once the data entry from the Terry Stop Form has been completed, the Terry Stop Form will be retained by the work location for ninety days and then destroyed in accordance with SOP 680.10(E)(5), as it relates to data protection and security. (WILEAG 10.1.1.3)

   Note: In lieu of filing a Terry Stop Form, police members may enter their own Terry stops into the RMS FI module.

6. All Field Interview reports in the RMS FI module shall be reviewed by a supervisor for completeness and accuracy and approved within seven (7) days of the initial field interview.

D. REPORTING OF NO-ACTION ENCOUNTERS

1. No-action encounters differ from field interviews (Terry stops) in that the MPD member questions an individual about the individual's own actions or behavior, but does not request or obtain that individual's name.

2. After conducting a no-action encounter the police member shall:

   a. Record the facts of the no-action encounter in the RMS. That documentation shall include the subject's perceived age, gender, race, ethnicity, and the encounter location, date, and start time, and a narrative explaining the legal basis for the encounter.

b. Ensure the call for service is given a C-21 disposition code.

3. All no-action encounter reports shall be completed by a police member prior to the end of their tour of duty.

4. No-action encounter reports are to be reviewed by a supervisor for completeness and accuracy. No-action encounter reports found to be incomplete or inaccurate are to be rejected and returned to the submitting police member who will make the necessary corrections and re-submit the report within 24 hours.

5. All no-action encounter reports in the RMS FI module shall be reviewed by a supervisor for completeness and accuracy and approved within fourteen (14) days of the initial no-action encounter.

6. Documentation of no-action encounters is critical. Failure to properly document no-action encounters may result in counseling, training, and/or discipline.

085.25 FRISKS (WILEAG 1.7.3)

A. JUSTIFICATION FOR CONDUCTING FRISKS

1. Law enforcement officers have the right to perform a frisk (e.g., a protective pat-down search) of the outer garments of a suspect for weapons if the suspect has been legitimately stopped with reasonable suspicion and only when the police member can articulate specific facts, circumstances, which support individualized, objective, and articulable reasonable suspicion that the person is armed and poses a threat to the police member's or another person's safety. To be clear, not every field interview (Terry stop) poses sufficient justification for conducting a frisk.

2. The following are some criteria that may form the basis for establishing justification for performing a frisk. Police members should note that these factors are not all-inclusive; there are other factors that may be considered.

   Members may not use only one of the below factors on their own to justify a frisk as more than one of these or other factors must be present:

   a. The type of crime suspected - particularly in crimes of violence where the use or threat of deadly weapons is involved.

   b. Number of subjects vs. police members present.

   c. Police member vs. subject factors (age, gender, and size considerations)

   d. Factors such as time of day, location or neighborhood (e.g., high crime area, known drug trafficking area) where the stop occurs

   e. Prior knowledge of the subject's use of force and/or propensity to carry deadly weapons.

f. The appearance and demeanor of the subject (e.g., a long trench coat being worn on a warm summer night).

g. Visual indications that suggest that the subject is carrying a firearm or other deadly weapon.
(WILEAG 1.7.3.2)

B. PROCEDURES FOR PERFORMING A FRISK

When individualized, objective, and articulable reasonable suspicion justifies a frisk, the frisk should be performed with due caution, restraint, and sensitivity. These frisks may only be performed to protect the safety of police members and others. Frisks should be conducted in the following manner.

1. Whenever possible, frisks should be performed by police members of the same sex as the suspect.

2. Because frisks are cursory in nature, they should be performed with the suspect in a standing position and the police member standing to the suspect's rear. Should a police member visually observe a weapon, a more secure search position may be used, such as the prone position.

3. In a frisk, police members are permitted only to feel the outer clothing of the suspect. When confronted with a suspect wearing multiple layers of clothing (e.g., multiple shirts, pants, coats) or otherwise difficult to pat-down clothing such as puffy jackets or long overcoats, police members with proper articulation based on the facts and unique circumstances of the particular stop, may be justified in removing, lifting, unzipping or adjusting the clothing in order to conduct a proper pat-down. Police members may not place their hands in pockets unless they feel an object that could reasonably be a weapon, such as a firearm, knife, club, or other item or an item immediately recognized as contraband under the "plain-feel" doctrine.

4. If the suspect is carrying an object such as a duffel bag, handbag, suitcase, briefcase, sack, or other item that may conceal a weapon, the police member may not open the item but instead should place it out of the suspect's reach.

5. If the external feeling of the suspect's clothing fails to disclose evidence of a weapon, no further search may be conducted. If evidence of a weapon is present, an officer may retrieve that item only. If the item is an illegal weapon, and the possession of which is a crime, the police member may make an arrest of the suspect and complete a full custodial search of the suspect.

C. AMOUNT OF FORCE USED TO CONDUCT A FRISK

Police members shall use only that force which is reasonably necessary to conduct the pat-down.

D. DISPOSITION OF ITEMS SEIZED IN A FRISK

1. If it is contraband, the police member shall take the appropriate police action based upon the type of contraband seized. Per Wis. Stat. § 968.18 any member seizing property without a search warrant shall issue a properly completed *Property Receipt* (form PP-33) as soon as practicable to the person from whom the property was taken in accordance with SOP 560 Property.

2. If it is not contraband, the police member shall return it to the individual upon completion of the stop.

085.30 VEHICLE CONTACTS (WILEAG 6.2.5)

A. Traffic enforcement is the responsibility of all uniformed members. Enforcement shall be in accordance with traffic laws and regulations and take into account the degree and severity of the violation. Due to ongoing threat assessments, officers may choose to call for and wait for back up to arrive before making initial contact or at any time during the stop.

B. REASONS FOR VEHICLE CONTACT

1. The member has reasonable suspicion for a traffic or equipment violation.

2. The member has probable cause to arrest a driver or passenger for a crime.

3. The member has reasonable suspicion that a driver or passenger has committed, is committing, or is about to commit a crime.

4. The member wishes to assist a motorist who is in apparent need of help.

C. TYPE OF CONTACT

1. Types of Contact

a. Approach contacts. Approach contacts are those that do not appear to pose a higher than normal risk of danger to the officer. The officer therefore feels relatively safe in approaching the vehicle to speak to the driver. Vehicle contacts for minor violations typically fall into this category.

b. Non-approach contacts. Non-approach contacts are those in which the officer does not feel safe in approaching the vehicle, but instead chooses to take other action, such as directing the driver to step out of vehicle and move to a different location for contact.

c. High-risk contacts. High-risk contacts are those in which the apparent level of danger requires extreme caution. The considerations for a high-risk contact include the nature of the offense, occupants with warrants for violent offenses, pursuits, and occupant(s) with violent history. These stops typically involve multiple officers, ordering subjects out of a vehicle one at a time, etc.

2. Location of Vehicle Contact

   The officer needs to consider the environment around him/her before turning on his/her emergency lights to initiate a stop. The three general aspects of a location to consider include:

   a. Traffic hazards. Officers should find a location that will provide the best protection from other traffic. Locations to avoid include, but are not limited to, hill crests, curves, construction zones, intersections, and high traffic areas.

   b. Complications. Other complicating factors officers should consider are private property, areas with little or no light, hostile crowds, and areas with heavy pedestrian traffic.

   c. Escalation or Disengagement Opportunities. When appropriate, officers should look for cover and concealment, vehicle escape routes, and on-foot escape routes.

D. LEVEL/STAGE/DEGREE OF STABILIZATION

The level/stage/degree of stabilization refers primarily to the type of contact. The officer shall notify the dispatcher via his/her squad radio or MDC of the location of the stop, description of the vehicle (type, color, model, and number of doors), the license plate, the number of occupants, and the reason for the stop.

1. Approach and Non-Approach Contacts

   a. Initiate the contact by turning on emergency lights and using the siren, if necessary, to signal the driver to stop.

   b. The officer shall utilize the angle-left, off-set, or in-line vehicle positioning tactics as prescribed by the Law Enforcement Standards Board. A minimum of 15’ between the officer’s squad and the target vehicle is optimal.

   c. Notify the dispatcher of the vehicle contact.

   d. During a vehicle contact it is imperative that officers remain aware of their surroundings. Officers conducting vehicle contacts must be aware of dangers presented by the target vehicle, its occupants, and possible dangers or distractions from their surrounding environment.

      1. The officer’s threat assessment may suggest that it is unsafe for an approach contact but the perceived risk does not warrant a high-risk vehicle contact. The officer should request another squad when conducting a non-approach contact. The officer may remain in the squad and use the PA system to give directions to the occupant(s) of the vehicle during a non-approach contact. The officer shall order the driver to walk towards the front of the officer’s squad. The officer will then position himself/herself in a safe position of tactical advantage (out of traffic and keeping the driver of the

vehicle facing the squad's emergency lights if possible).

e. The officer shall make contact with the driver and passenger(s) in accordance with section 085.10(A).

f. The officer shall then query the name of the driver, and if appropriate, the passenger(s), and the vehicle registration.

g. The officer shall complete paperwork related to the vehicle contact, perform a safe approach, and close the contact in accordance with section 085.10(B). (WILEAG 6.2.5.1, 6.2.5.2)

2. High-Risk Contacts

Officers shall follow a methodical process when conducting a high-risk contact.

[redacted]

b. Coordinate other responding officers.

[redacted]

c. Make the stop.

[redacted]

d. Position squads and officers properly. A [redacted] is recommended when conducting a high risk stop.

[redacted]

[redacted]

[redacted]

[redacted]

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[redacted]

[redacted]

[redacted]

E. REPORTING OF TRAFFIC STOP

1. After conducting a traffic stop, the police member shall record the facts of the traffic stop in TraCS by completing a Contact Summary form.

2. All Contact Summary forms shall be completed by the member prior to the end of their tour of duty.

3. Contact Summary forms shall be reviewed by a supervisor for completeness and accuracy and approved within seven (7) days of the initial traffic stop. Contact Summary forms found to be incomplete or inaccurate are to be returned to the submitting police member who will make the necessary corrections and re-submit the form within 24 hours.

085.35 OPEN VIEW AND PLAIN VIEW DOCTRINES (WILEAG 1.7.3)

A. OPEN VIEW

1. The open view doctrine allows the police to see and possibly seize contraband. To apply open view, the officer must see the contraband or evidence from a vantage point available to the public. To seize the contraband or evidence, it must be located in an area open to the public and not protected by the Constitution.

2. Police officers are not allowed to enter and seize contraband if the contraband is exposed to the public from a constitutionally protected place. For example: If officers see a marijuana plant growing in the window of a residence, they cannot enter the home, but must have probable cause in order to seize the plant without a search warrant.
(WILEAG 1.7.3.8)

B. PLAIN VIEW

1. The plain view doctrine allows the police to inadvertently discover contraband or evidence after making a lawful intrusion into a constitutionally protected area, such as a residence or a vehicle. The contraband or evidence must be immediately recognizable as such and be in plain view.

2. The key to the plain view doctrine is that the police member must be in the protected place with consent or on legitimate police business before it will apply. Once the inadvertent discovery is made, police members have probable cause to seek a search warrant for a more thorough search.
(WILEAG 1.7.3.8)

085.40 SEARCH UNDER THE MOVABLE VEHICLE EXCEPTION (CARROLL DOCTRINE) (WILEAG 1.7.3)

A. Police members may conduct a warrantless search based on the moveable vehicle

exception if the police member has probable cause to believe seizable items or evidence of a crime being investigated may be found within the movable vehicle, or any container in the vehicle.
(WILEAG 1.7.3.3)

B. BURNT MARIJUANA VEHICLE SEARCHES

In addition to the smell of "burnt" marijuana, prior to being authorized to search a vehicle, members shall also have at least one of these factors present:

1. Plainview observance of evidence of marijuana shake, residue, or drug paraphernalia;

2. Statements and/or admissions that marijuana, contraband, or paraphernalia is on their person or in the vehicle;

3. A wanted check reveals that the driver and/or passenger(s) are on active probation or parole supervision or the driver and/or passenger(s) have an open criminal case;

4. Prior knowledge that individual(s) in the vehicle is/are suspected to be involved in illegal drug trafficking or other serious crime(s);

5. Consent is obtained to search the vehicle, which would then require the member to complete a *Consent to Search Authorization* (form PF-3) in accordance with SOP 085.55;

6. The driver displays signs of being under the influence of an intoxicant or narcotic and the member proceeds with conducting an OWI investigation (Standard Field Sobriety Tests, Drug Recognition Expert). If probable cause for arrest is established, conduct a search of the vehicle search incident to arrest.

085.45 SEARCH INCIDENT TO ARREST (WILEAG 1.7.3)

A. PERSONS

1. A police member will conduct a full, thorough search of the individual at the time of arrest. The search may extend to objects in the actual possession of the arrested individual and areas in the arrested individual's immediate control.

2. The arrested individual will be searched for weapons, contraband, fruits and instrumentalities of crimes, and evidence connected with any offense.

3. Police members must conduct searches incidental to a lawful arrest immediately, or as soon as possible, after the arrest.
(WILEAG 1.7.3.7)

B. PLACES

Police members may conduct a lawful search of only that area under an arrestee's immediate control at the time of the arrest. Police members are only authorized to search other areas within the location of the arrest if:

1. The police member reasonably believes that their safety is threatened, or

2. There is a reasonable chance the arrested person might escape or destroy evidence.

3. When making an arrest in a home, in addition to a search incident to the arrest, the police may conduct a protective sweep for those areas of the home for which an officer has a reasonable suspicion to believe a confederate may be lurking. This sweep is limited in nature and must be specifically targeted to locating people who may pose a safety risk to police members.

C. VEHICLES

1. After a person is detained outside a vehicle and it is no longer reasonable to believe the detainee may gain access to the vehicle at the time the search, police members do not have the lawful authority to search the passenger compartment and unlocked containers incident to arrest, unless the police member believes that evidence of the offense for which the subject was arrested is believed to be contained within the vehicle.
(WILEAG 1.7.3.3)

2. While a search incident to arrest is restricted to the aforementioned conditions, an additional search is allowable under the following circumstances:

   a. Probable cause exists to believe that evidence of a crime is contained within the vehicle,

   b. Police members have consent to search,

   c. Articulable exigent circumstances exist, or

   d. The police member is performing an inventory search pursuant to the impoundment of the vehicle.

085.50 CRIME SCENE SEARCHES (WILEAG 1.7.3)

A. Crime scene searches may fall into several areas of warrantless searches:

1. Consent (see 085.55)

2. Plain view (see 085.35)

3. Search incident to arrest (see 085.45)

4. Exigent circumstances (see 085.60)

B. According to the principles of the U.S. Supreme Court cases Thompson v. Louisiana and Mincey v. Arizona, there is no "crime scene exception" to the Fourth amendment mandates. Rather, police members must be able to articulate consent, plain view, search incident to arrest, or exigent circumstances in order to conduct a search of the area. In most instances, it will be necessary to obtain a search warrant for a crime scene.
(WILEAG 1.7.3.4)

C. When uncertainty arises regarding the legality of a crime scene search, the Milwaukee County District Attorney's office should be contacted for advice. After hours, police members may contact the on-call duty district attorney by obtaining contact information through the Technical Communications Division at extension [redacted]

085.55 SEARCH BY CONSENT (WILEAG 1.7.3, 10.1.1)

The purpose of our consent searches is to prevent violent crime by lawfully recovering contraband, weapons and evidence of crimes. The purpose is not to create random drug arrests. Consent searches are an important tool in policing, the discretionary use of which must be carefully controlled. The Chief of Police has restricted your ability to request consent for a search to those circumstances in which you have individualized, objective, and articulable reasonable suspicion that you will recover contraband, weapons and evidence of crimes.

A. Police members may conduct consensual searches of persons and/or property if:

1. The police member has individualized, objective, and articulable reasonable suspicion that criminal activity has, is or will be occurring or when a police member has reasonable and articulable belief that a fugitive and/or a missing person may be within a particular location.

2. The consent is voluntary and not given because of the threat of force.

3. The person giving consent has apparent authority over and control of the premises or articles to be searched.

4. The person giving consent understands the consequences of consent and the right to refuse.
(WILEAG 1.7.3.1)

B. SCOPE OF THE SEARCH

1. The person giving consent may limit the scope of the search.

2. The person giving consent may revoke the consent at any time. If consent is revoked, the search must end immediately. If consent is revoked after an item is found that is readily recognizable as evidence, the item may be seized and the

scene secured until a search warrant is obtained. Otherwise, the search must end immediately.

3. Police members may search closed containers found during a consensual vehicle search as long as the officer reasonably believes the consent extended to closed containers in the vehicle.

4. An adult who shares common authority over a place can grant consent for a search of that place, but not for the personal belongings or storage spaces of another.

C. GUIDELINES FOR OBTAINING CONSENT

1. Police members shall ensure the person whose consent is sought has the authority to give consent. Police members shall further ensure the person whose consent is sought is capable of giving voluntary and knowing consent.

2. Police members shall advise the person, whose consent is sought, of the right to refuse a search.

3. If the person consents to the search, the police member shall ask the person to sign the *Consent to Search Authorization* (form PF-3). If the person refuses to sign the *Consent to Search Authorization*, the police member shall make every effort to record proof of consent. If the member is unable to obtain a signature or to record proof of consent, the member shall be required to document the details related to the consent and the reasons for the failure to obtain written or recorded consent.

4. Police members must obtain consent from a person, who has a "right to privacy" in the area to be searched, or against whom the incriminating search is directed, or from a person who has a valid and equal right to privacy in the area to be searched.

5. Police members shall not claim authority to conduct a search without consent or a search warrant unless otherwise permitted by law.

6. Police members should advise the person, whose consent is sought, about the general nature of the investigation and the purpose of the search.

D. REPORTING OF CONSENT SEARCHES

1. Prior to conducting a consent search, *Consent to Search Authorization* (form PF-3) must be completed and the pink copy of the form will be provided to the person who consented to the search.

2. When operationally feasible, an audible and visual record of consent utilizing the “in-car” video system and/or the member’s body worn camera should be made to assist in the mitigation of future claims that the search was coerced or non-consensual. This is especially true when the person does not wish to sign the consent form, but agrees to the search. The fact a recording is available shall be

referenced in the incident report and on the consent form.

3. In the event contraband is located during a consensual search, the original completed consent form will become evidence and will be inventoried as such. Prior to inventorying the consent form, two copies of the completed form will be made and submitted to the police member's shift commander for data entry into the search field of the RMS FI module. Once entered, one copy will then be forwarded for imaging at the Records Management Division, and the second copy will be retained by the work location for one year and then destroyed in accordance with SOP 680.10(E)(5), as it relates to data protection and security.

4. If contraband is not located during a consensual search, the original consent form will be forwarded to the police member's shift commander for data entry into the search field of the RMS FI module. Once entered into RMS, all copies of the form will be retained by the work location for one year and then destroyed in accordance with SOP 680.10(E)(5), as it relates to data protection and security.
(WILEAG 10.1.1.3)

5. The yellow copy of the consent form will be submitted with the arrest / DA package (if any). If the yellow copy of the form is not required, it will be properly destroyed in accordance with SOP 680.10(E)(5), as it relates to data protection and security.
(WILEAG 10.1.1.3)

E. THIRD PARTY CONSENT VALID IN CERTAIN CIRCUMSTANCES

1. Consent is valid if the third person has equal authority over the business or residence and it can be concluded the absent person assumed the risk the cohabitant (roommate) might permit a search.

2. Consent to search is not allowed if one cohabitant (roommate) or business partner objects to the consent, even if the other person gives permission. Consent must be given by both people, if present and should be recorded in writing or by body-worn or in-car camera prior to the search.

3. Parents may consent to search a child's living area if the parents have routine access to the area (the child does not pay rent).

4. Landlords cannot give consent to search if a lease or rental agreement is still in effect.
(WILEAG 1.7.3.1)

085.60 EXIGENT CIRCUMSTANCES (WILEAG 1.7.3)

Police may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that delay in getting a warrant would result in the immediate threat of escape, the immediate threat of destruction of evidence, or the immediate threat of death or great bodily harm to the officer or the general public.
(WILEAG 1.7.3.5)

085.65 STRIP SEARCHES (WILEAG 1.7.7)

A. Strip searches shall be conducted only in the circumstances permitted by Wis. Stat. § 968.255 (strip searches) and Wis. Stat. § 968.256 (search of physically disabled person) and only with the approval of an on-duty captain or higher authority.

Note: In the absence of an on-duty member with the rank of captain or higher, an on-duty lieutenant will have the authority to grant written consent.

1. A strip search is defined as the uncovering and/or exposed to the view and/or touching of a detained person's genitals, pubic area, buttock or anus, or a female's breasts by the person conducting the search. This would include having a person remove or arrange some or all of his or her clothing so as to permit an inspection of genitals, pubic area, buttocks, anus, or breasts of a female.

B. No person shall be subject to a strip search unless they are a detained individual. Wis. Stat. § 968.255(1) defines detained as any of the following:

1. Arrested for any felony.

2. A person arrested for specified misdemeanors, which are primarily weapons-related offenses. These offenses are covered under the following Wis. Stat. §:

- 167.30 (Use of firearms, etc., near park, etc.);
- 940.19 (Battery; substantial battery, aggravated battery);
- 941.20(1) (Endangering safety);
- 941.23 (Carrying a concealed weapon);
- 941.237 (Carrying handgun and alcoholic beverages);
- 948.60 (Possession of dangerous weapon by a person under 18);
- 948.605 (Gun-free school zone) or
- 948.61 (Dangerous weapons on school premises).

3. A juvenile taken into custody under Wis. Stat. § 938.19 and where there is reasonable grounds to believe the juvenile has committed an act which would be a felony if committed by an adult, or a juvenile taken into custody under one of the eight specified misdemeanors in subsection 2.

4. Arrested for any misdemeanor not specified above (subsection 2), any other violation of state law punishable by forfeiture, or any local ordinance violation, if there is probable cause to believe the person is concealing a weapon or an object which may constitute evidence of the offense for which he or she is detained.

5. Any person who intentionally violates the requirements outlined in Wis. Stat. § 968.255 may be charged with a misdemeanor and be fined not more than $1,000 or imprisoned not more than 90 days or both.

C. Pursuant to Wis. Stat. § 968.255(2): No person may be the subject of a strip search unless he or she is a detained person and if:

1. The person (and one search witness) conducting the search is of the same sex as the person detained, unless the search is a body cavity search conducted under subsection F;

   Note: The search witness whenever possible shall be a police supervisor of the same sex as that of the detainee to be searched.

2. The detained person is not exposed to the view of any person not conducting the search (the search witness excepted);

3. The search is not reproduced through a visual or sound recording Wis. Stat. § 968.255(2)(c). Strip searches shall not be conducted in the booking room due to the presence of video equipment;

4. A person conducting the search has obtained the prior written permission of the chief or his/her designee of the jurisdiction (e.g., captain of police or higher rank or in the absence of an on-duty member with the rank of captain or higher, an on-duty lieutenant) where the person is detained, unless the person conducting the search has probable cause to believe that the detained person is concealing a weapon; and

5. A *Strip Search Authorization Report* (form PS) is completed in the Administrative Investigations Management (AIM) system regarding the search.

D. JUSTIFICATION FOR A STRIP SEARCH

1. A strip search shall only be conducted when the detained person has been taken into custody for any of the offenses listed in 085.65(B) subsection 1, 2 and 3 and the police member can articulate, in writing on form PS (in the Administrative Investigations Management system), the reason why he/she believes the detainee is concealing an object which my pose a safety risk or may constitute evidence of a crime.

2. Any strip search of an individual being detained for any misdemeanor not specified in 085.65(B) subsection 2, any other violation of state law punishable by forfeiture, or any other local ordinance, must be based on probable cause to believe the individual being detained is concealing a weapon or evidence of a crime for which he/she is being detained.

E. STRIP SEARCH AUTHORIZATION REPORT (FORM PS)

1. A shift commander upon being notified a police member is requesting a strip search will attempt to locate an on-duty captain or higher authority in order to receive written authorization to conduct a strip search, unless it is a probable cause weapon search. In the absence of an on-duty member with the rank of captain or higher, an on-duty lieutenant will have the authority to grant written consent.

2. The shift commander receiving approval for a strip search shall cause a *Strip Search Authorization Report* to be completed in the AIM system prior to the search being conducted. Minimally the following fields shall be completed on the report prior to the

subject being provided a copy of the form as stated in subsection 5:

a. Date/time of incident;

b. Location of stop or incident;

c. Suspect's name/address and other demographics;

d. Police member conducting the search and police member witness;

e. Authorizing command officer (as specified in subsection 1);

f. Was justification or probable cause found to authorize search (yes or no);

g. Reason / justification statement for the search entered in the incident notes section - (as specified in subsection D).

3. Once all the data from subsection 2 has been entered into AIM, the form will be printed.

4. The strip search authorizing member in subsection 1 will sign the form next to his/her name on the report.

5. A copy of the completed form with the authorizing member's signature will be made and shall be provided to the person being searched.

6. The work location responsible for conducting the search will maintain custody and retention of the form containing the original signatures.

F. BODY CAVITY SEARCHES

1. A search warrant is required for every body cavity search.

2. Police members are prohibited from conducting a body cavity search whether manual or visual. If a body cavity search is deemed necessary, such search can only be done by a physician, physician's assistant or registered nurse licensed to practice in the state of Wisconsin (Wis. Stat. § 968.255(3)).

3. A body cavity search includes the following:

a. The manual inspection involving a digital (finger) or instrument intrusion into a person's anus or vagina.

b. The visual inspection of the anus or vagina even when no manual examination is performed.

G. PHYSICALLY DISABLED PERSONS

A physically disabled person, for the purpose of Wis. Stat. § 968.256, is defined as "a

person who requires an assistive device for mobility, including, but not limited to, a wheelchair, brace, crutch or artificial limb". A search of a physically disabled person is to be conducted in a careful manner. If a search of a physically disabled person requires the removal of an assistive device or involves a person lacking sensation in some portion of his or her body, the search shall be conducted with extreme care by a person who has had training by the Central Booking Division in handling physically disabled persons.

H. The department will provide annual training regarding the policies and procedures related to strip searches to any member who may conduct a strip search in accordance with Wis. Stat. § 968.255(6).

085.70 ANATOMICAL GIFTS (WILEAG 6.1.8)

A. Anatomical gift searches and notifications shall be conducted in accordance with Wis. Stat. § 157.06(12) (Anatomical Gifts).

1. Police members who reasonably believe an individual to be dead or near death shall make a reasonable search of the individual for a record of gift or a record of refusal or other information identifying the individual as a donor or as an individual who has refused to make an anatomical gift. If a record of gift or record of refusal is located and the individual or deceased individual to whom the record of gift or record of refusal relates is taken to a hospital, the police member responsible for conducting the search shall send the record of gift or record of refusal to the hospital.

2. Members shall document these efforts in their official memorandum book.

085.75 OTHER SITUATIONS AUTHORIZED BY STATE AND FEDERAL CONSITUTIONAL PROVISIONS (WILEAG 1.7.3, 1.7.4)

A. HOT PURSUIT

When in pursuit of a fleeing subject for whom the police have probable cause to believe has committed a jailable offense (must be a misdemeanor or felony offense), an officer may enter a home without a warrant if he/she has probable cause to believe the subject is in the home. This hot pursuit exception is limited to a jailable offense (must be a misdemeanor or felony offense) situation and to a chase scenario.

Note: Officers shall use discretion when employing this tactic as it may not always be the best practice, or the safest choice, to chase a fleeing subject into a home for a minor misdemeanor even though the entry would be lawful.

B. FRESH PURSUIT

The pursuit by a law enforcement officer of someone he/she has probable cause to believe has violated any law or ordinance the officer is authorized to enforce. This means that the infraction took place within the officer's geographical jurisdiction and

fresh pursuit allows the officer to follow that person outside of what normally would be his/her geographical limits. An officer may, when in fresh pursuit, follow anywhere in the state and arrest any person for violation of any law or ordinance the officer is authorized to enforce.
(WILEAG 1.7.3.8, 1.7.4.2)

C. FELONY ARREST WITH AN ARREST WARRANT

1. Police members must have a search warrant or consent to enter a residence legally; unless the member has knowledge the suspect resides full-time at the residence and the suspect has been seen inside the residence at the time of the arrest warrant service.

2. Police members must obtain a search warrant to gain lawful entry to the premise of a third party to effect an arrest unless they have valid consent or some other exception to the warrant requirement exists.
(WILEAG 1.7.4.1)

D. MISDEMEANOR ARREST WITH AN ARREST WARRANT

1. Police members must have a search warrant or consent to enter a residence legally; unless the member has knowledge the suspect resides full-time at the residence and has been seen inside the residence at the time of the arrest warrant service. Police members must use good articulable discretion when making the decision to forcibly enter a residence for the purposes of making a misdemeanor (jailable offense) warrant arrest. When in doubt, seek direction from a supervisor.

2. Police members must obtain a search warrant to gain lawful entry to the premise of a third party to effect an arrest unless they have valid consent or some other exception to the warrant requirement exists.
(WILEAG 1.7.4.1)

E. SEARCH OF A PERSON ON PROBATION, PAROLE OR EXTENDED SUPERVISION (Wis. Stat. § 302, 304, and 973)

1. Police members may search a person, his or her residence, and any property under his or her control at any time during the person's period of state of Wisconsin Division of Community Corrections supervision on probation, parole, or extended supervision if the member has reasonable suspicion that the person is committing, is about to commit, or has committed a crime or a violation of his/her conditions of probation or release.

   a. The authority granted to search under this section only applies to:

      1. Persons on probation for a felony.

      2. Persons on probation for a misdemeanor violation under Wis. Stat. § 940, 948, or 961.

3. Persons on parole.

4. Persons on extended supervision.

b. The person's status must be a result of a Wisconsin conviction, and the person must have been placed on probation or released to parole/extended supervision on or after December 14, 2013.

c. Prior to considering any search under this authority, the police member shall verify that the person's status is one of those listed above in subsection a (1-4), and that he/she was placed on that status on or after December 14, 2013.

2. Any search conducted pursuant to this section shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing.

a. The scope of the search shall be related to the reasonable suspicion possessed by the member and must be based on specific and articulable facts.

b. If the probationer, parolee, or person under extended supervision lives with someone else, any search shall be limited to common areas or those under the control of the probationer, parolee, or person on extended supervision.

c. Members shall not force entry to a residence to perform a search under this section.

3. Police members conducting a search pursuant to this section shall as soon as practicable notify the Division of Community Corrections after the search by email. A copy of the email shall be sent to the member's commanding officer.

a. The member conducting the search shall ensure a QPP (Query Probation/Parole) TIME system search is conducted.

b. A TIME system response will include a five digit agent number for the person. The first number determines the region to which the agent is assigned (for example, Agent 58233 is assigned to Region 5 and consequently the e-mail would be sent to Region 5).

c. Members shall put "Act 79 Search Notification" in the subject line of the notification e-mail. In the body of the e-mail, members shall indicate the offender's name and date of birth as well as a brief description of the search and its results. The e-mail address for each region is listed below.

[redacted]

[redacted]

d. Members shall include the time/date that the notification to the Division of Community Corrections was made in any applicable RMS reports.

F. ABANDONED PROPERTY

1. This is another exception which is not really a search. A scrap of paper which turns out to be a policy slip or a cigarette butt containing marijuana and thrown on the ground is abandoned and may be seized. A person seen discarding such an object could then be arrested. Trash placed at the curb on truck pick-up day is generally considered abandoned.

2. Individuals do not have any reasonable expectation of privacy regarding property that they had abandoned prior to its seizure by law enforcement (e.g., the police approach a subject pursuant to a lawful traffic stop. The subject takes off on foot leaving his/her vehicle behind. The vehicle is deemed to be abandoned property and, thus, can be lawfully searched).
(WILEAG 1.7.3.8)

085.80 VEHICLE INVENTORY SEARCHES (WILEAG 1.7.3)

Police members impounding a vehicle shall conduct and document a thorough inventory of the vehicle and its contents to the extent practical to protect the police member, the vehicle owner, and the department from claims of loss or damage. Vehicle inventory procedures are found in SOP 610 Towing of Vehicles.
(WILEAG 1.7.3.6)

085.85 SOURCE AND INFORMATIONAL RESOURCES

This SOP was developed to provide police members with general guidance in search and seizure. The concepts in this SOP are governed by landmark state and federal court cases that establish the boundaries for proper police conduct in this arena.

The following sources were referenced in the development of this SOP:

- Wisconsin Law Enforcement Criminal Law Handbook (Blue Book), published by the Wisconsin Department of Justice, 2017 edition
- State of Wisconsin Department of Law Enforcement Standards Board Vehicle Contacts (A Training Guide for Law Enforcement Officers), 2014 edition
- Federal and State Constitutions
- Federal and State Case Law
- Wisconsin State Statutes
- Milwaukee County District Attorney's Office
- Milwaukee Police Department Code of Conduct

- Milwaukee Police Department Standard Operating Procedures

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