



VILLAGE OF EAGLE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE 002 – ARREST AUTHORITY | EXPANDER OF JURISDICTION

GENERAL ORDER: 2018-02
ISSUED: October 12, 2018

EFFECTIVE: October 14, 2018

REVIEWED/APPROVED ON: October 10, 2018
BY: Assistant Chief Steven Lesniewski

ACTION: Supersedes all previous Procedures

WILEAG STANDARD(S): 1.6.1, 1.7.2, 1.7.4, 1.7.5, 1.7.6

002.00 PURPOSE

The purpose of this policy is to define the authority of officers to make arrests on duty and off duty and to establish guidelines for effecting arrests, both with and without a warrant.

002.01 POLICY

- A. It is the policy of the Village of Eagle Police Department that officers shall investigate violations of state law and municipal ordinances and shall make arrests for such violations in accordance with the constitutions of the United States and the State of Wisconsin; Federal, State and Municipal legislation; and Department policy. In rare instances, officers may arrest for Federal crimes.
- B. In order to promote safety and efficiency, it is the policy of the Village of Eagle Police Department to determine and regulate those situations and locations within which a Village of Eagle Police Officer is permitted to make an arrest while off duty.

002.02 DEFINITIONS

- A. **Adult:** For the purposes of investigating or prosecuting a person who is alleged to have violated a state or criminal law or any civil law or municipal ordinance, “adult” means a person who has attained 17 years of age. [Wisconsin Statute §938.02(1)]
- B. **Arrest:** To deprive a person of their liberty by legal authority; the taking, under real or assumed authority, the custody of another for the purpose of holding and detaining that person, to answer a criminal or civil charge. The central idea of arrest is the taking or detaining of a person, by word or action, into custody so as to subject their liberty to the actual control and will of the person making the arrest.
- C. **Close Pursuit:** Pursuit of a felony suspect into another state.
- D. **Crime:** Conduct which is prohibited by state law and punishable by fine, imprisonment or both. Conduct punishable only by forfeiture is not a crime.

- E. *Custodial Arrest*: The act of depriving a person of their liberty by legal authority for the purpose of booking, holding or detaining them to answer a criminal charge or civil forfeiture action.
- F. *Fresh Pursuit*: The continuous and uninterrupted 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 follow anywhere in the state and arrest any person for a violation of any law or ordinance the officer is authorized to enforce. [City of Brookfield vs. Collar, 148 Wis. 2d 839 (1989)]
- G. *Non-Custodial Arrest*: The acts of temporarily depriving a person of their liberty by legal authority for the purpose of issuance of a citation or referral for further prosecution.
- H. *Offense*: As used in this document, any violation of law whether Federal, State or Municipal.
- I. *Probable Cause*: That quantum of evidence which would lead a reasonable police officer to believe that the defendant committed an offense. It is more than a hunch or mere suspicion, but less than the evidence required to bind over for trial. The "reasonable grounds" specified in state statute is the same as "probable cause."
- J. *Warrant (arrest)*: A written order issued and signed by a judge and directed to a law enforcement officer, commanding the officer to arrest the person identified in the order. An arrest warrant may be for a violation of a criminal law or municipal ordinance.
- K. *Personally Involved*: An officer is deemed personally involved where the off-duty officer, a family member or a friend becomes engaged in a dispute or incident involving a personal matter with the person to be arrested or any other persons connected with the incident. This does not apply to situations where the police officer is a victim of a crime.
- L. *Legal Jurisdiction*: An officer has legal jurisdiction and authority of a Police Officer of the Village of Eagle Police Department whenever within the corporate limits (boundaries) of the Village of Eagle. This includes the entire width of boundary highway as defined in Wisconsin Statute §175.40(4) Officers also have expanded arrest authority under Wisconsin Statutes §175.40 (on duty) and §175.40(6m) [2005 Wisconsin Act 414] (off-duty).

002.03 PROCEDURE FOR ON-DUTY ARRESTS

A. AUTHORITY TO ARREST

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

2. A law enforcement officer shall identify himself/herself by his/her official indicia of office (badge, identification card or uniform) and generally use formal words of arrest to avoid ambiguity regarding the officer's authority/intent and thus avoid providing the suspect a potential defense to Resisting an Officer or Escape from Custody. 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. Refusing to assist an officer upon command is a misdemeanor offense under Wisconsin Statute §946.40.
3. If the alleged violator under Wisconsin Statute §948.55(2) or §948.60(2)(c) is or was the parent or guardian of a child who is injured or dies as a result of an accidental shooting, no law enforcement officer may arrest the alleged violator until at least seven days after the date of the shooting.
4. Wisconsin Statute §61.31 extends an officer's authority to arrest for violations of non-criminal state law and of municipal ordinances of the Village of Eagle (forfeitures).
5. Wisconsin Statute §175.40(4) states, that a police officer, whose boundary is a highway, may enforce any law or ordinance that he or she is otherwise authorized to enforce by arrest or issuance of a citation on the entire width of such highway and on the entire intersection of such a highway and a highway located in an adjacent jurisdiction. This subsection does not extend an officer's jurisdiction outside the boundaries of this state.
6. Wisconsin Statute §175.40(6), adopted by this policy, gives authority to a police officer outside his or her territorial jurisdiction to arrest a person or provide aid or assistance anywhere in the state if all the following criteria apply:
 - a. The officer is on duty and on official business.
 - b. The officer is taking action that he or she would be authorized to take under the same circumstances in his or her territorial jurisdiction.
 - c. The officer is acting to respond to any of the following:
 1. An emergency situation that poses a significant threat to life or of bodily harm.
 2. Acts that an officer believes, on reasonable grounds, constitute a felony.

❖ *Any officer acting under this authority must immediately notify and cooperate with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken in the jurisdiction. A supervisor from this Department shall be notified by the quickest means and as soon as the circumstances allow for notification to be made safely.*

7. Wisconsin Statute §66.0513 adopted by this policy provides that upon the request, personnel from another law enforcement agency may assist the requesting agency within their jurisdiction, and upon that request the assisting officer shall have full police powers within the requesting jurisdiction, including being entitled to the same wage, salary, pension, worker's compensation, and all other service rights for this service as for service rendered within the limits of the city, county, village or town where regularly employed.

8. Wisconsin Statute §29.941 adopted by this policy provides that all police officers are deputy conservation wardens and shall assist the DNR and its wardens in enforcement of fish and game laws or other violations of Chapter 29 of the Wisconsin Statutes whenever notice of violation thereof is given to them by the Department or its wardens. This action should only be taken at the request of the DNR or a warden.
9. 18 USC 3041 authorizes state law enforcement officers to make arrests for Federal crimes. *US v. Bowdach*, 561 F 2d 1160 (1977); rehearing denied en banc. Officers shall not utilize this authority unless so directed by a supervisory officer.

B. ARREST WITH A WARRANT

1. A police officer shall arrest a person within their jurisdiction when that officer has knowledge that a lawful arrest warrant has been issued and reasonable effort has been made to properly identify the person to be arrested. In complying with the requirements of that warrant, an officer shall retain custody of the named defendant and promptly notify the proper authority. The person so arrested shall be transferred to the custody of the sheriff or other law enforcement agency unless release is authorized by proper authority.
2. In situations where the arresting officer is not in possession of the warrant, he/she shall be responsible for confirming the existence of the warrant. Foreign warrants shall require teletype confirmation; however, telephone confirmation shall be acceptable pending receipt of the teletype. No arrest should occur until after the warrant has been confirmed.
3. Upon making an arrest, the arresting officer should inform the defendant as soon as safely practicable of the nature of the offense with which they are being charged. For safety reasons, officers may initially mislead the defendant about the number or seriousness of the warrants.
4. An arrest warrant may be served at the suspect's dwelling by making a forcible entry only if the officer has probable cause to believe the suspect is present inside the dwelling. *Wis. V Blanco*, 237 Wis.2d 395, 2000 WI App 119. An arrest for a suspect residing in another's dwelling requires the consent of the owner/occupant or the issuance of a search warrant.

C. ARREST WITHOUT A WARRANT

1. An officer may arrest a person within this jurisdiction, without a warrant, whenever he/she has probable cause to believe that the suspect is committing or has committed an offense. It is not necessary that an offense be committed in the officer's presence for him/her to arrest for that offense. Thus, whenever an offense has been committed, the officer may arrest for it, except that whenever the person to be arrested is in their residence (home, apartment, etc.) in addition to probable cause it is necessary that the officer has consent to enter the dwelling from a person legally able to give such consent OR there be exigent circumstances to authorize the officer to go into the residence without a warrant to affect the arrest. (If several occupants have equal rights in the same dwelling, any one of those actually present may forbid entry to the police. *Georgia v. Randolph*, US Supreme Court, 04-1067; 03/22/06.)

- a. The courts have defined exigent circumstances as: the immediate threat of escape, the immediate threat of destruction of evidence; the immediate threat of death or great bodily harm to the officer or the general public.
- b. "There is no requirement that police officers must arrest an offender as soon as probable cause for the arrest exists." *Forman v. Richmond (Indiana) Police Dept.*, 104 F.3d 950,962 (1997). Hence, if there is no compelling need for an immediate arrest; officers may consider delaying the arrest to conduct further investigation and/or to employ additional measures to ensure a substantial case. This may include the identification and questioning of additional victims, witnesses, and parties to the crime or the location of additional evidence.
- c. If in pursuit of a fleeing felon, an officer may enter a home without a warrant if he/she has probable cause to believe the accused felon is in the home.

1. The decision to make a custodial arrest shall be based on the following factors:

- a. Gravity of the offense.
- b. Criminal history.
- c. Likelihood of flight.
- d. Safety of the public.
- e. Potential for further disturbance.
- f. Threats by the suspect.
- g. The need to collect and preserve evidence essential to prosecution.
- h. Mandatory per Wisconsin Statute §968.075(2), as related to Domestic Violence situations.

2. The alternative to a custodial arrest is to complete an incident report documenting the alleged offense and refer the report to the appropriate prosecutor for review and issuance of a warrant or summons to appear.

D. ORDINANCE ENFORCEMENT; WISCONSIN STATUTE §800.02(6)

1. Two objectives are attained through the use of ordinances:

- a. Ordinances are a vehicle whereby the Village can assert control and regulation over matters not addressed in state statutes, in the interest of protecting the public health, safety, and welfare.
- b. Ordinances provide a less severe sanction where ordinances have statutory counterparts.

2. When the option is available for the officer to charge a municipal ordinance or state statute, the officer may consider the severity of the offense, number of previous arrests, and multiple offenses. The decision, further, should be in accordance with the Village of Eagle Police Department Core Values and Standards of Conduct (SOP 001).

3. The issuance of municipal ordinance citations rather than state criminal charges shall not preclude booking procedures mandated by Wisconsin Statutes §165.84(1), §165.83(2) or other Department Policy. The Department may require bond posting consistent with schedules established by the Wisconsin Supreme Court Judicial Conference.
4. Officers are not to use the ordinance system indiscriminately so as to permit serious offenses or repeated violations to be treated in a manner that would not be in the best interest of the public. In unusual cases, the decision in which court to prosecute shall be made by a supervisor after careful review of the facts.

E. UNIFORM TRAFFIC CITATIONS; WISCONSIN STATUTE §345.22

1. In most cases where municipal ordinance has adopted the state statute, the venue for a traffic citation should be for the jurisdiction of the Municipal Court.
2. The issuance of UTC's shall generally be noncustodial in nature. An offender arrested solely on the basis of a violation of a state traffic statute or ordinance in conformity therewith is usually released upon receipt of the citation. Exceptions include an alcohol/drug related traffic offense, some criminal traffic offenses, or when further detention is necessary to carry out legitimate investigative actions.

002.04 OFF DUTY ARREST AUTHORITY

- A. An off-duty officer faced with a situation involving criminal activity is usually neither equipped nor prepared to handle the situation in the same manner as if he/she were on duty. This may lead to unnecessary injuries to off-duty officers and confusion for those on duty officers arriving at the scene and attempting to correctly assess the situation. An off-duty officer, confronted with a situation involving criminal conduct, should consider notifying on duty law enforcement personnel before deciding to take action. In some cases however, the exigency of a given situation may call for immediate action by the officer. In that case, the off-duty officer should take action only after considering his or her own safety as well as the safety of others.

002.05 OFF-DUTY PROCEDURES

A. OFF-DUTY RESPONSIBILITIES

1. While off duty, Village of Eagle Police Officers are responsible for immediately reporting any suspected or observed criminal activity to on duty authorities of the appropriate jurisdiction.
2. Except as allowed by this policy, off-duty officers should not enforce minor violations such as harassment, disorderly conduct or other nuisance offenses. On duty personnel are to be contacted to respond to the situation where an off-duty officer becomes aware of such violations.
3. When action is necessary, the off-duty arresting officer shall abide by all Departmental policies and procedures, including those pertaining to off-duty weapons.

B. PROHIBITED OFF-DUTY ARRESTS

1. Village of Eagle Officers are not to make off-duty arrests:
 - a. When the arresting officer is personally involved in the incident underlying the arrest.
 - b. When engaged in off-duty employment of a non-police nature and the officer's actions are only in furtherance of the interests of the private employer.
 - c. When the arrest is made solely as enforcement of a minor traffic violation. Despite the fact that the police officer has police powers and responsibilities 24 hours a day throughout the jurisdiction, the off-duty officer should not enforce minor traffic violations.
 - d. When outside of the legal jurisdiction of the Village of Eagle except as authorized by this procedure and Wis. Stat. 175.40 (6m) [2005 Wis. Act 414].

C. PERMITTED OFF-DUTY ARRESTS

1. When off-duty and within the Village of Eagle, an officer may make an arrest only when:
 - a. The arresting officer is not personally involved in the incident underlying the arrest.
 - b. There is an immediate need to prevent a crime or apprehend a suspect.
 - c. The crime would require a full custodial arrest.
 - d. The arresting officer possesses appropriate police identification (badge and ID card).
2. In addition to the requirements listed immediately above (a-d), when off-duty and outside the legal jurisdiction of the Village of Eagle, an officer may make an arrest only pursuant to the following:
 - a. Wisconsin Statute §175.40(6m) [2005 Wis. Act 414] hereby adopted by this policy gives authority to a peace officer outside his/her territorial jurisdiction and while off duty to arrest a person or provide aid or assistance anywhere in this state if the following criteria are met:
 - i. The officer responding to an emergency situation that poses a significant threat to life or of bodily harm [Wisconsin Statute §939.22 (4)],

and
 - ii. The officer is taking action that he or she would be authorized to take under the same circumstances in the officer's territorial jurisdiction.

- b. An officer electing to take action under this section shall, consistent with the exigencies of the situation, attempt to weigh reasonable responses to the situation including maintaining cover and observation, contacting the local law enforcement agency or asking others to do so, rather than directly intervening in the incident. In addition, *when and if safe to do so*, the officer shall present and display their appropriate police identification (badge and ID card) as well as verbally identify himself/herself as a police officer to both responding officers of the local jurisdiction as well as to bystanders. Officers shall comply with the directions given by the responding officers of the local jurisdiction.
- c. Any officer acting under the authority of this section shall immediately notify and cooperate with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken within said jurisdiction. In addition, the officer shall as soon as possible notify a supervisor of this Department and apprise him/her of the actions taken by the officer while off duty and within another jurisdiction.

002.06 LIABILITY PROTECTION

- A. Eagle Police Officers have liability protection for the performance of official duties both on and off duty. This protection does not extend to illegal acts intended to cause injury or damage, or to those actions that the officer knew, or reasonably should have known, were in conflict with the law and the established policies of this department.



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