

**WISCONSIN LAW ENFORCEMENT  
OFFICERS CRIMINAL LAW  
HANDBOOK**



## INTRODUCTION

Proper police practices are fundamental to a democratic society. Accordingly, one of the significant challenges to law enforcement officers is to keep abreast of the evolving body of laws governing the constitutional and statutory requirements for doing their jobs effectively and lawfully.

To assist law enforcement in keeping informed of the pertinent laws, the Wisconsin Department of Justice's Training and Standards Bureau publishes and distributes the *Wisconsin Law Enforcement Officers Criminal Law Handbook*. This handbook is designed as a practical synopsis of the current status of the law focusing on topics ranging from arrest, search and seizure, confessions, and the use of force, to bond requirements and the elements and penalties of criminal offenses.

The handbook is to be a quick and easy portable reference for the recruit and the veteran officer alike. The Wisconsin Department of Justice believes that reference to the handbook's procedures, rules, and tips, will help Wisconsin law enforcement officers maintain their rich tradition of respecting the people they serve and the laws they have sworn to uphold.

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Attorney General

*Note: This edition of the Wisconsin Law Enforcement Officers Criminal Law Handbook has two new sections, **Crime Scene Investigation**, and **Crime Scene-Evidence**, which appear at the beginning of the text.*

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## **CRIME SCENE INVESTIGATIONS**

When officers respond to a potential crime scene, the actions they take upon arrival at the location must be correct. The crime scene may ultimately involve many people, including medical personnel, crime scene search specialists, detectives, crime laboratories and/or the coroner or medical examiner. The officers arriving first at the scene have a critical role: an inappropriate action or omission at the scene may seriously compromise any subsequent investigation.

The following checklist is intended to assist those first responding officers at the scene of a serious crime, which may necessitate additional resources, follow-up investigative work and/or review by the prosecutor's office. Patrol protocol shall first follow the "Incident Response" model "R.E.S.P.O.N.D."

The checklist is not all-inclusive; officers should always follow departmental policies and regulations directing the steps to be taken at a crime scene.

### Initial Response: Report, Evaluate, Stabilize

- Detain and identify: all persons
- Locate potential suspects/witnesses
- Contact person notifying law enforcement
- Identify all authorized personnel
- Ensure safety
- Neutralize any threat
- Consider hazardous materials/conditions
- Assess victim
- Notify EMS if needed
- Document condition, position, emotional state, and excited utterances of victim
- Assign officer/detective to victim

### Preserve the Scene

- Set perimeters for scene: think "large" (ropes, barricades, tapes, etc.)
- Do Not allow entry by non-authorized personnel
- Log entry/departure of persons in crime scene
- Document observations and record any changes: include sketches
- Do not contaminate the scene (touch or step on evidence)
- Do not move things before they are documented
- Document any changes in scene (victim, objects, or conditions)
- Note all possible evidence or suspects
- Note weather conditions
- Note any vehicles: description/registration

### Organize

- Inform Dispatch of arrival time at scene
- Update suspect information: (broadcast/teletype)
- Request additional resources as needed: supervisor, investigators, evidence technicians, search team
- Delegate responsibilities: every officer has role and must complete a report
- Be informed of possible multiple crime scenes
- Control sensitive/confidential information
- Make necessary notifications: coroner, family, advocates or trauma response personnel
- Determine need for search warrant

## Crime Scene Process: Normalize, Document

- Conduct planned search of scene
- Videotape the scene
- Photograph scene: exterior, interior, overall, mid-range, close-up
- Diagram/sketch, measurements
- Identify points of exit/entry
- Mark evidentiary items
- Collect/preserve evidence
- Photograph each item prior to collection
- Glove hands prior to collection and use different gloves for different items
- Refer to Wisconsin "Physical Evidence Handbook" for specific item collection
- Mark each package: case number, date, item number, short description and initials of person collecting
- Seal the container and initial the seal
- Document the chain of custody on a separate form with the same information as is on the package
- Document chain of custody: "who" collected/packaged

## Interviews

### Victim(s)/Witness(s)

- Identify
- Determine if any relationship of victim and suspect
- Document statement of events surrounding and including event
- Provide Victim's Rights pamphlet
- Provide officer's information /business card

### Suspect(s)

- Note and preserve any evidence on suspect
- Swab hands prior to toilet use
- Isolate suspect(s)
- Document any spontaneous statement
- Use Miranda/Waiver of rights
- Observe/document behavior/condition of suspect; including injury or disabilities
- Do criminal history checks
- Retain clothing

## Follow-Up

### Canvass Neighborhood of Crime Scene

- Prepare questions
- Assign locations
- Document contact or no contact

### Hospital Follow-Up

- Identify/interview all medical personnel in attendance
- Secure copies of all medical records: X-rays, reports, other tests results
- Get statement of physician in charge: victim's condition, prognosis
- Identify/interview any visitors

## CRIME SCENE – EVIDENCE

Proper recognition, collection, and preservation of physical evidence can make or break a case. The following checklist is a general overview intended to assist those collecting evidence at a crime scene.

For more detail consult the Physical Evidence Handbook, or a Wisconsin State Crime Laboratory.

Madison: (608) 266-2031  
 Milwaukee: (414) 382-7500  
 Wausau: (715) 845-8626

### Collect and Preserve Evidence

After photographing and sketching the scene:

- Keep **notes** of every item as you go:
  - the item number assigned
  - short description
  - who collected it, the date and time
  - the item location – in your notes, and in your sketch
- Use gloves to avoid contamination of you or the evidence. Change gloves often, when cross contamination can occur. Always change gloves before collecting another item.

### Containers

Collect item in the **appropriate container**, both in size and type. The container must be new and unused to avoid contamination of evidence.

- Breathable containers like paper bags, envelopes, and cardboard** should be used for things with residual moisture (e.g., all DNA material, clothing, etc.). Wet items must be air dried before packaging.
- Plastic** traps moisture and can destroy evidence through mold, rust, condensation, etc., and should be used for dry items. Material like plants must be air dried before placing in plastic.
- Glass** should be used for liquids where you don't want evaporation, such as in accelerants or drawn blood.
- Rigid Containers** should be used when the container's contact with the item might destroy fingerprints or other evidence adhering to the item.

### Specific Items

- Fingerprint items**  
 Package items for fingerprints securely to avoid movement and abrasion against the package when transported. Rigid containers work best to keep from collapsing and touching the item. Fingerprint cards are packaged and sealed as evidence.
- Blood and body fluids**
  - When collecting, *change gloves often to avoid cross contamination.*
  - All items collected from a scene should be air dried and packaged in separate breathable containers, affixed with a biohazard label, sealed, initialed, marked with appropriate information, and stored at room temperature.

- For stained items, collect the whole item. Package each item separately.
- For liquids and stains on surfaces:
  - Swab the area with the tip of a sterile swab, until the stain is gone or until 5 swabs have been saturated. For dry stains you must add a drop of clean distilled water to the tip of the swab to facilitate collection.
  - Air dry and package each area collected separately as above.
  - Collect a control from each area in the same manner from a “clean” area near the stain. Label “control for \_\_\_” and package and mark as above.
- Liquid blood from blood draws from the hospital should be refrigerated.
  
- Firearms and ammunition**  
Mark the package, not the item. A tag can be used on firearm trigger guard. In the case of the revolver, mark the hammer position on the revolver and sketch the positions of the ammunition in your notes. If unloading, package each separately and mark each package according to the position designations in your sketch. Render the firearm “safe” before packaging and transporting. Loaded firearms must be delivered in person. Delivery services (Mail, UPS, FedEx, etc.) will not accept loaded firearms.
  
- Fire Debris Samples**  
*DO NOT DRY fire debris samples.* The accelerants to be analyzed must not be allowed to escape/evaporate. Collect in separate airtight unlined metal paint cans (lined cans contain petroleum products). Collect liquid accelerants in airtight glass bottles with Teflon -lined caps, or absorb into a clean cloth and place into an unlined airtight metal paint can.

## Sealing

- Seal** the container with evidence tape, heat seal, or adhesive seal, and initial the seal. A seal is proper when the evidence cannot escape, and no one can get in the package without evidence of tampering.
- Initial the seal** – *The Crime Laboratory will not accept items that have not been properly sealed and initialed.*
- Write on the container** the case number, date, and item number, short description, in conjunction with your notes.
- Keep a **Chain of Custody** of the items as they move through the system, both on the package and on a form for your records.

## Submitting to the Crime Laboratory

- Make sure all items are sealed, and the seal initialed by the person recovering.
- Fill out Transmittal Form with complete information. Bring the appropriate information to the Crime Laboratory: transmittal form, case information, types of analysis needed, court dates, etc.
  - If sending evidence via mail (Certified, Insured, Registered) or a delivery service (UPS, FedEx, etc.):
  - Put all the individually sealed and labeled containers in a mailing package.
  - Place the transmittal form in an envelope and tape it to the **OUTSIDE** of the mailing package.
  - Send, being sure to get a tracking number and receipt.

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## ARREST

### WHAT CONSTITUTES

The Wisconsin Supreme Court has said:

The central idea of an arrest is the taking or detaining of a person by word or action into custody so as to subject his liberty to the actual control and will of the person making the arrest . . . there must exist the intent to take into custody and a corresponding understanding by the person arrested that he is in "custody," although no formal declaration of arrest is required.

Arrest also implies not only custody, but also the aim of bringing the person arrested into the judicial process to answer for an offense.

*An officer, in uniform, firmly grips the person's arm and says, "You're going down to the station." There is an arrest.*

*Same as above, except officer in plainclothes and identifies himself/herself. Arrest.*

*An officer makes no physical contact and says, "Would you mind coming down to the station to answer some questions?" The person asks if he/she must, and the officer says, "You don't have to, but it would help get this cleared up." There is no arrest, though this situation does approach the borderline.*

*An officer, in uniform, makes no physical contact and says, "We would like to ask you some questions down at the station. Let's go." The person does not have to do so, but is not so informed and may think he/she must comply. Furthermore, the officer may have no "intent to take into custody" and intend only a request that the person voluntarily come down to the station.*

This situation turns primarily on the fact that the suspect believes that he/she was under arrest and whether that belief was reasonable. This is a close case but most likely would be held to constitute an arrest. The safest procedure is, if you intend to make an arrest, convey that information clearly to the suspect; if you do not intend to arrest but merely to question, advise him/her of that fact and the fact that he/she is not in custody. There may be questioning without an arrest, done at the officer's insistence (*see* Stop and Frisk), but only in the vicinity of the public place where the person is stopped. Transporting the person to the station or another location for the purpose of questioning requires either arrest or the person's consent.

In order for an arrest to occur, the subject must be physically restrained or alternatively must comply with the officer's directive.

*An officer tells a subject to stop and adds, "You're under arrest," and yet the subject keeps on running. No arrest has yet occurred because the subject has not yet been physically restrained nor has the subject complied with the officer's wishes.*

Whether an arrest has occurred may be very important, as in false arrest or resisting arrest, or in determining if the person's Miranda rights should have been read to him/her. If the officer intends to arrest, it should be made clear, as by saying, "you're under arrest"; and when no arrest is intended, this should also be made clear as by informing the person he/she is not required to come down to the station, merely requested to do so, or that he/she is free to go, or he/she is not under arrest.

Both the officer's words and conduct should be clear. The words "you're under arrest" leave no room for doubt, but when no arrest is intended, and the words don't indicate otherwise, conduct may induce an understanding of arrest in spite of the words.

On the other hand, were a plainclothes officer to display his/her badge, begin asking questions after a pat-down and verbally or physically prevent the person from moving away, it would probably be an arrest even if not intended by the officer.

The officer, if off duty or in disguise, **must** make a reasonable effort to inform the arrestee of his/her identity, as an officer. If the person has no reason to know the officer's identity, he/she can assume he/she is being assaulted and is entitled to use force in self-defense. The Wisconsin Supreme Court has upheld a damage award against an officer for

negligence in attempting to make an arrest. He was in disguise and didn't inform the plaintiff of his identity as a police officer.

### WHEN CAN ARREST BE MADE

Under Wisconsin law, there are four situations in which a law enforcement officer is statutorily authorized to make an arrest:

1. With a warrant commanding arrest of the person.
2. With belief on reasonable grounds that a warrant for the person's arrest has been issued in this state.
3. With belief on reasonable grounds that a felony warrant has been issued for the person's arrest in another state. (A Wisconsin law enforcement officer shall not arrest on a **misdemeanor** warrant issued from **another state**.)
4. With belief on reasonable grounds that the person is committing or has committed a crime.

The "reasonable grounds" specified in the statute is the same as "probable cause."

### With Warrant

When an arrest is made pursuant to a valid warrant, and the warrant is valid on its face and reasonable effort is made to properly identify the person to be arrested, the officer and his/her department will normally be protected from any claim of false arrest or false imprisonment, and the arrest itself will be valid. When operating with a warrant, the officer does not have to prove his/her right to make the arrest at a later date, as he/she would have to if the arrest were made without a warrant. Obtaining a warrant prior to arrest is the best procedure in any case where it is practicable to do so.

An arrest warrant must be issued by a judge or properly authorized court commissioner. To obtain a warrant, the officer must present a complaint for warrant providing sufficient information for the judicial officer to find probable cause to believe: (1) that a crime has been committed; and (2) that the person to be arrested committed it.

In 1970, the Wisconsin Supreme Court held that probable cause must appear from the complaint. If the necessary information is contained in affidavits or testimony, it must be reduced to writing and specifically incorporated by reference into the complaint.

A complaint that states merely, "John Doe did feloniously murder his wife Jane Doe," gives no information on which to find probable cause. A recital that Jane Doe had been found dead from gunshot wounds (established by coroner), caused by a certain weapon (established by ballistics) and bearing fingerprints of John Doe would provide sufficient information from which to find probable cause. The Wisconsin Supreme Court has said information obtained in violation of the Miranda warnings, inadmissible at trial, may nevertheless be used as the basis for an arrest warrant.

### Source of information

Police Investigation: Information discovered by one law enforcement officer is "known" to all officers. Facts discovered by ten detectives may be used as the basis for a complaint filed by a different officer, and the reliability of the other officers need not be shown.

Victim: The uncorroborated evidence of a crime victim will usually provide probable cause to support a warrant.

"Good Citizen" Informer: The information concerning a crime observed or otherwise obtained by a good citizen just doing his/her duty in reporting it to the police will generally support a warrant. Examples: A reputable farmer hears shots, then sees two men, known to the farmer, cleaning out a deer in June; a dog walker observes the license number of a hit-and-run automobile. The U.S. Supreme Court has held that to show probable cause, an officer must establish: (1) the underlying circumstances from which he/she concludes that the informant is reliable; and (2) the underlying circumstances or manner in which the informant obtained his/her information is reliable. The court will consider the totality of the circumstance to decide on the reliability of an informant. The Wisconsin Supreme Court has decided that when the informant is a victim or eyewitness rather than the unnamed police contact, the emphasis is on the second test. The reliability of a crime victim need not be established. When the informant is an eyewitness, some corroboration of his/her information may be required, but generally his/her reliability need not be shown either.

Paid Informer: This confidential informant who provides information for cash or favors is considered less trustworthy than the above sources. Whenever a paid informer is utilized, the officer must exercise close supervision to protect against possible misconduct by the informer. However, once prior reliability is shown, the paid, or reliable, informant's testimony will support a warrant as fully as any of the other sources listed.

The reliable informant's name may be withheld, but past examples of his/her reliability must be cited. For a first-time paid informer, some corroborative information will generally be required, since no showing of reliability can be made without it, and only the "reliable informant" will support a warrant.

It is important to know these requirements because a warrant lacking in any of them will be defective, and a defective warrant is served only at the officer's risk. It is also important to know that a warrant may not be altered after it is issued, not even to correct an inaccurate date.

#### Serving an arrest warrant

An arrest warrant will be directed to all law enforcement officers. It may be served anywhere in the state, but must be served by an officer with arrest power in the locality where it is served. Do not attempt to serve a warrant outside of your geographical jurisdiction. There is no statutory provision as to time of service, but the court has said the "command" to make the arrest is not to be at the officer's leisure. "Without delay," "promptly" and "within a reasonable time" are various indications as to permissible time for service. Although it is required to be served promptly and within reasonable time, the arrest warrant does not expire after a specific time period, and is valid until executed or withdrawn. On the other hand, a misdemeanor warrant served late on a Saturday night resulting in a jail stay until Monday morning might well be seen as served at an unreasonable time. The gravity of the offense, potential for escape and for doing further damage should be considered. A warrant for failure to answer summons for a parking violation served late at night would be unreasonable; a warrant for murder or rape served at 3:00 a.m. Sunday morning would be reasonable; and a warrant for misdemeanor theft served at 5:00 a.m., when the officer knows the person leaves for work at 6:30 a.m., would probably be acceptable.

The warrant need not be in the arresting officer's possession, so long as he/she knows it has been issued. This knowledge may be gained through a broadcast on the police car radio. The warrant is served by arresting the person and informing him/her of the nature of the offense with which he/she is charged, "as soon as practicable." This does **not** mean immediately; a false reason or no reason may be given at the time of the arrest and the truth told only after the person is securely in custody in an area safe to the officer. There may be times when the arrest may be made without danger if a minor offense is cited, whereas the true reason would evoke violent resistance. After the arrest, the officer will endorse upon the warrant the time and place of the arrest and his/her mileage and fees for it.

#### Without Warrant

While perhaps the majority of arrests are warrantless, such an arrest, at least theoretically, is an exception to the rule of first obtaining a warrant. An officer may arrest whenever he/she has probable cause to believe:

1. A valid warrant (felony or misdemeanor) is outstanding in Wisconsin.
2. A valid felony warrant is outstanding in another state.
3. The suspect is committing or has committed a crime.

It is not necessary that a misdemeanor be committed in an officer's presence for him/her to arrest for that offense. Thus, whenever a crime has been committed, the officer may arrest for it, except that, absent consent, whenever the person to be arrested is in his/her residence (home, apartment, etc.), in addition to probable cause it is necessary that there be exigent circumstances to authorize the officer to go into the residence to effect the arrest. Arrest of a person in his/her home, without a warrant, should be done only in the most extreme circumstances. The better practice is to have a warrant for arrest in all circumstances where it is at all practical.

#### Exigent circumstances

To make an arrest without a warrant in an area for which the subject has a reasonable expectation of privacy requires a showing of probable cause by the officer and the showing of reasonableness as to why a warrant was not obtained prior to the arrest. The reasonableness should be more than just inconvenience to the officer, but a basis such as a possibility of flight, not being able to properly identify the suspect, harm to other persons, destruction of evidence or matters of that nature.

To make an arrest in a person's home without a warrant, the courts have been very strict on there being "exigent circumstances" in addition to probable cause. 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.

If exigent circumstances do not exist, it is absolutely essential to have a warrant or consent to enter the premises by someone authorized to give that consent to make an arrest of a person in his/her own residence. In all other circumstances where no reasonable need for immediate action exists, a warrant should be obtained.

#### Probable cause

The probable cause required for warrantless arrest, the Wisconsin Supreme Court has said, is no less than would support a warrant. It is "that 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. The facts on which probable cause is based must be legally obtained. The fresh needle puncture mark on an addict's arm discovered by forcibly and unjustifiably removing his/her jacket will not support an arrest. The test for probable cause is objective, not subjective. It may not be enough that the arresting officer believes that the defendant probably committed a crime; it must be sufficient evidence to convince the arresting officer that the hypothetical "reasonable officer" would find probable cause.

*An officer receives a tip from an unknown (therefore unreliable) source that X, a known heroin user, will be purchasing a quantity of heroin from Z, an unknown person, at a certain time and place (a public place). The officer conceals himself/herself near the place and, at the time predicted, observes X receive a package from a person in return for a quantity of paper money. There is probable cause to arrest both persons after the transaction.*

*In the above situation, the officer arrives at the place too late and observes X alone, walking along the street holding a small unconcealed package. There is no probable cause for arrest.*

If the officer arrives at the scene of a crime in progress by chance or in answer to a call for assistance, there is no question that a warrantless arrest may be made then or when the suspect is apprehended after a chase. The same is not true when an officer answers a call and upon arrival sees a person fleeing from the scene of what appears to be a just completed crime. At this point the officer certainly has basis to "stop" the person for a reasonable time and question him/her regarding the crime, but it is not sufficient basis to arrest without verifying some facts.

There are two requirements for valid warrantless arrest when the offense is not committed in the officer's presence: (1) there must be reasonable grounds to believe that a crime has been committed by the suspect; and (2) it is impractical to obtain a warrant under the circumstances.

*A police bulletin reports a robbery and describes the suspect and the suspect's car. An officer, hearing the description, sees a car matching the description travelling away from the scene of the reported robbery a very short time after the reported incident. As the officer gives chase, the suspect attempts to flee at a high rate of speed. When caught, warrantless arrest is valid.*

*In the above situation, the driver of the car confesses and at the station reveals the name and address of a person who assisted in previous crimes. A warrant should be obtained to arrest the other person unless time and other factors require immediate arrest.*

Even where a valid warrantless arrest is not justifiable, the officer may sense that something is wrong. In such "suspicious circumstances," a stop and questioning situation may be present.

#### Summons in lieu of warrant

An arrest warrant must be issued by a judge or court commissioner, but a district attorney may "in any case" after issuance of a complaint issue a summons instead of requesting a warrant. For misdemeanors subject to a maximum imprisonment of not more than six months, even if a warrant is requested, the judge must issue a summons only, unless he/she is convinced that the accused would not answer a summons. It is important to note that a summons, unlike a warrant, does not authorize an arrest, and does not justify a search.

The formal requirements of a summons are less demanding than for a warrant. A summons must be served by a law enforcement officer and must command the defendant to appear before a court at a certain time and place, but need only be "substantially" in the form set forth for a warrant.

**Serving a Criminal Summons:** The summons must be served by a law enforcement officer, not by professional process servers. It may be served anywhere in the state by personally handing it to the defendant, or by leaving a copy at his/her usual residence with a responsible person living there, or by mailing a copy to the defendant's last known address. A copy of the complaint must be attached to the summons or be on the same form. If the defendant is a corporation, a summons must be used, not a warrant.

### USE OF FORCE

**General Rule:** A law enforcement officer making an arrest is entitled to use whatever force is reasonably necessary. Whether the force used is reasonable depends upon the totality of facts and circumstances in each case. Several factors to be considered in making this determination are the known character of the arrestee; the risks and dangers faced by the officer; the nature of the offense involved; the chance of the arrestee's escape if the particular means are not employed; the existence of alternative methods of arrest; the physical size, strength and weaponry of the officers as compared to the arrestee; and the exigencies of the moment. If the law enforcement agency has specific local rules, such rules should be thoroughly understood and consistently followed.

**Excessive Force:** The use of more force than is reasonable will not affect the validity of the arrest. It will expose the officer to civil suit, discipline or both, and in aggravated circumstances possible criminal liability also.

**Deadly Force:** In Wisconsin, an officer may use deadly force when the officer reasonably believes it is necessary to prevent death or great bodily harm to himself/herself or to others. In Wisconsin, the definition of deadly force applied by the police is the use of any means or instrumentality intended to or likely to cause death. Therefore, the justification for deadly force is the imminent threat of death or great bodily harm, but the application of deadly force is that action which is likely to cause death.

In a limited number of instances, an officer may use deadly force in attempting to make an arrest or prevent escape. The arrest must be for a serious offense in which the suspect has used or threatened to use deadly force against some member of the public, such as murder, rape, assault with a deadly weapon, etc. The officer must reasonably believe there is no other way to make the arrest or retain custody of the person once arrested. Even if the suspect is fleeing from the officer, there has to have been a use or threat of use of deadly force by the suspect to authorize deadly force. In any situation the officer should not use deadly force unless he/she reasonably believes it is necessary, and then only as a last resort.

*A murder suspect, known to be armed and to have previously shot an officer, is seen by Officer X, who calls on the suspect to stop and throw down his/her gun. If the suspect flees, the officer is justified in shooting him/her.*

*A robbery suspect has shot at the pursuing officer and then runs away. The officer may shoot the suspect while in pursuit because it is reasonable to assume the suspect will shoot again.*

An officer may also use deadly force, at any time, even when no crime has been committed, in defense of himself/herself or another, whenever the officer reasonably believes it necessary to prevent imminent death or great bodily harm to himself/herself or the other person seen as being in danger.

**Lesser Crimes:** In all other cases, the officer may not use deadly force, even if this restriction makes it impossible to arrest the person as, for example, a fleet-footed suspect outrunning the officer and successfully escaping. It makes no difference whether the person flees or resists the arrest if the resistance is not with deadly force. However, the officer has a duty to attempt to make the arrest, and if the person resists using deadly force, the officer may use deadly force in self-defense. Even in self-defense, however, the officer must reasonably believe that force lesser than deadly force will not be effective.

*X, wanted for a previous shoplifting, flees when X sees an officer approaching X's home. Deadly force is not justified.*

*Z, wanted for a traffic offense, resists the arrest lunging at the officer with a switch blade. Even though it is a minor offense (not a felony), deadly force is justified to protect the officer's life.*

Even in self-defense, however, the officer must reasonably believe that force lesser than deadly force will not be effective.

Use of deadly force requires there be an **imminent** threat that the arrestee will use deadly force against someone.

## JURISDICTION OF PEACE OFFICER

### Where The Officer May Act

City, town or village officers, sheriffs or deputy sheriffs have jurisdiction to act as officers in their city, town, village or county. They may act as such officers anyplace within the jurisdiction for which they are appointed.

Conservation wardens may act as such anywhere in the state.

State traffic patrol officers may act as such anywhere in the State of Wisconsin.

All police officers whose jurisdiction is in Milwaukee County shall have the powers of police officers throughout Milwaukee County.

Federal law enforcement officers, while engaged in the performance of their duties, may make an arrest for a violation of state law anywhere in the state when the officer has reasonable grounds to believe that a felony has been or is being committed in his/her presence and has reasonable grounds for believing that the person to be arrested has committed the felony.

An officer's geographical jurisdiction may be extended by Wisconsin's fresh pursuit law, Uniform Act on Close Pursuit, Wisconsin's mutual aid statutes and the expander of jurisdiction statute. These statutory sections are explained below:

### Fresh Pursuit

Fresh pursuit means 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 now 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.

By statute (sec. 349.03(4), Stats.), an officer may arrest for operating while under the influence (sec. 346.63, Stats.) or refusal to take a blood alcohol test (sec. 343.305, Stats.) anywhere in the State of Wisconsin, as long as the offense occurred in his/her jurisdiction, without necessarily being in fresh pursuit. This rule applies only to the two offenses named above and is meant to cover the situation where an officer is dispatched to an accident scene, upon arriving finds the driver already conveyed to a hospital outside of his/her jurisdiction and after investigation desires to make a drunk driving arrest. The officer may go to the hospital, anywhere in Wisconsin, and make the arrest for drunk driving or refusal to take a test, whichever is appropriate, using a citation from his/her jurisdiction and citing a violation of his/her city, town, village or county ordinance.

### Close Pursuit (Pursuit Out-of-State)

Close pursuit into an adjoining state is governed by a different law which applies only to felonies. The Wisconsin statute entitled "The Uniform Act On Close Pursuit" allows a member of a duly-organized peace unit from another state, who enters Wisconsin in close pursuit of a person he/she has probable cause to believe committed a felony in his/her home state, the same authority to arrest as a law enforcement officer of this state. When the peace officer of another state makes his/her arrest in Wisconsin, the Act requires that he/she shall, without unnecessary delay, take the person arrested before a judge of the county in which the arrest was made, and the judge will have a hearing to determine the lawfulness of the arrest. If the arrest is determined to be lawful, the judge shall commit the person to jail for a reasonable period of time to await the issuance of an extradition warrant by the governor, or admit him/her to bail for such purpose.

All of our surrounding states (Minnesota, Michigan, Iowa and Illinois) have a comparable law and, therefore, a Wisconsin officer may, in close pursuit of a felon, go into those states to make an arrest. Any officer making such an arrest should familiarize himself/herself with the law of the state in which the arrest is made as to the procedure he/she must follow subsequent to arrest.

## Mutual Aid

Another way in which the officer's territorial jurisdiction can be expanded is by invoking the Wisconsin statute on mutual assistance. This statute provides that upon the request of any law enforcement agency, 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 all protections for the officer such as worker's compensation.

Anytime that it is necessary to make an arrest outside of your jurisdiction and you are not within the definition of Wisconsin's fresh pursuit statute, you should request the assistance of the local law enforcement agency or invoke mutual aid so that you are not acting as a citizen as opposed to a law enforcement officer with full police powers.

### Mutual aid--between states

Section 175.46, Stats., now allows for mutual aid agreements to be reached with neighboring states, provided the following provisions are met: (1) the Wisconsin law enforcement agency must be located in a county that has land within 5 miles from any land of the state with which the agreement is made; (2) the agreement must be in writing; and (3) at least 30 days before entering into the agreement, the Wisconsin law enforcement agency must submit a copy of the proposed agreement, with four required provisions, to the Department of Justice for the department's review and comment; however, the Wisconsin law enforcement agency need not have the consent of the department to enter into the agreement.

### Expander of Jurisdiction Statute

Section 175.40(6), Stats., allows for a Wisconsin law enforcement officer to arrest a person or to provide aid or assistance anywhere in the state if the following criteria are met:

1. The officer is on duty and on official business.
2. The officer is taking an action that he/she would be authorized to take under the same circumstances in his/her territorial jurisdiction.
3. The officer is acting to respond to any of the following: (a) an emergency situation that poses a significant threat to life or bodily harm; or (b) acts that the officer believes on reasonable grounds constitute a felony.
4. The law enforcement officer's supervisory agency must have adopted and implemented a written policy as to this issue.

## WHEN MAY A POLICE OFFICER ACT

We have explained above the geographical limitations of a police officer's authority, and now the question is what types of laws may he/she enforce.

With the valid issued warrant the officer may, pursuant to that warrant, arrest within his/her jurisdiction for violation of any law, whether it be an ordinance from another county or municipality, a crime committed in another county under Wisconsin statutes or a felony committed in another state.

Without a warrant, a peace officer has general authority to enforce all state statutes and all ordinances of the county or municipality which employs him/her. By law, also, 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 ch. 29 of the Wisconsin statutes whenever notice of violation thereof is given to them by the department or its wardens. This action should normally only be taken at the request of the DNR or a warden.

Conservation wardens have general authority to act as peace officers with respect to laws and regulations pertaining to fish and game, boating and snowmobiling. Legislation has expanded their authority to allow arrests in the assistance of other law enforcement agencies or for crimes committed in their presence. The primary function of wardens, however, remains in the area of enforcing fish and game regulations and laws.

State traffic patrol officers and inspectors have general authority with respect to all traffic laws and regulations. State traffic patrol officers and inspectors shall have the full powers of a law enforcement officer as to all forfeitures and criminal matters, but neither shall be permitted to conduct investigations for crimes under chs. 939 to 948, Stats. The law makes clear, however, that the primary responsibility of state traffic patrol officers and inspectors is the enforcement of traffic regulations.

### FALSE ARREST

Under Wisconsin law, false imprisonment is a crime which consists of intentionally confining or restraining another with knowledge that the actor has no lawful authority to do so. False imprisonment is also a tort, a civil wrong which is compensated by damages. The tort of false imprisonment results from the intentional unlawful restraint by one person of the physical liberty of another. A false arrest will result in an action for false imprisonment--the only difference being that the false imprisonment is done under an assertion of legal authority. An arrest under a warrant, void on its face, when no probable cause exists is a false arrest, as is a warrantless arrest when no probable cause exists.

### Defenses

Where an officer arrests under a warrant not void on its face, and the officer has used reasonable care to make sure the person being arrested is the one identified in the warrant, he/she is protected from a claim of false arrest. If he/she makes a warrantless arrest of a person later shown not to have committed the crime for which the arrest is made, but the arrest is made on probable cause, this also is a complete defense.

## **ENTRAPMENT**

### WHAT CONSTITUTES

The basis of entrapment is encouraging the commission of a crime by a person who had no intent to commit a crime until induced or persuaded to do so by the law enforcement officer. The critical element is whether the defendant was **predisposed** to commit the type of crime in question. Arranging the opportunity for the commission of crime is **not** entrapment so long as the idea to commit the crime comes from the person arrested and not from the officer.

*An officer observes a car traveling behind him/her. The officer speeds up a little and the car follows suit. The officer continues to increase speed, clocks the following car and arrests for speeding. Entrapment.*

*A patrolman in an unmarked car on a deserted county highway is challenged by a person to race and arrests the person prior to actually drag racing. No entrapment.*

*Undercover officer acts as drunken derelict in high crime area and arrests two men attempting to "roll" him/her. No entrapment.*

In undercover vice squad operations, courts use the same test (predisposition). The officer may inquire, negotiate and use deception to gain evidence.

*An undercover officer begs a drug user to sell the officer some drugs claiming to be suffering from withdrawal symptoms. Entrapment.*

In certain criminal fields, the courts recognized the need for law enforcement officials to participate to some extent in the criminal activity in order to either gain the criminals' confidences or gather evidence.

*An officer believes a bookstore owner to be engaged in selling hard core pornography. The officer enters the store in civilian dress and says a friend has advised that the officer might get some "hotter stuff" than is displayed on the racks, but is told by the owner that such materials are available only to good customers. The officer then purchases "soft core" pornography on several occasions while continuing to request "hotter stuff." The owner eventually offers to sell hard core material and is arrested. No entrapment.*

*A narcotics officer arranges to be introduced to a suspected pusher. Over a period of time the officer provides certain ingredients, legally available in themselves, necessary in the preparation of the drugs. When sufficient evidence has been gathered, the pusher and associates are arrested. No entrapment.*

*A narcotics officer is informed that X is selling marijuana. The officer arranges to meet and get to know X, and some time later requests X to sell the officer some marijuana. X refuses saying X buys it for X's own use and never sells to anyone, since pushing is more serious than smoking. The officer continues to coax X to sell the officer marijuana and, some time later, X finally agrees to do so and is then arrested. Entrapment as to selling but not to possession.*

It is always helpful to make more than one buy or other transaction, if only to show that the offender was in the business. This goes to meet any entrapment claim as well as to show the seriousness of the offender's conduct. Recently, state and federal officers joined together in a "sting" operation in which the officers set up a storefront "fence" and purchased stolen goods from persons over a long period of time. The operation was fully videotaped and was a successful venture.

#### REMOVING NECESSARY ELEMENT

When a law enforcement officer obtains knowledge of planned or desired criminal activity and proceeds to set a trap for the would-be criminal, the degree of cooperation may, in rare instances, destroy an essential element of the crime.

*An officer receives word of a planned burglary from a store by an employee and consults with the owner of the store. They agree to afford an easy opportunity by which to apprehend the employee. The owner provides the employee with a store key, knowing the given reason is a pretext, with the intent to facilitate the employee's plan to burglarize. The employee is arrested that night upon entering the store. No crime since the employee entered with the owner's consent; thus, a necessary element of burglary is lost.*

*An undercover policewoman agrees to meet a suspected rapist. He is arrested by concealed officers as he attacks the policewoman. There is attempted rape, no consent to his actions.*

### "MIRANDA WARNINGS"

#### WHAT ARE

The U.S. Supreme Court requires that an accused be informed of his/her constitutional rights in circumstances described below. It is suggested that you read the warnings from the Department of Justice Miranda card verbatim so no question may be made at trial as to whether the defendant was fully advised.

#### WHEN REQUIRED

Miranda warnings are required by the U.S. Supreme Court to be given prior to any "custodial interrogation," which may occur at a suspect's home, on the street or at the station house. This situation occurs, said the court, whenever an investigation has moved from the investigatory to the custodial stage, either actual or constructive custody. Constructive custody may occur prior to any arrest. The critical factor is that point in which a reasonable defendant would believe that they are not free to go and are in police custody. If officers surround the suspect and refuse to allow the suspect to leave, this would be constructive custody. Note, however, it is better to warn too early than too late.

Miranda warnings are not required for **non-criminal** investigations and are not required when the interrogation is not "custodial." When a crime is committed, a person may be interrogated as a part of the officer's investigation without such interrogation being custodial. Finally, the warnings are not required when a person's statement is volunteered. Some of the factors the courts will consider in determining whether a situation is "custodial" include time of day, number of officers involved in questioning, manner of questioning, place of questioning, length of questioning and persons present with the suspect. Even when Miranda is fully complied with, the statement must be voluntarily given; that is, not the product of force, threats, harassment or improper inducements.

*In a murder investigation the officer has three suspects. One is taken to the police station. The officer does not intend an arrest, but the suspect reasonably believes to be under arrest. After questioning, the suspect confesses to the crime. The warnings should have been given.*

*In the above example, further investigation eliminates all but one suspect. The officer goes to the suspect's home to question the suspect. The warnings need not be given.*

*An officer responds to a report of a shooting and asks a bystander, later found to be the victim's husband, "What happened here?" The man confesses having shot his wife. No warnings were required.*

*A person enters a police station and confesses to a crime. This is a truly volunteered statement and no warnings are required.*

If interrogation of a suspect is stopped, for example, late at night or by one team, and resumed the next morning or by a different team of interrogators, the warnings should be repeated before the questioning is resumed. Here interrogation "presupposes a series of authoritative demands for answers, intended to expand the scope of the investigation rather than merely clarify." The booking process with routine questioning does not constitute interrogation. An arrested person might ask, "How much time can I get for this?" The officer responds, "For what?" The arrested person answers, "For the robbery." This would not constitute interrogation.

The suspect can exercise his/her Miranda rights in one of two ways:

1. He/she can choose to remain silent.
2. He/she can request the presence of his/her attorney during any police questioning.

The rules as to the resumption of questioning after the suspect has asserted his/her Miranda rights varies dependent upon which of the two Miranda rights are involved.

#### Remaining Silent

Whenever a suspect states an unwillingness to talk, the interrogation must cease. The police may lawfully re-initiate the interrogation, but may do so only after two requirements are met:

1. The police must wait a sufficient period of time before re-initiating the interrogation. The courts have not set a bright line rule as to what constitutes a sufficient time, but it is clear that there must be a wait of a minimum of two hours.
2. The police must re-Mirandize the suspect.

In addition to these two absolute requirements, the courts would prefer if the following two circumstances were also present:

1. A different officer handles the second interrogation.
2. The interrogation is about a different offense.

These last two requirements are not essential, as it is likely that if one of them is present along with the two required circumstances, the re-initiation of the interrogation would be lawful.

*A person is in custody and is asked questions about a burglary committed in jurisdiction A. The person asserts his/her Miranda rights to be silent. Two days later, while still in custody, a different officer initiates questioning with the suspect about a burglary committed in jurisdiction B. This second interrogation is permissible because the interrogation is conducted by a different officer about a different offense and after the passage of a sufficient period of time.*

#### Request Of Counsel

If the suspect asserts his/her Miranda rights by requesting an attorney, the interrogation must cease and the police **cannot** re-initiate the interrogation as to any charges under any circumstances, so long as the defendant is in custody, unless this suspect is accompanied by his/her attorney. The U.S. Supreme Court has held that it is not enough to provide the suspect with access to an attorney; the attorney must be actually present during the interrogation.

*A person is in custody and during questioning requests the assistance of counsel. Defendant confers with counsel. Two days later, while still in custody, a different officer questions the defendant as to a different offense, but counsel is not present. This is a violation of the defendant's Miranda rights, as the request for counsel prohibits further custodial questioning as to any charges without the actual physical presence of counsel.*

It is not required for the police to advise the suspect of an attorney's availability so long as Miranda is complied with and the suspect does not express a wish to have counsel present during questioning.

*A person is in custody and advised of his/her Miranda rights. The suspect agrees to proceed with the interrogation without counsel. During questioning, a public defender arrives at the police station and demands to halt the interrogation so that he/she may confer with the suspect and determine if his/her services are needed. There is no requirement for the police to enter and halt the interrogation or inform the suspect of the attorney's proximity, unless and until the suspect on his/her own initiative requests an attorney.*

**NOTE:** The situation would be different if a defendant had already been charged and already was represented by the attorney.

While the police must give the Miranda warnings in a technically precise and complete fashion, the suspect may assert his/her Miranda rights in an informal and imprecise fashion. If it is apparent the suspect wishes to remain silent or wants an attorney, or both, the officer must stop the questioning. A suspect can, of course, at any time **at his/her own initiative** seek to resume the questioning with police, but the police may not at their own initiative resume questioning except under the specific circumstances referred to earlier.

There may be occasions where the subject is unclear as to whether or not they want an attorney. The subject might say something to the effect of, "Do you think I need an attorney?" "Do I need an attorney?" "Would an attorney help?" "I can't afford an attorney." If the subject makes an ambiguous reference to an attorney, the officer should do the following:

Stop the interrogation.

1. Ask the subject to clarify the attorney issue.
2. If the subject expresses a willingness to proceed without an attorney, then the officer can lawfully resume the ongoing interrogation.
3. Conversely, if the subject, during the clarification phase, now expresses a wish for an attorney, the rules governing a situation where a custodial subject asserts a right to an attorney control.

Finally, if one of the officers of the department is aware that the suspect has exercised his/her Miranda rights, the whole department is deemed to be aware of this fact. Therefore, it is important for the officers of the department to communicate with each other as to the Miranda issue so as to avoid the prospect of an inadmissible confession.

#### HOW GIVEN

The warnings should be read to the suspect slowly and clearly, and obviously must be given in the suspect's language. If read from this handbook or a wallet card, the suspect should be allowed to read them if he/she so requests. If the suspect asks any questions concerning his/her rights, they must be answered. A suggested technique is to have the suspect repeat in his/her own words the warnings back to the officer. This is a valuable way of later proving that the suspect "understood" the warnings.

If the suspect wants an attorney and cannot afford one, you should advise the suspect that the State Public Defender will provide counsel, and the nearest Public Defender's officer should be notified.

#### WAIVER

Any statements made by an accused after being informed of his/her rights and waiving them will be admissible, but the burden is on the state to show **voluntary** and **understanding** waiver. If possible, the waiver should be written and witnessed. If oral, the officer should carefully note and record as soon as possible the suspect's exact words. Waiver may **never** be presumed from the suspect's silence.

### **JUVENILES**

#### JURISDICTION

Under Wisconsin law, for purposes of criminal or forfeiture prosecutions, a juvenile is defined as a person under the age of 17. Thus, a 17 year old may be arrested by law enforcement and is to be treated as an adult.

Also, the juvenile code will have jurisdiction on children who have reached the age of 10--making the age range for which a juvenile delinquency petition can be filed to be 10-17.

Also, if a child is at least 10, he/she can be treated as an adult if he/she commits or attempts to commit the following offenses: (1) first degree intentional homicide; 2) second degree homicide; 3) reckless homicide; and 4) battery to a guard in a secured detention facility. However, if a child under 17 but above 10 is to commit such an offense, he/she is still to be placed in a secure detention facility upon arrest and will continue to be incarcerated in a juvenile facility until, if convicted, he/she turns 17, at which time he/she is to be placed in an adult correctional facility.

Juveniles may be waived into adult court at age 15, and if the charge is a serious felony, such as first degree sexual assault, car jacking or armed robbery, they may be waived at age 14.

Also, if a juvenile has been waived into adult court previously and convicted, or if he/she has been waived and his/her case is pending, he/she is to be automatically treated as an adult for any subsequent offense he/she commits.

### ARREST

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

If a juvenile is taken into custody, his/her parent or guardian must be notified as soon as possible. Then, unless it is "impracticable, undesirable or has been otherwise ordered by the court," the juvenile must be released to the custody of his/her parent or guardian. If the juvenile is not to be released, there must be a written order of the juvenile court setting forth the reasons for his/her detention. Finally, a juvenile may never be detained in a jail or other facility for adult prisoners unless it is a separate, approved room or ward completely separate from adult prisoners.

The Miranda rule applies to juveniles in a similar fashion as it is applied to adults. While there is no requirement to have parents present during a custodial interrogation, their absence may be an issue as to whether or not the statement is voluntary.

The procedures for handling juvenile matters vary considerably from county to county. An officer handling a juvenile matter is strongly urged to check with the district attorney, the juvenile court and the juvenile intake worker of his/her county as to the procedures they are following in these matters.

## **SEARCH AND SEIZURE**

### WHAT CONSTITUTES

#### Search

A search, as defined by the Wisconsin Supreme Court decisions, is a 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.

#### 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 Constitution provides a high degree of protection for individuals from searches and seizures made by police officers. Searches and seizures carried out by officers without a warrant must be clearly justified by officers as falling into one of the well-defined exceptions to the Fourth Amendment warrant requirement. To avoid suppression of evidence and possible personal liability, officers should always attempt to obtain a warrant whenever reasonably possible before instituting a search and a seizure.

### WHEN AUTHORIZED

Under Wisconsin law, a search of a person, object or place may be made, and things may be seized, when the search is made pursuant to sec. 968.10, Stats.

1. Incident to lawful arrest.
2. With consent.

3. Pursuant to a valid search warrant.
4. With the authority and within the scope of a right of lawful inspection.
5. Pursuant to a search during an authorized temporary questioning as provided in sec. 968.25, Stats.
6. As otherwise authorized by law.

Searches and seizures are also authorized when they are covered by the judicially recognized exceptions to the warrant requirement.

1. Automobile-probable cause search (Carroll Doctrine)
2. Inventory searches
3. Exigent circumstances- hot pursuit
4. Protective sweep
5. Terry stop and frisk

There are also permissible searches, which do not involve the Fourth Amendment, as there is no expectation of privacy. These types of searches are:

1. Open fields
2. Abandoned property
3. Dog sniffs in public places
4. VIN numbers
5. Open view
6. Fly overs

Whenever an officer discovers evidence while conducting a lawful search, the officer may seize the item under the plain view doctrine, provided that the following three factors are present:

1. The item is in clear plain view.
2. The item is obviously evidence or contraband.
3. The officer is lawfully in the area where the discovery was made.

#### With Warrant

To obtain a search warrant, like an arrest warrant, the officer must present a complaint for warrant or an affidavit which provides sufficient information from which the judge may find probable cause to believe that the objects to be seized are at the place to be searched and are subject to lawful seizure. A warrant may be issued to search a specific person as well as a place or object. Additionally, while the same quantum of evidence is required to show probable cause as in the arrest warrant, such evidence must be recent in time. A lapse of even four days may be sufficiently stale as to prevent the issuance of a search warrant. For an arrest warrant, it is immaterial whether the evidence shows the crime to have (probably) been committed hours or weeks before. It must be reasonable to infer from facts shown in the affidavit that the things are to be found at the place of search. Anticipatory warrants may be issued if the officer has shown the judge facts that the evidence will be at a location at some future time. *See* sec. 968.23, Stats., for sample form of search warrant.

#### Requirements for a valid warrant

To be valid, a search warrant must:

1. Be in writing and signed by the issuing judge.
2. Be directed to a law enforcement officer.
3. Command that a particularly specified place or person be searched.

4. Particularly describing the subject matter of the search.
5. Be dated.
6. Be based upon a sworn complaint or affidavit showing "probable cause."

As with an arrest warrant, a search warrant defective on its face is served at the officer's peril. A search warrant must meet all of the above requirements. In urban areas especially, the officer should pay special heed to the requirement of a particularly specified place. A physical description of the building, or a description of the apartment as being on the second floor in the north east corner of the building, are good examples of how to insure accuracy in the warrant. If you intend to search the home, the garage and the car in the garage, enumerate all of these areas. Furthermore, any evidence seized under an invalid warrant will be inadmissible, just as if seized with no warrant or no reasonable grounds.

#### Secrecy of warrant

The statutes direct that search warrants be issued with "all practicable secrecy." The record on which a search warrant is based is not to be filed or made public until the warrant is executed. Further, there is a criminal sanction of fine of up to \$10,000 and/or imprisonment up to two years for anyone who makes any disclosure concerning a search warrant prior to its execution, unless the disclosure is necessary to its execution.

#### Executing a search warrant

A search warrant, like an arrest warrant, may be executed anywhere in the state by a police officer with police authority in the search location. Unlike an arrest warrant, however, it must be executed and served by midnight of the fifth day, counting holidays and weekends, following its issuance. Although not expressly required by statute, some courts have held that the officer executing a search warrant must have it in his/her possession and display it if so requested. The statute expressly authorizes the use of "all necessary force" in executing a search warrant. After execution, it must be returned within 48 hours, **excluding** holidays and weekends, even if the five-day period would not yet have ended. The 48-hour rule, however, is ministerial and does not automatically affect the validity of the search.

The police may search any person found at the warrant site if the warrant so specifies or allows for a search of unnamed people. Otherwise, the police may frisk any people they might encounter at the warrant scene **if** they can articulate a reasonable safety concern.

The police may search any items found at the warrant scene, even if they do not belong to the residence's owner, so long as the item has the possibility of containing the evidence searched for and the item is not directly found on a person.

#### Knocking requirement

The Constitution requires that in most circumstances an officer knock and announce before seeking to execute a search warrant. However, there are a few exceptions to the knock and announce" requirement. These exceptions are:

1. Warrants with expressed no-knock authorization.
2. When an officer upon arrival at the scene reasonably believes that knocking and announcing will create a strong likelihood of the destruction of evidence or danger to the officer or others.

#### Things seized under search warrant

Anything described in the search warrant may, of course, be seized. With respect to things seized, but not particularly described in the warrant, the Wisconsin Supreme Court has adopted four requirements:

1. The evidence is discovered 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 evidence is discovered in the physical area properly searchable within the purposes for which the search was started.

4. The evidence is discovered while the officer is actually searching for objects within the purpose for which the search was started.

Whenever this standard is met, the seizure is valid. The search must terminate when the items named in the warrant are found.

*An officer, with a warrant, is searching for burglarious tools and goods stolen from a sporting goods store. In the course of the search he/she discovers a face mask and realizes it may have been used by the suspect while committing the burglary. The face mask is properly seizable.*

#### Telephone search warrant

Wisconsin provides for the issuance of a search warrant based upon oral testimony.

The normal procedure would be for the officer requesting the warrant to call the judge, identify himself/herself as a police officer and indicate that he/she was requesting an oral or telephone search warrant. He/she must then supply the judge with sufficient information so the judge may determine that: (1) the procedure to obtain a written search warrant cannot be done promptly; and (2) prompt execution of the search warrant is necessary.

If the court finds these two requirements to have been met, the officer should then advise the court of the information he/she would normally put in an affidavit; namely, the probable cause for his/her warrant. If the court finds the probable cause to be adequate, the officer may then proceed to completing the actual warrant. It is necessary that he/she have a duplicate original of the warrant in writing and that he/she read that duplicate original verbatim to the judge. The judge may modify the warrant if he/she feels it appropriate or may indicate it is satisfactory in its original form. The judge would then direct the officer to sign the judge's name to the bottom of the warrant and also sign his/her own name. The officer may then execute the warrant by using that duplicate original for the purpose of execution. The judge, in the meantime, shall have completed the original warrant, signed it and filed it with the court file.

It is necessary that the telephone conversation, subsequent to the officer informing the judge that the purpose of the call is to request a warrant, be recorded by means of a voice recording device. This recording can be at either end of the conversation (at the judge's residence or telephone, or at the phone from which the officer is making his/her call, whether it be in his/her department or someplace else). If no such voice recording device is available, this procedure may not be used.

The fact of this statute being in existence makes justification of a warrantless search of someone's home or other property more difficult to justify. The necessary requirements for warrantless search are that there be probable cause and, in most situations, exigent circumstances.

In many situations the showing of exigent circumstances may be difficult, unless an attempt is made to obtain a telephonic warrant. If a warrantless search is made, be prepared to answer questions as to why a telephonic warrant was not requested.

#### Without Warrant

A search may validly be conducted without a warrant under the following situations:

##### Incident to lawful arrest

When a person is lawfully arrested, the officer may **contemporaneously** conduct a complete search of the person arrested and a search of the area readily accessible to the arrested persons, including any items he/she has in his/her possession, including luggage, briefcase, etc.

A person arrested for a criminal violation may be thoroughly searched, and the area readily accessible to him/her may also be thoroughly searched, for weapons and for evidence.

A person stopped on a traffic charge where a citation is issued generally may not be searched. However, an individual arrested and taken into custody on valid probable cause of a violation of the criminal code may be thoroughly searched for weapons or evidence before being placed in a squad car.

The search incident to lawful arrest must, to be valid, be made contemporaneously with the arrest. The immediate area may be searched when the person is arrested. If a person is arrested at his/her home, the officer may **not** return after

booking the suspect to continue a warrantless search. The Wisconsin Supreme Court has held that officers responding to a call to assist a mother and apparently dead child, once having examined the home, found it deserted and knowing the persons had been taken to the hospital, could not re-enter a bedroom and conduct a warrantless search, since the emergency situation once ended no longer justified the search.

Courts have declared that the area immediately accessible to an individual is that area within reach of his/her outspread arms ("wing-span"), or that area immediately surrounding him/her into which he/she can "lunge" to reach a weapon or to destroy evidence. The "lunge" area of an automobile has been determined to be the entire passenger compartment of the vehicle, including the glove compartment and closed containers.

Even with this expansion, however, an arrest may not be used as an obvious shortcut to a thorough warrantless search.

*Two officers driving down the street in a squad car observe a person in a car ahead of them for whom they know a felony warrant is outstanding. They do not pull him/her over immediately, but follow him/her hoping that he/she will proceed to his/her home. As he/she stops his/her car in front of his/her home they pull up, identify themselves and he/she runs into the house. The officers cannot now follow this felon into his/her house and make a search in the house. However, they can follow into the house to arrest. Timing the arrest to give them an opportunity to go into the house to observe and possibly make a search incident to arrest in the house is not permissible. Under these circumstances the search of anything other than the person of the suspect would be invalid.*

In 1973, the U.S. Supreme Court decided that a complete search of the person may be made whenever an arrest is made. This search of the person, incident to lawful arrest, is not limited to a protective pat-down for weapons, nor is it limited to fruits, instrumentalities or evidence of the crime for which the arrest is made, but can be made for any evidence.

The Wisconsin Supreme Court has held that a search incident to an arrest can justify a warrantless seizure of the suspect's blood, provided the officer has a reasonable suspicion the blood contains useful evidence.

#### Protective sweep

If 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 a confederate may be lurking. This sweep is limited in nature and must be specifically targeted to the finding of people. It is not to be used as a ruse for an investigatory search for evidence.

#### Hot pursuit

When 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. This hot pursuit exception is limited to a felony situation and to a chase scenario.

#### In public place

No search warrant will be required 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 the private office of one conducting the business) and common areas of apartment buildings.

A closely related exception is the "open fields" concept. Open fields, although privately owned, fenced and even posted "No Trespassing," are not such as gives the person in possession a reasonable expectation of privacy. Only the home and "curtilage" are protected from warrantless search. The curtilage is the area of close proximity to the home. To determine whether an area is curtilage, and thus covered by the Fourth Amendment, or open fields, and thus not covered, the courts look at the following four 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; if it 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 casual "walker-byers."

### In "plain view"

The "plain view" exception is more properly an instance of valid warrantless seizure than warrantless search because no search occurs when an object is in the "plain view" of the officer.

One restriction on this exception is that the officer lawfully be in the place from which he/she sees the object. A gun lying on the floor of an automobile would be in plain view of an officer making a traffic violation arrest. If, however, the car were in the owner's garage which the officer entered without permission or warrant, the gun would still be in plain view, but viewed during an unlawful search.

A second restriction to this exception is the requirement that the items seized be obviously identifiable as contraband or evidence.

A third restriction is that the officer have constitutional access to the item to be seized. Contraband in a home can be observed in plain view by an officer on the street. However, the officer still cannot enter the home to seize the item unless he/she has a warrant to enter the home or there exists an emergency exigent circumstance to justify the warrantless intrusion into the home. **NOTE:** The U.S. Supreme Court has abolished the inadvertency requirement for a plain view seizure.

The U.S. Supreme Court has allowed an "order out" of a motorist stopped for a traffic violation. As the motorist opened the door and stepped out of the vehicle, the principles of plain view enabled the officer to observe the suspect, the suspect's clothing and the inside of the vehicle for criminal evidence. The court viewed the safety factor as justification of the order. Also the U.S. Supreme Court has allowed an "order out" of passengers in a vehicle which has been lawfully stopped.

An officer may use a flashlight to see at night what would be in plain view in daylight, all else being legal.

### Custodial Searches

Any person arrested and taken into custody may lawfully be thoroughly searched by the jailer, in addition to the search which may have been done incident to arrest by the officer in the field.

The justification for this is to discover any articles on his/her person which could constitute a danger to himself/herself, other inmates or jailers. Articles on his/her person or in his/her car may be inventoried as a routine procedure both to protect his/her ownership interest and to protect the police from claims of conversion or theft. The person arrested will always be subject to a custodial search. If he/she is arrested in his/her car, which cannot safely be left at the scene of the arrest, the car may be inventoried at the police station. This would never occur if the person were arrested at home with his/her car parked in his/her driveway.

There are times when an arrested person will demand that his/her car not be impounded. It is necessary that an officer have a reasonable police reason to impound, and may not impound a person's car just because he/she is arrested. You may not automatically impound the car of a drunk driver just because you arrest him/her. You must consider whether the location and circumstances would reasonably allow the car to be left on the street or in a public parking area.

When a vehicle has been lawfully impounded and is in police custody, it should be inventoried as soon as practicable. A search conducted after the car has been in custody for three weeks would appear to be a search for evidence and difficult to justify as an inventory to protect the owner's possessions. An inventory of an automobile should be just that, and not an investigatory search for evidence. Evidence discovered while legally doing an inventory is admissible in court. The important thing is the court's decision as to what your intent was at the time of inventory. Having a checklist to show what is done each time helps prove it was an inventory and not an investigation.

The scope of an inventory search is determined by department policy. The policy should be in writing, but must be universally applied. Therefore, an unwritten policy universally applied would be valid and an ignored written policy would be invalid. Department policy controls whether an officer can in an inventory search go into closed or locked containers.

### Consent Searches

No search warrant is required if a person having control of the place or thing to be searched gives his/her consent to the search. This consent must, however, be voluntarily, freely and knowingly given. The consent must not be coerced by, for example, stating that the person is "making trouble for himself/herself" in not cooperating. If after indicating an intent to search with or without consent an officer is told, "O.K., go ahead," the consent is not voluntary.

If an officer requests consent of "X" to search his/her home indicating that if consent is not given he/she will get a warrant and make the search anyway, the consent may not be voluntary. If the officer had probable cause sufficient to obtain a warrant at the time he/she asked for consent and the request is not made in a coercive manner, the consent would be valid. If, however, the officer did not have probable cause and was attempting to run a bluff even if he/she obtained consent, it would have been coerced and later could be determined to be invalid.

If the officer specifies the nature of the item to be searched, the scope of the consent will be limited to any area where there is a chance to find the targeted object.

*A police officer asks a subject for permission to search the subject's car for a rifle. If consent is granted, the officer could search the trunk but not a closed small container.*

#### Who may give consent

The person who consents to a search must have the authority to grant consent. Generally, a baby sitter could not give consent to the search of an automobile in the garage, but the Wisconsin Supreme Court has said that a daughter who borrowed her father's car for the summer could give valid consent to its search.

*An officer investigating a burglary goes to a suspect's home to question him. A woman identifies herself as the suspect's wife and says her husband is at work. The officer then asks to look around and the woman agrees. The consent is valid.*

In the above example, the woman is the suspect's girlfriend with whom he lives. Consent is still valid, provided the girlfriend is a permanent resident.

*An officer goes to a hotel to question a suspect. The clerk says the suspect is out and lets the officer enter and search the suspect's room. The search is illegal since the clerk has no authority to invade the suspect's (guest's) privacy.*

*Same as above, but the suspect has removed his/her belongings and apparently "skipped." The search probably is valid if the search is made after check-out time and the suspect does not have a reservation for that night, since suspect seems to have given up his/her interest in the hotel room.*

In the case of a juvenile or adult suspect who lives with his/her parents, the parents can always consent to a search of the grounds, garage and common areas of the home. If the suspect has his/her own bedroom, however, which is kept private and the parents respect this privacy, their consent to search the bedroom might be ineffective against the suspect's reasonable expectation of privacy. If the suspect pays his/her parent's room and board, this fact would buttress his/her claim to privacy. Depending on the circumstances a juvenile may have authority to consent to search their parent's home but only to areas of mutual use.

#### Abandoned Objects

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.

Also, if a subject leaves his/her property behind because he/she is fleeing from the police, the property is deemed to be abandoned.

*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.*

#### Inspection Pursuant To Law

Certain types of businesses, such as restaurants, taverns and hotels, are licensed and subject by statute to unannounced searches under penalty of loss of license. Proprietors of such establishments "consent" beforehand to searches, which extend to the entire area of the business premises. An upstairs apartment could not be searched, and the owner's attached office should not be searched under the provision. In some cases, refusal to consent may constitute a misdemeanor, which would justify an arrest which, in turn, justifies a full search of the person and of the area immediately accessible to him/her. Each profession or occupation may be subject to varying procedures for inspections, and the officer should consult with the appropriate regulatory agency prior to any warrantless search.

## Automobiles

Perhaps the best-known exception to the warrant requirement is the "automobile exception." It applies not only to automobiles, but also boats, airplanes or any movable vehicle. The "mobility" of the automobile, the possibility of moving out of the jurisdiction, justifies a warrantless search. Probable cause is required but proof of exigent circumstance is not. Based on probable cause, an officer may search anyplace in an automobile that is reasonable to believe the object of the search might be located. This includes searching any container, closed, locked or open. The officer may search anyplace a judge could give him/her a warrant to search. An officer should say to himself/herself, "Based on the information I have, what areas would a judge let me search, and for what items?"

The U.S. Supreme Court has abolished any distinction between a probable cause search of an automobile and a search of a particular object known to be in the automobile. Therefore, whether the investigatory focus is on the automobile in general or on a particular object, the officer may search and seize within the automobile without a warrant.

If a person is arrested in an automobile or immediately after having exited an automobile, the search incident to that arrest includes the lunge area while the person was in the automobile.

The U.S. Supreme Court has held that the interior of the automobile will be automatically considered to be the lunge area without the officer having to prove that the individual could reach or control any particular item within the interior of the automobile. Thus, incident to a legal custodial arrest, the officer may search the person and the interior of the automobile, including any closed containers in that automobile, and also including a glove compartment, even if locked, but the officer may *not* go into the trunk of the automobile.

An inventory of an automobile may be done if the automobile is legally impounded. An inventory indicates that the items in the car are inventoried to protect the officer from claims of theft, to protect the automobile owner's property and to protect the integrity of the impound area. An inventory authorizes an officer to go into all parts of the car, including the glove compartment or trunk. The authority to open closed containers found within the car is dependent upon whether the department has a specific policy as to closed containers in inventory searches. The policy need not be in writing, although this is certainly preferable, but the policy must be uniformly and consistently applied by all members of the department. In the absence of such a policy, there is no authority to open a closed container in an inventory search. If it is necessary to go into the closed container, and there is no policy permitting this extension of the scope of the inventory, a warrant should be obtained.

It is still recommended that a warrant be obtained prior to making the search, if at all possible.

## STRIP SEARCHES

"Strip search" means a search in which a detained person's genitals, pubic area, buttock or anus, or a detained female's breast, is uncovered and either is exposed to view or is touched by a person conducting the search. Before any officer makes a strip search, he/she should be aware of the very strict requirements of sec. 968.255, Stats., governing such searches and be familiar with department policies. Failure to conform with these requirements could well lead to serious liability lawsuits, a \$1,000 fine or imprisonment for not more than 90 days or both. A search warrant authorizing the search of a specific person does not automatically allow a strip search and sec. 968.255, Stats., must still be complied with.

## Search Of Physically Disabled Persons

"Physically disabled person" means a person who requires an assistive device for mobility, including, but not limited to, a wheelchair, brace, crutch or artificial limb. The removal of an assistive device requires the aid of a person who has had training in handling physically disabled persons. This type of search requires extreme care and strict conformance with department policy.

## Search Of Body Cavity

No person other than a physician, physician's assistant or registered nurse licensed to practice in this state may conduct a body cavity search. "Body cavities" include the anus and vagina. An opinion of the Attorney General advises that the mouth, ear and nose are not body cavities envisioned by the statutes, but extreme care should be exercised in searching these areas. Failure to strictly conform with the statutory requirements and department policies carries the same penalty and liability as an unlawful strip search.

## Objects Of Search

In addition to such obvious objects of search as weapons, drugs or stolen property, the search may be for evidence such as hair, blood, urine or breath samples. Stomach pumping is not permitted since the U.S. Supreme Court found it shocking to the conscience. However, if the suspect has an object in his/her mouth, not yet swallowed, it may be removed if due caution is used to remove it. After an arrest the suspect may be compelled to appear in a lineup, wear certain clothing, give a handwriting sample or speak for a witness to hear his/her voice.

In emergency situations, highly perishable physical evidence may be taken from the person of one not under arrest, without a warrant; for example, fingernail scrapings from one suspected of murder by strangling. Taking a blood sample of an unconscious person suspected of being intoxicated and believed to have committed a crime while in that condition is another example of a permissible warrantless search justified by "exigent circumstances."

## **STOP AND FRISK**

All law enforcement officers should be familiar with this term. It should be noted immediately that a proper "stop" will not automatically authorize a "frisk." Officers must be able to articulate the "reasonable suspicion" required for a "stop" independently and separately from the "reasonable fear" required for a "frisk."

### THE STOP

Under the statute, there are six rules for the stop:

1. It must occur in a public place. This includes a person's car if on the street, but a person's backyard or home or his/her host's backyard or home are not public places.
2. The officer must identify himself/herself as a law enforcement officer.
3. The officer must reasonably suspect that the person is committing, has committed or is about to commit a crime. This quantum is not the same as probable cause to arrest; it is less than that, but more than "mere suspicion." A person loitering in a high crime area late at night or jogging near a building site already burglarized might, in view of the officer's experience, produce reasonable suspicion. The U.S. Supreme Court in 1972 said that the tip of an untested informant, while not giving reasonable grounds for arrest, would give reasonable suspicion for a stop and frisk.
4. The officer may demand the person's name and address and explanation of his/her conduct. However, if the person quietly states, "I do not wish to say anything to you, even identify myself," and causes no trouble at all, and there is no further information or facts which could lead the officer to "probable cause," the officer must allow the person to go on his/her way. Refusal to answer an officer's questions in itself is not "obstructing an officer."
5. 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 station house six miles away.
6. 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 car inquiry or identity check.

The courts have held that mere flight from the presence of the police is a powerful factor for formulating a reasonable suspicion necessary for an investigatory stop. Also, if necessary, the police may use force to compel a reasonable suspicion-investigatory stop.

Under the statute, the stop must occur in a "public place." No definition of a "public place" is given and the court has not yet clarified the phrase. If the officer sees suspicious activity at a time at which the officer himself/herself is in a public place, the requirement is probably satisfied. An officer on patrol at 3:00 a.m. might see a person attempting to enter a house through a side window. After questioning, it is revealed that the person is the owner of the house and has lost his/her keys. The "stop" has, thus, occurred on this person's private property. The officer, however, either from his/her car in the public road or on foot on the public sidewalk, has, from a "public place," viewed suspicious activity and is perfectly justified in further investigation. It is reasonable to assume that "public place" refers to a place accessible without breaking and entering.

*Officer A sees X loitering near an all-night drugstore in a high crime area late at night. Officer A may stop X and question X.*

*If X says he/she is waiting for a prescription to be filled, the officer may check with the pharmacist, but otherwise no probable cause to believe X engaged in criminal activity has arisen.*

### THE FRISK

For a frisk to be warranted after a person has been stopped, the officer must reasonably suspect that he/she or another is in danger of physical injury from that person. The officer 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 might be a weapon. The frisk may not be used as an excuse to search for evidence.

Many factors can justify a frisk. Some of these factors involve 1) time of day, 2) nature of underlying offense the officer is suspicious of, 3) attitude and demeanor of subject, 4) number of subjects as compared to officers, 5) state of intoxication of subject, and 6) whether the officer is lawfully placing the subject in close quarters such as a squad.

An officer may lawfully seize an object during a frisk that is not suspected to be a weapon if the officer is experienced and trained in narcotic detection and enforcement and, based on that experience, can ascertain that the object felt is a controlled substance.

If the officer finds a weapon or dangerous instrument, it may be taken. Upon completion of the questioning, the officer must return the weapon or object if its possession by the person is legal unless, upon probable cause, he/she decides to arrest. If he/she finds contraband, it may be seized and may constitute grounds for valid arrest. Once there is an arrest, a complete search incident to arrest may be made.

### **ENTRY OF LAND, BUILDINGS AND DWELLINGS**

Possession of a warrant does not of itself allow an officer to break in to make an arrest or search. Generally, with a warrant, the officer must first knock, and if there is no response, then announce his/her identity and purpose and wait a reasonable time (which will vary according to the circumstances) before he/she may break down the door if there is no response.

### FORCIBLE ENTRY

While breaking down a door is, of course, a forcible entry, so is merely turning the doorknob of a closed, unlocked door.

An officer may make a forcible entry only after knocking and announcing, unless one of the exceptions below exists.

### Exceptions

There are two exceptions to the "knock and announce" requirement, which are as follows:

1. When the search warrant or arrest warrant specifically authorizes a no-knock entry.
2. Where the executing officer can articulate a reasonable basis for fearing that a knock and announcement is likely to imperil personal safety, imminent escape or the destruction of evidence. **NOTE:** The police should be aware that this exception is unpopular with the courts and, therefore, the factors which triggered the no-knock entry should be compelling. The police should further be aware that if the factor which triggered the court to issue a no knock warrant have completely dissipated at the time of execution the police should knock and announce.

An officer pursuing a suspected felon discovered in the act of committing a crime, or pursuing a felon described by witnesses and having been seen entering a building moments earlier, may enter such a building in "hot pursuit" of the suspect without first obtaining a warrant.

If the officer reasonably expects a "no-knock" entry will be required, he/she should request prior authorization from the judge when applying for the warrant.

Land, in distinction to dwellings, may be entered immediately. Even if posted or fenced, there is no trespass if the officer has a warrant or probable cause. Where necessary, a gate may be broken to enter.

Any building used for a business, such as a pool hall or tavern, may be entered as a public place while it is open.

## **LINEUP**

### RIGHT TO COUNSEL

The U.S. Supreme Court has held that a suspect has the right to counsel when appearing in a lineup. In Wisconsin, this right arises once a warrant or summons has been issued or an information or indictment returned. The attorney has no right to ask anyone questions. His/her only function is to assure that the lineup procedure is fair or to object when the procedure is unfair or "unduly suggestive." Better practice suggests that a suspect be informed of his/her right to have counsel present at the lineup.

### UNFAIR PROCEDURE

The lineup procedure must be fair. Thus, where a witness to a crime saw a black man, the black suspect may not be in a lineup with all white men. If the criminal is young, the others must not all be elderly. The suspect must not be the only one wearing the particularly distinctive clothing worn by the criminal. The suspect must not be identified by one witness deliberately in the presence of other witnesses or only the suspect's photograph shown to witnesses prior to the lineup. The procedure must not be designed to call attention specifically to the suspect.

### ACCEPTABLE PROCEDURE

A suspect may be compelled to appear in a lineup. The suspect may be made to read a statement where all persons in the lineup read it, assume a certain pose or walk or wear particular clothing where all persons in the lineup do the same.

Lineups may be recorded by audio-video tape for future showings, which future showings do not require notice to the participants nor presence of counsel. They are to be treated in the same way as picture identification.

### OTHER SITUATIONS

A suspect apprehended near the scene of the crime, within a relatively short period of time after the commission of the crime, may be exhibited to witness in a "showup." A suspect may be taken before a badly hurt witness for identification, and a single photograph of the suspect may be shown to a witness of a recent crime (although it is preferable to exhibit a photographic display rather than a single photograph). These, however, are unusual exceptions. The general rule against suggestiveness always applies to lineups, and in these unusual exceptions the rule is that the identification be basically fair even though the normal lineup procedure is not possible. If an officer does use photographs, they must be similar, *e.g.*, all black suspects rather than one black suspect and four white.

## **DOMESTIC ABUSE**

Section 968.075, Stats., establishes a procedure law enforcement must follow when responding to a domestic disturbance call. It is important to note that domestic abuse is itself not a crime, but rather a term for a statutory procedure to be followed for certain disorderly conduct and battery cases.

The domestic abuse procedure is used for those cases which involve:

1. The intentional infliction of physical pain, physical injury or illness.
2. The intentional impairment of a physical condition.
3. A first, second or third degree sexual assault.
4. A physical act that may cause a person to reasonably fear an imminent engagement in these forms of abuse.

Secondly, the domestic abuse procedure is limited to those cases where the prohibited acts are perpetrated against:

1. A spouse.
2. A former spouse.
3. An adult with whom the person resides or formerly resided.
4. Against an adult with whom the person has a child in common.

When responding to a domestic abuse call, if the officer observes a physical injury to the victim, or has a reasonable basis for believing that continued abuse is likely, the officer **must arrest** the suspect. If the officer is advised of a domestic abuse incident from a written report or complaint, he/she **must** arrest the suspect if the report is received within 28 days after the day of the incident.

After the arrest, the suspect shall be booked and shall not be released until the following two conditions are met:

1. He/she has posted the required cash bond dependent upon whether the underlying charge is battery, disorderly conduct or other offense.
2. The defendant has signed a no-contact form prohibiting him/her for a 72-hour period from having contact with the alleged victim, unless waived by the victim.

If a person violates the 72-hour restriction, he/she must be again arrested and charged with a violation of the no-contact bond and he/she can also be charged with bail jumping. If the defendant, after release, commits a second act of domestic abuse within 72 hours against either the original victim or a new victim, the underlying offense shall be charged as a felony. Only a law enforcement officer or the defendant's attorney may contact the victim at the defendant's direction during the 72-hour period.

The law enforcement agency responsible for the domestic abuse arrest shall notify the alleged victim of the no-contact provision and of the procedure they must employ if they choose to waive the no-contact prohibition.

## **OWI AND IMPLIED CONSENT**

### WHEN DOES IT APPLY

For the implied consent law to apply, the driver must have been placed under arrest for operating while under the influence of an alcoholic beverage, controlled substance or a combination of both, or operating at a time when he/she tested .08 or above or .02 and above for fourth and subsequent offense, for causing injury, great bodily harm or death by the operation of a vehicle while intoxicated. **NOTE:** The rules differ for cases involving commercial motor vehicles.

### CONDITIONS

For the implied consent law to apply, the driver must have been placed under arrest. The officer must inform the driver:

1. That he/she is deemed to have consented to a test.
2. Of the consequences of a refusal to take the test.
3. That he/she may have the alternate test administered also at no cost to him/her, or at his/her cost a test given by any qualified person of his/her own choosing.

If the person refuses, the officer must make the report called for in sec. 343.305, Stats., and furnish a copy to the person accused of drunk driving. Additionally, the police may forcibly take blood as the courts have validated such seizures because of the exigent circumstance that alcohol dissipates quickly in the bloodstream.

Since the implied consent statute specifically requires warnings to be given, much the same as Miranda does, it is suggested that the warnings be read word-for-word whenever required. In addition to assuring full compliance with the law, it will make proof in court easier when required.

The implied consent law authorizes the officer to demand "one or more" tests and, therefore, he/she may demand whatever number of tests he/she feels are necessary.

Once a person refuses to take a test and later changes his/her mind, it is in the officer's discretion as to whether a test shall then be given.

An arrested person has no right to talk to an attorney prior to taking a blood alcohol test or to making a decision as to whether or not he/she should take the test. Practice might better be to allow the telephone call to an attorney, if it does not interfere with your procedure and duties.

If the person refuses the offered tests, the officer is required to prepare a notice of intent to revoke, as defined in sec. 343.305, Stats.; take possession of the person's operator's license; issue a receipt for that license; and give a copy of the notice to the person refusing.

An officer may request a preliminary breath test in accordance with sec. 343.303, Stats. The present law does not provide for any penalty if the person refuses the preliminary breath test. This test is not admissible in evidence unless the defendant challenges the officer's probable cause.

If a person submits to an evidentiary test and scores .08 or above, or .02 and above for fourth and subsequent offences, the officer may process the paperwork for an administrative suspension. The officer shall provide the defendant with written notice of the administrative suspension and provide the defendant with a 30-day temporary license. The defendant has 30 days to challenge the administrative suspension, and during this time he/she can drive on the temporary license. After the 30 days, the six-month administrative suspension takes effect, unless the defendant succeeds in rescinding the suspension.

## **TAKING OF BAIL**

### NON-TRAFFIC

In most cases the officer will not be taking bail for a person who is arrested for a misdemeanor. This is so because the Wisconsin Supreme Court ruled that a local person, who does not appear to be dangerous, and who has no history of not showing up for court, should be cited and released if arrested for a misdemeanor. However, if the defendant is not local, or appears dangerous, or has in the past not showed up for court, bail is required and the amount must be set for non-traffic misdemeanors either by the uniform bail schedule adopted by the Wisconsin Judicial Conference or, in a particular case, endorsed upon the person's arrest warrant. Felony bail must be set by the judge.

For non-traffic misdemeanors, an officer may choose to not take bail when in the officer's opinion the person, because of his/her **physical condition**, is a danger to himself/herself or others. However, if bail in such a case is not taken, the defendant does not have the ability to post bail or the charge is a felony, the arrested person must be presented to the judge within a reasonable time. The U.S. Supreme Court has determined that a person who is arrested and consequently incarcerated must be brought before a judge within 48 hours to determine if there is probable cause to substantiate the proposed charge. This 48-hour period includes weekends and holidays.

When bail is taken, the person must execute an appearance bond, which may be secured or unsecured. The bail may be taken only at a sheriff's office or police department. The person giving bail, the clerk of court and the department or the office where the bail is taken each get one copy of the receipt, which must be serially numbered.

### TRAFFIC VIOLATIONS

When a person is arrested with a warrant, the officer shall:

1. Without unreasonable delay bring the subject before a judge.
2. Accept the bail endorsed upon the warrant by the judge or, if no endorsement is made, accept the bail set forth in the uniform deposit schedule as adopted by the Wisconsin Judicial Conference, unless the court directs that the person be brought before the court personally.

If a person is arrested for OWI, he/she must immediately be taken into custody and may not be released until 12 hours after the arrest; however, during that 12-hour period the person may be released, in the discretion of the officer or his/her department, if a chemical test reveals the arrested person's blood alcohol content to be .04% or less, or to the custody of his/her spouse, a relative, attorney or other responsible adult.

On any other traffic charge, the officer shall issue a citation and, in addition:

1. May release him/her.
2. Shall release him/her when he/she:
  - a. makes a deposit of bail;
  - b. makes a stipulation of no contest and deposit of bail;
  - c. deposits his/her valid Wisconsin operator's license, under which he/she was operating at the time of the arrest, with the officer;
  - d. presents a guaranteed arrest bond certificate.
3. Shall, if the violator is not released, bring him/her without unreasonable delay before a judge.
4. Shall, if the alleged violator is released, specify on the citation a court return date which shall not be more than 90 days after the issue date of the citation.

When a person arrested wishes to make a deposit of bail, that person shall deposit the money as the arresting officer directs by either mailing the deposit at a nearby mailbox to the office of the sheriff; headquarters of the county traffic patrol; district headquarters or station of the state traffic patrol; city, village or town police headquarters or precinct station; the office of the municipal judge; the office of the clerk of court; or by going, in custody of the arresting officer, to any of those places to make a deposit. Before accepting such deposit, the person arrested must be advised as to the mandatory revocation and demerit point provisions provided in the Wisconsin statutes and sign a form acknowledging receipt of such information. If the deposit is mailed, a copy of the signed statement must accompany the deposit. The person arrested may also make the stipulation of no contest with the deposit.

At the time of the deposit by the arrested person, either by mail or at one of the prescribed locations, the officer shall notify the arrested person orally or in writing that:

1. If the person fails to appear in court at the time fixed in the citation, he/she will be deemed to have entered a plea of no contest and bail will be forfeited.
2. If the person fails to appear in court at the time fixed in the citation, and the court does not accept the deposit as a forfeiture, the person will be summoned into court to answer the complaint.

## **ELEMENTS OF CRIMES**

Not all crimes set forth in the statutes are described here. The more common ones are, however, with all essential elements of each. Statutes are omitted where the elements are obvious from the name.

### RULES OF THE ROAD

#### **346.04(3) Eluding - fleeing from officer (fine not less than \$600 nor more than \$10,000, imprisoned not more than 3 years):**

- operating a motor vehicle
- after having received visual or audible signal from a traffic officer or marked police vehicle
- knowingly flee or attempt to elude said officer
- by willful or wanton disregard of such signal
- so as to interfere with or endanger the operation of the police vehicle or the traffic officer or other vehicles or pedestrians
- and shall not increase his/her speed or extinguish his/her lights in an attempt to elude or flee

**Note:** The penalty can be increased if the fleeing results in injury, death, or property damage. Also fleeing can be charged as a misdemeanor under **346.04 (2t)** in cases where the operator does not stop but is not driving in such a manner as to interfere with or endanger the police vehicle and does not increase his/her speed or extinguish his/her lights.

## CRIMES - GENERAL PROVISIONS

### **939.05 Parties to crime (the penalty is the penalty for the crime which the person is accused of being a party to):**

- *either* directly committing the crime
- *or* intentionally aiding and abetting its commission
- *or* being a party to a conspiracy with another to commit it
- *or* advising, hiring, counselling or procuring another to commit it
- *or* being a party to any other crime in pursuance of the intended crime, which other crime is a natural and probable consequence of the intended crime under the circumstances

## LIFE AND BODILY SECURITY - CRIMES AGAINST

### Life

#### **940.01 Homicide - intentional - first degree (Class A felony/penalty: life imprisonment):**

- causing death
- of another human being
- intending to kill that person or another

#### **940.02 Homicide - reckless - first degree (Class B felony/penalty: imprisonment not to exceed 60 years):**

- recklessly causing death
- of another human being
- under circumstances which show utter disregard for human life
- *or* causes death of another human being by manufacturing or delivering a controlled substance which another human being uses and dies as a result of that use

#### **940.03 Felony Murder (15-year enhancement penalty to maximum penalty for accompanying felony):**

- causing death
- of another human being
- while committing or attempting to commit:
  1. sexual assault
  2. arson
  3. armed robbery
  4. robbery

#### **940/05 Homicide - intentional - second degree (Class B felony/penalty: imprisonment not to exceed 60 years):**

- intentionally causing death of another human being
- but the state cannot prove beyond a reasonable doubt that the killing was not motivated by:
  1. provocation
  2. unnecessary and unreasonable defensive force
  3. unnecessary and unreasonable belief of prevention of felony
  4. coercion

**940.09 Homicide by intoxicated user of vehicle (Class D felony/penalty: imprisonment not to exceed 25 years and or a fine not to exceed \$100,000):**

- operating or handling of a vehicle
- while under the influence of an intoxicant or while the person has a blood alcohol concentration of .08% or more, or .02% or more if the driver has three or more convictions
- so as to cause the death of another

Bodily Security

**940.19(1) Battery (Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- causing bodily harm
- to another
- without his/her consent
- by an act done with intent to cause same to that person or another

**940.19(5) Battery aggravated (Class E felony/penalty: fine not to exceed \$50,000, or imprisonment not to exceed 15 years or both):**

- causing great bodily harm
- to another
- by an act done with intent to cause same to that person or another

**940.19(2) Battery substantial harm (Class I felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 3.5 years or both):**

- causing substantial bodily harm
- to another
- with intent to cause bodily harm to that person or another

**940.20(2) Battery to law enforcement officers or fire fighters (Class H felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 6 years or both):**

- intentionally causing
- bodily harm
- to a law enforcement officer or fire fighter
- who is acting in an official capacity
- whom the actor knows or has reason to know is such official
- by an act done without the victim's consent

**940.21 Mayhem (Class C felony/penalty: fine not to exceed \$100,000 and or imprisonment not to exceed 40 years):**

- cutting or mutilating
- the tongue, eye, ear, nose, lip, limb or other bodily member of another
- intending to disable or disfigure that person

**940.225(1) Sexual assault - first degree (Class B felony/penalty: imprisonment not to exceed 60 years):**

- having sexual contact\* or sexual intercourse\*\*
- with another person
- without the victim's consent
- *either* causing pregnancy or great bodily harm to the victim
- *or* by use or threat of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be such
- *or* by use or threat of force or violence
- while aided or abetted by one or more persons

\*Sexual contact means: any intentional touching of the intimate parts (breast, buttock, anus, penis, vagina or pubic mound), clothed or unclothed, of a person to the intimate parts, clothed or unclothed, of another, or the intentional touching by hand, mouth or object of the intimate parts, clothed or unclothed, of another, if such touching can reasonably be construed as being for sexual arousal or gratification, or if it contains the elements of actual or attempted battery.

\*\*Sexual intercourse means: vulvar penetration, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or object into the genital or anal opening of another by the defendant or upon the defendant's instruction. The emission of semen is not required.

**940.225(2) Sexual assault - second degree**  
**(Class C felony/penalty: fine not to exceed \$100,000, or imprisonment not to exceed 40 years or both):**

- (1)
  - having sexual contact or sexual intercourse
  - with another person
  - without the victim's consent
  - *either* by use or threat of force or violence
  - *or* causing injury, illness, disease or loss or impairment of a sexual or reproductive organ or mental anguish requiring psychiatric care for the victim
- (2)
  - having sexual contact or sexual intercourse
  - with another person
  - *either* who suffers from a mental illness or deficiency which renders the victim temporarily or permanently incapable of appraising the person's conduct, and the actor knows of such condition
  - *or* whom the actor knows is unconscious
  - *or* the perpetrator is an employee of an in-patient facility or a state treatment facility and the victim is a person who is a patient or resident of the facility
  - without the victim's consent

**NOTE:** See definitions and note at Sexual assault - first degree, above at 940.255(1).

**940.225(3) Sexual assault - third degree**  
**(Class G felony/penalty: fine not to exceed \$25,000, or imprisonment not to exceed 10 years or both):**

- having sexual intercourse
- with another person
- without the victim's consent

**NOTE:** See definitions and note at Sexual assault - first degree, above at 940.225(1).

**940.225(3m) Sexual assault - fourth degree**  
**(Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- having sexual contact
- with another person
- without the victim's consent

**NOTE:** See definitions and note at Sexual assault - first degree, above at 940.225(1).

**940.24 Injury by negligent handling of dangerous weapon, explosives or fire**  
**(Class I felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 3.5 years or both):**

- operating or handling a dangerous weapon, explosives or fire
- in a negligent manner causing bodily harm to another

**940.25 Injury by intoxicated use of a vehicle**  
(Class F felony/penalty: fine not to exceed \$25,000, or imprisonment not to exceed 5 years or both):

- operating a vehicle
- while under the influence of an intoxicant, or while the person has a blood alcohol concentration of .08% or more, or .02% or more if the driver has three prior OWI convictions
- causing great bodily harm to another human being

**940.30 False imprisonment**  
(Class H felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 3 years or both):

- intentionally confining or restraining another
- without his/her consent
- knowing that the actor has no lawful authority to do so

**940.31 Kidnapping** (Class C felony/penalty: imprisonment not to exceed 40 years and or a fine not to exceed \$100,00-) (Class B felony if ransom demanded/penalty: imprisonment not to exceed 60 years):

- *either* by force or threat of imminent force
- carrying another from one place to another, or seizing or confining another
- without his/her consent
- *or* by deceit inducing another to go from one place to another
- intending to cause him/her to be secretly confined or imprisoned, or carried out of this state, or to be held to service against his/her will

## PUBLIC HEALTH AND SAFETY - CRIMES AGAINST

### Weapons

**941.20 Endangering safety by use of dangerous weapon** (Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both) (Class G felony/penalty: fine not to exceed \$25,000, or imprisonment not to exceed 10 years or both) ( Class F felony/penalty: fine not to exceed \$25,000, and or imprisonment not to exceed 12.5 years):

Penalty (1) Class A misdemeanor  
(2) Class G felony  
(3) Class F felony

(1) Whoever:

- endangers another's safety by the negligent operation or handling of a dangerous weapon
- *or* operates or goes armed with a firearm while he/she is under the influence of an intoxicant
- *or* intentionally points a firearm at or toward another
- *or* while on the lands of another discharges a firearm within 100 yards of any building devoted to human occupancy situated on and attached to the lands of another without the express permission of the owner or occupant of the building; "building" as used in this paragraph includes any house trailer or mobile home, but does not include any tent, bus, truck, vehicle or similar portable unit

(2) Whoever:

- intentionally discharges a firearm into a vehicle or building under circumstances in which he/she should realize there might be a human being present therein
- *or* sets a spring gun

(3) Whoever:

- intentionally discharges a firearm from a vehicle while on a highway or on a vehicle parking lot that is open to the public
- if
- the person discharges the firearm at or toward another or the person discharges the firearm at or toward any building or other vehicle

**941.23 Carrying concealed weapon**  
**(Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- defendant must have gone armed with a dangerous weapon
- the weapon was concealed
- the defendant must not have been a peace officer

**941.24 Possession of switchblade knife**  
**(Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- whoever manufactures, sells, offers to sell, transports, purchases, possesses or goes armed with a knife
- which knife has a blade which opens by pressing a button, spring or other device in the handle, or by gravity, or by thrust of movement

**941.29 Possession of a firearm (by a felon)**  
**(Class G felony/penalty: fine not to exceed \$25,000, or imprisonment not to exceed 10 years or both):**

- any person
- convicted of a felony in this state or of a crime elsewhere that would be a felony if committed in this state
- *or* found not guilty of a felony in this state by reason of mental disease or defect, or found not guilty or not responsible for a crime elsewhere that would be a felony in this state by reason of insanity, or mental disease, defect or illness
- who subsequent to said conviction possesses a firearm

PROPERTY - CRIMES AGAINST

Trespass

**943.10 Burglary (Class F felony/penalty: fine not to exceed \$25,000, or imprisonment not to exceed 12.5 years or both):**

- intentionally entering: any building or dwelling, enclosed railroad car or enclosed portion of any ship or vessel or locked, enclosed cargo portion of a truck or trailer or a motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home or a room within any of the above
- without the consent of the person in lawful possession thereof
- intending to steal or commit a felony therein

(Penalty for the above increases if done while armed with a dangerous weapon, use of explosives or while on the premises commits a battery upon a person lawfully therein.)

**943.12 Possession of burglarious tools**  
**(Class I felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 3.5 years or both):**

- having in personal possession
- any device or instrumentality
- intended, designed or adapted for use in breaking into any depository designed for the safekeeping of any valuables or
- into any building or room
- intending to use such item for such purpose
- and intending to steal from such place

**943.125(1) Entry into locked coin box**  
**(Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- intentionally enters a locked coin box of another
- without consent
- and with intent to steal therefrom

**943.13 Trespass to land  
(Class B forfeiture: fine not to exceed \$1,000):**

Whoever:

- (a)
  - without express or implied consent of the owner or occupant
  - enters any enclosed or cultivated land of another with intent to catch or kill any birds, animals or fish
  - *or* gather any products of the soil
- (b)
  - enters or remains on the land of another after having been notified by the owner or occupant not to
- (c)
  - after having been notified by the owner or occupant not to
  - enters said premises and hunts, shoots, fishes or gathers products of the soil
  - *or* enters said premises with intent to do any of the above.
- (d)
  - without the expressed or implied consent of the owner or occupant
  - enters any enclosed or cultivated land of another with a vehicle of any kind.

**943.14 Criminal trespass to dwellings  
(Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- intentionally entering
- another's dwelling
- without the consent of some person lawfully upon the premises
- under circumstances tending to create or provoke a breach of the peace

**943.15 Entry onto a construction site or into a locked building, dwelling or room  
(Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- whoever enters
- without consent
- a locked or posted construction site
- *or* a locked and enclosed building, dwelling or room of another

Misappropriation

**943.20(1)(a) Theft - larceny:**

- intentionally taking and
- carrying away
- using
- transferring
- concealing or
- retaining possession of
- another's moveable property
- without his/her consent
- intending to deprive the owner permanently of its possession

Penalties

Value of property does not exceed \$2,500 - Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both

Value of property exceeds \$2,500 but not \$5,000 - Class I felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 3.5 years or both

Value of property exceeds \$5,000 but not \$10,000 - Class H felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 6 years or both

Value of property exceeds \$10,000- Class G felony/penalty: fine not to exceed \$25,000, or imprisonment not to exceed 10 years or both.

**943.20(1)(d) Theft - false representation:**

- obtaining title to another's property
- by intentionally deceiving him/her with a representation the actor knows is false
- intending to defraud
- which actually does defraud him/her

**943.23(2) Operating vehicle without owner's consent (Class H felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 6 years or both):**

- intentionally taking and driving
- any vehicle
- without the owner's consent

(The above is reduced to a Class A misdemeanor if the defendant abandons the vehicle without damage within 24 hours after the vehicle was taken from the possession of the owner.)

(The above can be increased to a more serious felony if a dangerous weapon is involved or if there is an injury or death).

**943.32(1) Robbery (Class E felony/penalty: fine not to exceed \$50,000, or imprisonment not to exceed 15 years or both):**

- taking property
- from the person or presence of an owner
- intending to steal
- *either* by using force
- against the owner's person
- intending to overcome his/her physical resistance or physical power of resistance to such taking or carrying away
- *or* by threatening the imminent use of force
- against the owner's person or that of another present
- intending to compel the owner to acquiesce in such taking or carrying away

**943.32(2) Robbery - armed (Class C felony/penalty: fine not to exceed \$100,000 or imprisonment not to exceed 40 years or both) robbery--as defined above at 943.32(1):**

- while armed with a dangerous weapon or any article which would lead the victim to believe that it is a dangerous weapon, while committing the robbery

**943.50 Retail theft:**

- the defendant must have
- intentionally altered the indicated price or value of merchandise
- *or* took and carried away merchandise
- *or* transferred, concealed or retained possession of merchandise
- and the merchandise must have been held for resale by a merchant, or be property of the merchant
- and acted without the consent of the merchant
- and acted with intent to deprive the merchant permanently of the possession or the full purchase price of the merchandise

Penalties

Value of merchandise less than \$2,500 - Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both

Value of merchandise exceeds \$2,500 but not \$5,000 - Class I felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 3.5 years or both

Value of merchandise exceeds \$5,000 but not \$10,000 - Class H felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 6 years or both

## SEXUAL MORALITY - CRIMES AGAINST

### Prostitution

#### **944.30 Prostitution (Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- (1) • has, or offers to have, or requests to have non-marital sexual intercourse
  - for anything of value
- (2) • *or* commits, or offers to commit, or requests to commit an act of sexual gratification, in public or private, involving the sex organ of one person and the mouth or anus of another
  - for anything of value
- (3) • *or* is an inmate of a place of prostitution
- (4) • *or* masturbates, or offers to masturbate, a person or requests to be masturbated by a person
  - for anything of value
- (5) • *or* commits, or offers to commit, or requests to commit an act of sexual contact
  - for any thing of value

#### **944.31 Patronizing prostitutes (Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- any person who:
- enters or remains in any place of prostitution
- with intent to have non-marital sexual intercourse with a prostitute, or to commit an act of sexual perversion, masturbation or sexual contact with a prostitute

(See Vagrancy at 947.02)

## GOVERNMENT AND ITS ADMINISTRATION – CRIMES AGAINST

### Bribery And Official Misconduct

#### **946.10 Bribery of public officers and employs (Class H felony/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 6 years or both):**

- (1) • transferring or promising
  - to or on behalf of any public officer or employee
  - any property or personal advantage
  - which he/she is not authorized to receive
  - *either* intending to influence his/her conduct in relation to any matter which by law is pending or might come before him/her in his/her official capacity
  - *or* intending to induce him/her to do or omit any act in violation of his/her lawful duty
- (2) • any public officer or public employee
  - directly or indirectly accepting or offering to accept
  - any property or any personal advantage
  - which he/she is not authorized to receive
  - pursuant to an understanding that
  - *either* he/she will act in a certain manner in relation to any matter which by law is pending or might come before him/her in his/her official capacity
  - *or* he/she will do or omit to do any act in violation of his/her lawful duty

Interference With Law Enforcement

**946.40 Refusing to aid an officer**  
**(Class C misdemeanor/penalty: fine not to exceed \$500, or imprisonment not to exceed 30 days or both):**

- refusing or failing to aid
- without reasonable excuse
- upon command
- any person known by the actor to be a peace officer

**946.41 Resisting or obstructing officer**  
**(Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- knowingly resisting or obstructing\*
- an officer
- while he/she is doing any act in an official capacity and
- he/she is acting with lawful authority

\*Obstructing includes: knowingly giving false information to the officer or knowingly placing physical evidence with the intent to mislead the officer in the performance of his/her duty, including the service of any summons or civil process.

PUBLIC PEACE, ORDER AND  
OTHER INTERESTS - CRIMES AGAINST

**947.01 Disorderly conduct**  
**(Class B misdemeanor/penalty: fine not to exceed \$1,000, or imprisonment not to exceed 90 days or both):**

- in a public or private place
- engaging in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct
- under circumstances in which such conduct tends to cause or provoke a disturbance

**947.013 Harassment (Class B forfeiture): fine not to exceed \$1,000:**

- whoever, with intent to harass or intimidate another person
  - (a) strikes, shoves, kicks, or otherwise subjects the person to physical contact, or attempts or threatens to do the same
  - (b) engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose

**947.02 Vagrancy (Class C misdemeanor/penalty: fine not to exceed \$500, or imprisonment not to exceed 30 days or both):**

A vagrant is:

- (1) a person, with the physical ability to work, who is without lawful means of support and does not seek employment
- (2) *or* a prostitute who loiters on the street
  - *or* in a place where intoxicating liquors are sold
  - *or* a person who, in public, solicits another to commit a crime against sexual morality

(3) *or* a person

- known to be a professional gambler
- *or* known as a frequenter of gambling places
- *or* who derives part of his/her support from begging
- *or* as a fortune teller, or similar imposter

#### CHILDREN - CRIMES AGAINST

**948.02(1) Sexual assault of a child - first degree  
(Class B felony/penalty: imprisonment not to exceed 60 years):**

- having sexual intercourse or sexual contact
- with another person who has not attained the age of 13 years

**NOTE:** *See* definitions and note at Sexual assault - first degree, above at 940.225(1).

**948.02(2) Sexual assault of a child - second degree  
(Class C felony/penalty: fine not to exceed \$100,000, or imprisonment not to exceed 40 years or both):**

- having sexual contact or sexual intercourse
- with a person who has not attained the age of 16 years

**NOTE:** *See* definitions and note at Sexual assault - first degree, above at 940.225(1).

**948.02(3) Sexual assault of a child, failure to act  
(Class F felony/penalty: fine not to exceed \$25,000, or imprisonment not to exceed 12.5 years or both):**

- being a person responsible for the welfare of a child who has not attained the age of 16 years
- and having knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with a child
- and is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place
- *or* being repeated
- and fails to take that action and the failure to act exposes the child to unreasonable risks that intercourse or contact may occur between the child and the other person
- *or* facilitates the intercourse or contact that does occur between the child and the other person

**948.09 Sexual intercourse with a child age 16 or older (Class A misdemeanor/penalty: fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both):**

- having sexual intercourse
- with a child who is not the defendant's spouse and who has attained the age of 16 years

## **PENALTIES**

CLASS A FELONY -	Life imprisonment.
CLASS B FELONY -	Imprisonment not to exceed 60 years.
CLASS C FELONY -	Fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both.
CLASS D FELONY -	Fine not to exceed \$100,000, or imprisonment not to exceed 25 years or both.
CLASS E FELONY -	Fine not to exceed \$50,000, or imprisonment not to exceed 15 years or both.
CLASS F FELONY -	Fine not to exceed \$25,000, or imprisonment not to exceed 12.5 years or both.
CLASS G FELONY-	Fine not to exceed \$25,00, or imprisonment not to exceed 10 years or both.
CLASS H FELONY-	Fine not to exceed 10,000, or imprisonment not to exceed 6 years or both.
CLASS I FELONY-	Fine not to exceed \$10,000 or imprisonment not to exceed 3.5 years or both.
CLASS A MISDEMEANOR -	Fine not to exceed \$10,000, or imprisonment not to exceed 9 months or both.
CLASS B MISDEMEANOR -	Fine not to exceed \$1,000, or imprisonment not to exceed 90 days or both.
CLASS C MISDEMEANOR -	Fine not to exceed \$500, or imprisonment not to exceed 30 days or both.

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