



DIRECTIVES

Oak Creek Police Department

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ARREST PROCEDURES

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Applicability

Sworn Officers

*State Statute §175.40(6) – Expander of Jurisdiction

I. PURPOSE AND OBJECTIVES

It is the purpose and objective of this policy to define the authority of officers to make arrests on duty and off duty and to establish guidelines for affecting arrests, both with and without a warrant. Such guidelines shall serve to ensure that all rights and privileges afforded citizens during arrest situations will be diligently protected.

II. POLICY STATEMENT

It is the policy of the Oak Creek Police Department that officers shall investigate violations of state and municipal laws and ordinances and shall make arrests for such violations in accordance with procedures imposed by the Constitutions of the United States and the State of Wisconsin; federal, state and municipal legislation; and department policy.

III. AUTHORITY

- Wis. Stat. §29.941 DNR Assistance by Law Enforcement Officers
- Wis. Stat. §62.09 (13) Cities: General Police Arrest Authority
- Wis. Stat. §66.0513 Law Enforcement Mutual Assistance
- Wis. Stat. §175.40 Arrests: Boundaries, Assisting Other Agencies
- Wis. Stat. §175.40 (6) Arrests: Off Duty, Outside Employing Jurisdiction
- Wis. Stat. §345.22 Warrantless Arrest for Traffic Regulations
- Wis. Stat. §800.02 (6) Warrantless Arrest for Municipal Ordinances
- Wis. Stat. §968.07 Arrest by a Law Enforcement Officer
- Wis. Stat. §968.075 Domestic Abuse Incidents: Arrest and Prosecution
- 18 U.S. Code 3041 Arrest by State Officer for Federal Crime

IV. DEFINITIONS

- A. *Adult* – For the purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, “adult” means a person who has attained 17 years of age. [Wis. Stat. §938.02 (1)]
- B. *Legal Jurisdiction* – An officer has legal jurisdiction and the authority of a police officer of the City of Oak Creek Police Department whenever he/she is within the corporate limits (boundaries) of the City of Oak Creek. This includes the entire width of a boundary highway as defined in Wis. Stat. §175.40 (4). Officers also have expanded arrest authority under Wis. Stat. §175.40 (on duty) and §175.40(6m) [2005 Wis. Act 414] (off duty).

IV. DEFINITIONS - *Continued*

- C. *Personally Involved* – An officer is deemed personally involved when the off-duty officer, a family member, or a friend becomes engaged in a dispute or incident involving a personal matter with the person to be arrested or any other persons connected with the incident. This does not apply to situations where the police officer is a victim of a crime.
- D. *Arrest* - The act of depriving a person of his/her liberty by legal authority for a civil, or criminal, law violation.
- For clearance/reporting purposes, it shall be considered an arrest when an officer completes an incident report or citation documenting the alleged activity and forwards the citation to the Oak Creek Municipal Court or the report to the district attorney for review and issuance of a criminal complaint.
- E. *Custodial arrest* - The act of depriving a person of his/her liberty by legal authority for the purpose of holding or detaining him/her to answer a criminal charge or civil forfeiture action.
- F. *Non-custodial arrest* - The act of temporarily depriving a person of his/her liberty by legal authority for the purpose of issuance of a citation or summons relating to a civil forfeiture action.
- G. *Crime* - Conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by forfeiture is not a crime.
- H. *Offense* – As used in this document, any violation of law whether Federal, State, or municipal.
- I. *Fresh pursuit* - The pursuit of a defendant initiated immediately upon observation of a crime by an officer. The pursuit may also be initiated based upon information provided to an officer by a witness who has just observed a crime. Wis. Stat. §175.40(2), permits a peace officer, when in fresh pursuit, to follow anywhere in the state and arrest any person for the violation of any law or ordinance the officer is authorized to enforce.
- J. *Close Pursuit* – Pursuit of a felony suspect into another state.
- K. *Probable cause* - The amount of evidence which would lead a reasonable police officer to believe that a crime probably has been committed and that the person in question has probably committed it. It is more than a hunch or suspicion, but is less than sufficient evidence to bind over for trial. For the purpose of interpreting Wisconsin statutes, "probable cause" is used interchangeably with "reasonable grounds".
- L. *Warrant (Arrest)* - A written order issued and signed by a judge, and directed to a law enforcement officer, commanding the officer to arrest the person identified in the order. An arrest warrant may be for the violation of a criminal law (criminal arrest warrant) or in connection with a civil proceeding, i.e. failure to appear at a divorce, family support or paternity hearing (civil arrest warrant).
- M. *Bail* - Usually a sum of money, exchanged for the release of an arrested person as a guarantee of his/her appearance for trial.
- N. *Bond* - A written and sealed obligation, one requiring payment of a stipulated amount of money on or before a given day.
- O. *Commitment* - A court order authorizing consignment to a detention facility.

IV. DEFINITIONS - *Continued*

- P. *Positional Asphyxia* - A phenomenon which is believed to occur from transportation of persons in an excited state. It is a possibility that a person may die from an adverse physiologic effect of the transportation when in custody. This phenomenon can occur when the restrained person is placed face down in a "hog-tied" prone position. Victims show signs of resistance to the restraint and at one time become more relaxed and can be responsive. At one point usually without warning the victim becomes unresponsive. The cause of death is a cardiac arrest.
- Q. *Excited Delirium* - This term is much like positional asphyxia in that the possibility of death can result from using restraint procedures. These deaths can come quickly and without warning. Subsequent post-mortem examinations usually show various amounts of illegal drugs and/or alcohol in their systems. Certain mentally ill subjects who are in a psychotic state can exhibit symptoms of excited delirium. The objective symptoms displayed by people who are in the excited delirium state due to mental illness are the same as those whose symptoms are drug induced. The only way to differentiate the cause is through prior knowledge of the person, or by interviewing a third person with prior contact with the subject.

V. PROCEDURES FOR ON-DUTY ARRESTS

A. Authority to Arrest

1. Wis. Stats. §968.07(1), permits a law enforcement officer to make an arrest when:
 - a. The law enforcement officer has a warrant commanding that such person be arrested; or
 - b. The law enforcement officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or
 - c. The law enforcement officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or
 - d. There are reasonable grounds to believe that the person is committing or has committed a crime.
 - e. Wis. Stat. 968.07 (1m) When state law requires mandatory arrest (restraining orders or Domestic Violence).
2. Wis. Stat. §62.09(13), expands an officer's authority to arrest for violations of non-criminal state law and municipal ordinance when it states that an officer, "*Shall arrest with or without process...any person violating any law of the state or ordinance of the city.*"
3. Sec. 1.20 of the Municipal Code of Oak Creek further provides that officers may "*issue citations for violations of this Code of Ordinances, including ordinances for which a statutory counterpart exists*".
4. Wis. Stat. §968.07(2), provides that, "*A law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer.*"

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

5. Officers making an arrest shall use only that force which is reasonably necessary to affect the arrest. (Refer also to the Use of Force Policy #6-100.)
6. Oak Creek Police Department Rules and Regulations.
7. Countywide Arrest Authority Policy #7-400.
8. A law enforcement officer shall identify themselves by their official indicia of office (badge, ID card, or uniform) and generally use formal words of arrest to avoid ambiguity regarding the officer's authority/intent and thus avoid providing the suspect a potential defense to resisting an officer or escape from custody.
9. If the alleged violator under Wis. Stat. §948.55 (2) or §948.60 (2)(c) is or was the parent or guardian of a child who is injured or dies as a result of an accidental shooting, no law enforcement officer may arrest the alleged violator until seven days after the date of the shooting.
10. Wis. Stat. §175.40 (4) states, a peace officer whose boundary is a highway may enforce any law or ordinance that he or she is otherwise authorized to enforce by arrest or issuance of a citation on the entire width of such highway and on the entire intersection of such a highway and a highway located in an adjacent jurisdiction. This subsection does not extend an officer's jurisdiction outside the boundaries of this state.
11. Wis. Stat. §175.40 (6), adopted by this policy, gives authority to a peace officer outside his or her territorial jurisdiction to arrest a person or provide aid or assistance anywhere in the state if the following criteria are met:
 - a. The officer is on duty and on official business.
 - b. The officer is taking action that he or she would be authorized to take under the same circumstances in his or her territorial jurisdiction.
 - c. The officer is acting to respond to any of the following:
 - 1) An emergency situation that poses a significant threat to life or bodily harm.
 - 2) Acts that an officer believes, on reasonable grounds, constitute a felony.

Any officer acting under this authority must immediately notify and cooperate with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken in the jurisdiction. The on-duty shift commander from this department shall be notified by the quickest means and as soon as the circumstances allow for notification to be made safely.

12. Wis. Stat. §66.0513 adopted by this policy 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 is entitled to the same wage, salary, pension, worker's compensation and all other service rights for this service as for service rendered within the limits of the city where regularly employed.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

13. Wis. Stat. §29.941 adopted by this policy provides that all police officers are deputy conservation wardens and shall assist the DNR and its wardens in enforcement of this chapter whenever notice of a violation is given to them by the department or its wardens.
14. 18 U.S. Code 3041 authorizes state law enforcement officers to make arrests for Federal crimes. [*U.S. v. Bowdach*, 561 F.2d 1160 (1977)]; rehearing denied *en banc*. Officers shall not utilize this authority unless so directed by a supervisory officer.

B. Safety Considerations in Making Arrests

1. An effort shall be made to affect warrant, or warrantless, arrests in an environment that poses minimal danger to officers, citizens and the defendant.
2. When possible, all custodial arrests shall be conducted by two or more officers.
3. The Oak Creek Police Department Emergency Response Unit will be available to assist with any arrest that poses a high probability for danger.

C. Arrest with a Warrant

1. The Oak Creek Police Department shall maintain a file of all warrants issued as a result of department action. This file shall be available to officers on a 24-hour basis.
2. Officers shall initiate a CAD entry for all warrant service attempts. If an officer is unsuccessful at serving the warrant, the reason for non-service shall be recorded in the remarks section of the CAD screen.
3. Arrest warrants, both criminal and civil in nature, shall be served by sworn officers only.
4. In situations where the arresting officer is not in possession of the warrant, s/he shall be responsible for confirming the validity of the warrant. Foreign warrants shall require teletype confirmation; however, telephone confirmation shall be acceptable pending its receipt.
5. A police officer shall arrest a person within this jurisdiction when that officer has knowledge that a lawful arrest warrant has been issued and a reasonable effort has been made to properly identify the person to be arrested. In complying with the requirements of that warrant, an officer shall retain custody of the named defendant and promptly notify the proper authority. A person so arrested shall be transferred to the custody of the sheriff or other law enforcement agency unless release is authorized by proper authority.
6. Temporary detention of an individual for the purpose of verifying warrant status is permissible.
7. Upon making an arrest on the strength of a warrant, the arresting officer shall inform the defendant as soon as practicable of the nature of the crime with which s/he is charged. If available, a copy of the warrant shall be provided to the defendant.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

8. An arrest warrant may be served at the suspect's dwelling by making a forcible entry only if the officer also has probable cause to believe the suspect is present inside the dwelling. [*Wis. v. Blanco*, 237 Wis.2d 395, 2000 WI App 119]. An arrest for a suspect residing in another's dwelling requires the consent of the owner/occupant or the issuance of a search warrant.
9. An arrest warrant may be lawfully served at any time, though certain restrictions shall apply to the service of warrants for minor forfeiture actions; i.e., violations of municipal ordinances and non-criminal traffic statutes. These warrants may be served at any time when the person named on the warrant is contacted during the course of a lawful stop or observed in a public place. However, aside from this type of contact, officers should be objectively reasonable regarding the time of day a warrant is otherwise attempted to be served.
10. Upon execution of a warrant, officers shall notify the Communications Center and request that the warrant be removed from the T.I.M.E. system.
11. Officers shall not leave the City of Oak Creek to serve a warrant unless notification is made to the jurisdiction in which the warrant is to be served, or are involved in a fresh pursuit situation.
12. When serving an arrest warrant at a residence, officers shall be required to knock, state their identity and purpose, and await permission to enter, with the following exceptions:
 - a. When executing a warrant for a felony and, after announcing identity and purpose, entry is refused;
 - b. When those within, upon being made aware of the presence of someone outside, engage in activity which justifies officers in the belief that destruction of evidence is being attempted;
 - c. When those within, upon being made aware of the presence of someone outside, engage in activity which justifies officers in the belief that escape is being attempted;
 - d. When officers are justified in the belief that they, or the persons within, are in imminent peril of bodily harm.
13. An arrest warrant may be served at the suspect's dwelling by making a forcible entry only if the officer also has probable cause to believe the suspect is present inside the dwelling. [*Wis. v. Blanco*, 237 Wis.2d 395, 2000 WI App 119]. An arrest for a suspect residing in another's dwelling requires the consent of the owner/occupant or the issuance of a search warrant. When forcible entry is required, officers shall perform the following:
 - a. Locate and control all persons on the premises and any property which might potentially serve as a weapon.
 - b. Photograph any damage that occurred as a result of the forcible entry and describe in the offense report how the damage occurred.
14. Juvenile warrants - refer to Juvenile Procedures Policy #7-200.

D. Arrest Without a Warrant

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

1. An arrest on the strength of a warrant is preferable to a warrantless arrest; however, the immediacy of many police arrest situations makes it impractical to delay matters while the warrant is obtained.
2. The decision to make a custodial arrest shall be based on the gravity of the offense, likelihood of flight, safety of the public, and the need to collect and preserve evidence essential to prosecution.
3. The alternative to a custodial arrest is to complete an offense report documenting the alleged criminal activity and refer the report to the district attorney for review and the issuance of a criminal complaint and warrant or summons to appear. [The Wisconsin Supreme Court has adopted the position of the U.S. Supreme Court: "...as long as probable cause for an arrest exists, arrest warrants are unnecessary, even where there is time to obtain them." *Laasch v. Wis.*, 84 Wis.2d 587, 591 (1978) and *Sanders v. Wis.*, 69 Wis.2d 242, 255 (1975).]

Nonetheless, obtaining an arrest warrant will increase the likelihood of apprehension if the suspect is encountered by other law enforcement agencies.

4. An officer may arrest a person within this jurisdiction, without a warrant, whenever he/she has probable cause to believe that the suspect is committing or has committed an offense. It is not necessary that an offense be committed in an officer's presence for him/her to arrest for that offense. Therefore, whenever an offense has been committed, the officer may arrest for it, except that whenever the person to be arrested is in their residence (home, apartment, etc.) in addition to probable cause, it is necessary that the officer has consent to enter the dwelling from a person legally able to give such consent OR there be exigent circumstances to authorize the officer to go into the residence without a warrant to affect the arrest. (If several occupants have equal rights in the same dwelling, any one of those actually present may forbid entry to the police. *Georgia v. Randolph*, U.S. Supreme Court, 04-1067; 3-22-06)
 - a. The courts have defined exigent circumstances as *the immediate threat of escape, the immediate threat of destruction of evidence; the immediate threat of death or great bodily harm to the officer or the general public.*
5. "There is no requirement that police officers must arrest an offender as soon as probable cause for the arrest exists." [*Forman v. Richmond (Indiana) Police Dept.*, 104 F.3d 950, 962 (1997)]. Hence, if there is no compelling need for an immediate arrest, officers should not be too quick to make the arrest until the best case can be put together. This may include the identification and questioning of additional victims, witnesses, and parties to the crime, or the location of additional evidence.
6. 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 with a chase scenario.
7. When forcible entry is required, officers shall perform the following:
 - a. Locate and control all persons on the premises and any property which might potentially serve as a weapon.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

b. Photograph any damage that occurred as a result of the forcible entry and describe in the offense report how the damage occurred.

8. Officers shall generally not leave the City of Oak Creek to effect a warrantless arrest unless they are working in conjunction with an officer of the jurisdiction in which the arrest is to be made or involved in a fresh pursuit situation. (Refer to Countywide Arrest Authority Policy #7-400.)

E. Arrest by Summons/Citation

1. Certain warrantless arrest situations shall be accomplished through the issuance of a City of Oak Creek Municipal Summons or a State of Wisconsin Uniform Traffic Citation. These situations can be categorized as follows:

a. Violation of a City of Oak Creek Municipal Ordinance.

b. Violation of a State of Wisconsin, non-criminal traffic statute.

c. Violation of a State of Wisconsin, criminal traffic statute.

2. The following guidelines shall apply to the issuance of a municipal summons:

a. The action for which the summons is being issued must constitute a violation of municipal ordinance.

b. If the action for which the summons is being issued also represents a violation of a state criminal statute, officers shall weigh factors such as the gravity of the offense, the demeanor of the offender, the safety of all parties involved, and previous department contacts with the offender in determining whether the offender should be issued a summons or arrested for a crime.

c. The arrest shall generally be custodial in nature. An offender arrested solely on the basis of a municipal ordinance violation shall be released after booking procedures and upon receipt of the municipal summons and signing of a personal recognizance (PR) bond. The issuance of municipal ordinance citations rather than state criminal charges shall not preclude booking procedures mandated by Wis. Stats. §165.84 (1), §165.83 (2) or other Department policy. The Department may require bond posting consistent with schedules established by the Wisconsin Supreme Court Judicial Conference. (See booking procedure.)

3. The following guidelines shall apply to the issuance of a Uniform Traffic Citation for a non-criminal matter:

a. The action for which the citation is being issued must constitute a violation of Wisconsin, non-criminal traffic statutes or a City of Oak Creek Municipal Ordinance adopting the same statute.

b. In all cases where a municipal ordinance has adopted the state statute, the citation shall be written in a manner that has the City of Oak Creek bringing the charge.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

- c. The arrest shall generally be non-custodial in nature. An offender arrested solely on the basis of a violation of a non-criminal, state traffic statute, or ordinance in conformity therewith, shall be released upon receipt of the citation. The offender must sign a personal recognizance bond prior to release. If the offender should refuse to sign the personal recognizance bond, the officer will write “Refused to sign” on the signature line of the personal recognizance bond.
 - d. If the arrest is driver’s license-status-related (i.e., OAR/OAS/OWL), the offender **shall** not be allowed to continue to operate the vehicle. State status arrests shall be conveyed to the department for booking. Municipal arrests may be issued citations on scene if positive State of Wisconsin picture identification is verified. It is the “arresting officer’s” responsibility to request that dispatch confirm the offender’s driver’s license status violation prior to an officer placing the offender under arrest or issuing a citation on scene. When issuing citations on scene, officers will advise the operator that they are not permitted to drive from the scene. Efforts shall be made by officers to make arrangements for a ride, legally park the vehicle, have a valid driver remove the vehicle or tow the vehicle from the scene if it is a hazard or illegally parked.
4. The following guidelines shall apply to the issuance of a Uniform Traffic Citation for a criminal matter:
 - a. The action for which the citation is being issued must constitute a violation of Wisconsin criminal traffic statutes.
 - b. The arrest shall generally be custodial in nature. An offender arrested for a state traffic crime shall be confined in the county jail unless they are capable of posting the bond identified in the State of Wisconsin, Revised Uniform State Traffic Deposit Schedule. Exceptions permit the release of State OAR and OWL or criminal O.W.I. if the person is in possession of a valid Wisconsin operator's license and can be released to a responsible adult.
 - c. No bail is required for misdemeanor violations when the violator has ties to the community.
5. An officer solely attempting to affect an ordinance or citation arrest shall not make a warrantless entry into a residence unless one of the following conditions applies:
 - a. The officer is invited into the residence by someone the officer can reasonably believe has the authority to make such an invitation;
 - b. The officer is justified in the belief that s/he, or the persons within, are in imminent peril of bodily harm.
6. The following guidelines shall apply for situations in which the officer intends to seek criminal charges against an individual as well as issue a municipal citation.
 - a. Officers shall note in the narrative of the municipal citation that criminal charges are also pending.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

- b. The arresting officer shall attach a copy of the citation to the criminal charge referred to the District Attorney.
 - c. When in doubt as to the appropriateness of issuing citations or summonses in these situations, officers should consult with a supervisor.
7. Specific rules govern the issuance of summonses and citations to juvenile offenders. The Juvenile Procedures Policy #7-200 should be consulted for this information.
 8. Voiding Citations (Municipal Summons, Uniform Traffic Citations or Parking Tickets)
 - a. If a mistake is made on a citation, that citation may be 'Voided' with the reason documented in TraCS, explaining the reason. The correct citation shall be re-issued to correct the issue(s) on the 'voided' citation.

F. Assist Other Agency Requests

1. Periodically, other law enforcement agencies will request assistance from the Oak Creek Police Department in affecting an arrest. Certain guidelines shall be followed in providing this assistance.
 - a. Arrest With a Warrant
 - 1) Warrants issued in Wisconsin are directed to all law enforcement officers of the state and may be served anywhere in the state.
 - 2) An officer receiving a request from another agency to execute an arrest warrant on their behalf shall first confirm the warrant by checking N.C.I.C. and C.I.B. sources. If the warrant does not appear in these computer files, the officer shall request teletype confirmation of the warrant from the requesting agency.
 - 3) In exigent situations—i.e., flight of the suspect is imminent—officers may act on a telephone request from another agency. However, this information must be verified by a minimum of a taped return call to the agency to ensure the legitimacy of the phone request. As soon as practicable, a phone request shall always be followed by teletype confirmation.
 - b. Arrest Without a Warrant
 - 1) Officers responding to a teletype request from another police agency to affect a warrant-less arrest may conduct such an arrest if the defendant is located within the city and it is impractical to obtain a warrant under the circumstances.
 - 2) Officers may also affect an arrest on the strength of a radio or telephone request from another agency. However, teletype confirmation of such a request shall be sought, preferably before the arrest is affected. Again, it must be considered impractical to obtain a warrant under the circumstances.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

- 3) Officers shall be cautious of other agency requests that contain phrases such as "attempt to locate" or "stop and detain" and shall ascertain the clear nature of the request prior to taking "arrest" action.

c. Arrest by Summons/Citation

- 1) Officers shall not author a summons or citation on behalf of another jurisdiction for an offense occurring outside of the city.
- 2) Officers may, on occasion, be asked to deliver summonses or citations, issued by another agency, on behalf of that agency. Service of such legal process shall be in accordance with the guidelines established by the department.

G. Search Incident to Arrest

1. Wis. Stat. §968.10, provides that, *"A search of a person, object, or place may be made and things may be seized when the search is made incident to a lawful arrest."*
2. Wis. Stat. §968.11, defines the scope of a search made incident to a lawful arrest by stating that an officer, *"May reasonably search the person arrested and an area within the person's immediate presence,"* for the following purposes:
 - a. Protecting the officer from attack;
 - b. Preventing the person from escaping;
 - c. Discovering and seizing the fruits of the crime;
 - d. Discovering and seizing any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, the offense.
3. If, during the arrest, an automobile is within the defendant's immediate control, the officer may search the passenger compartment of the vehicle when the defendant is still present at the scene of the arrest for weapons or evidence of a crime/ordinance violation. For other searches, consent must be requested and given from the defendant on scene and can be revoked at anytime (US Supreme Court decision, *AZ v. Gant*).
 - a. The trunk of the vehicle may not be searched merely on the basis of a lawful arrest.
4. A search incident to a lawful arrest of the defendant's person is permitted for custodial arrests for both criminal and non-criminal offenses. Searches pertaining to vehicles and/or other containers require a warrant, probable cause or consent from the arrestee/owner.

H. Rights Upon Arrest

1. Any person placed under custodial arrest for a state charge shall be advised of their Miranda rights prior to any questioning.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

2. If a defendant indicates in any manner and at any time, either before or after being advised of Miranda rights, that they wish to consult with an attorney before speaking, there shall be no further questioning.
3. Non-custodial arrest situations—i.e., a routine traffic stop or ordinance violation—are more analogous to a temporary investigative stop as defined in Wis. Stat. §968.24, and do not require Miranda warning.

I. Release From Arrest

Wis. Stat. §968.08, states that, *"A law enforcement officer having custody of a person arrested without a warrant may release the person arrested without requiring him/her to appear before a judge if the law enforcement officer is satisfied that there are insufficient grounds for the issuance of a criminal complaint against the person arrested."*

J. Transportation

1. Whenever possible, a unit equipped with a protective barrier (wire mesh and/or heavy gauge plastic to prevent access to the driver's compartment) will be used to transport prisoners in accordance with the following procedures:
 - a. Officers will examine the rear seat area of the transport vehicle for contraband and weapons prior to and after a prisoner transport. If these items are located, they will be reported to the supervisor immediately and then removed.
 - b. Officers shall adhere to the Use of Force Policy #6-100, "General Rules and Guidelines", regarding the application and situations requiring handcuffing.
 - c. A second officer shall ride in the left rear seat of a unit equipped with a protective barrier only when their presence is necessary for the safety or security of the officers or the person being transported.
 - d. All subjects in custody must have all items in pockets removed from their person and kept separate from the back secured area. This is to include, but not limited to, cell phones.
 - e. Whenever possible, the prisoner shall ride in the right rear seat.
 - f. Only a unit equipped with a protective barrier should be utilized to transport more than one prisoner at a time.
 - g. Units equipped with protective barriers will have rear electric window switches deactivated and the rear inside lock releases rendered inoperable.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

- h. If a prisoner becomes sick or injured while in custody, the arresting officer shall render first aid to the level of their qualifications and seek medical attention as soon as possible. If the prisoner has already been transported to the Police Department when evidence or complaint of injury occurs and medical treatment is required or requested, the officer shall arrange for secure transportation to a medical facility via the Oak Creek Fire Department. Prisoners shall be transported by ambulance with at least one officer riding with the prisoner in the ambulance or following immediately behind the ambulance while en-route to the medical facility.
 - i. It may be unsafe at times to transport a handicapped person in a unit. As appropriate, a unit equipped with a protective barrier or an ambulance should be used for transport. A second vehicle may be needed to transport medicine or other special items for prisoners of this type.
 - j. In vehicles so equipped, prisoners shall be secured with a seat belt during transport. There are times when a prisoner may be resisting an officer's efforts to such an extent that it would be unsafe for both the officer and the prisoner to continue efforts to seat belt the prisoner. Under these circumstances, the prisoner may be transported without a seat belt.
 - k. Juveniles should not be transported in any vehicle in company with arrested adults.
 - l. Officers must be cognizant of the possibility that the subject being transported could be suffering from Excited Delirium or when restrained may be a potential victim of Positional Asphyxia. (See definitions).
 - m. Officers shall ensure that the In-Car video system is functioning and utilized while transporting arrested individuals in accordance with the Mobile Audio Video Recording System (MAVRS Policy #8-400).
2. When a unit equipped with a protective barrier is unavailable:
 - a. The prisoner will be placed in the right rear seat.
 - b. Another officer will ride in the left rear seat of the police vehicle only when their presence is necessary for the safety or security of the officers or the person being transported.
 - c. The officer shall place his weapon in a position so as to ensure that it is not exposed to the prisoner.
 - d. The officer should notify his supervisor in an attempt to gain mutual aid from a surrounding community for the transport of the prisoner.
 3. When transporting a prisoner, the following procedures shall be followed:
 - a. Upon departing the place of arrest, officers shall contact the communications center and state their mileage. The communications center will respond with their departure time.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

- b. Upon arriving at the appropriate destination, officers shall make radio contact with the communications center to give the ending mileage. The communications center will then provide the arrival time. This information will be recorded on the radio log.
 - c. This process will be repeated each time the prisoner is moved from one location to another.
 4. Prisoners being transported shall not be left unattended and should remain in the officer's view at all times.
 5. Communication with an attorney or family member by a prisoner should not be allowed until the prisoner has been secured at the police station or other secure facility.
 6. A vehicle transporting a prisoner shall not stop to respond to the need for law enforcement services unless the risk to a third party is both clear and grave and the risk to the prisoner is minimal.
 7. Officers transporting prisoners to the Oak Creek Police Department for booking will enter the north garage door of the sally port.
 - a. Officers will contact dispatch and request the north garage door to be opened to allow access to the sally port.
 - b. The sally port is designed to accommodate two squad cars at one time.
 - c. After the squads enter the sally port, the garage door will close and the sally port will be secure.
 - d. At this point, officers will secure all items identified in the Municipal Lock-up Policy. When all identified items are secured, officers will then be able to escort the prisoner into the booking area of the jail. (See Municipal Lockup Facility Policy #11-100)
 - e. When squads are leaving the sally port, the south garage door is the designated exit.

K. Booking Procedure

1. Booking Room Procedure
 - a. The booking room shall serve as a secure area in which the processing, questioning or testing of an arrestee may occur.
 - b. During the time an arrestee is present in the booking room, they shall be under the constant supervision of sworn Department personnel.
 - c. Prior to entering the booking room with an arrestee, all firearms, batons and knives shall be secured in available lockers.
 - d. Prior to booking, but after entering the booking area, a second search of the arrestee shall be conducted. If searching the arrestee is hampered by cast, brace or any type of bandages that cannot be removed, metal wand of the area in question should be done. A hand-held metal detector is kept in locker number one.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

- e. Prior to booking, but after an appropriate search of the arrestee has been conducted, the arrestee shall be secured to the concrete bench or the stainless-steel stool with the appropriate restraint (handcuffs, soft restraints). The arrestee shall be removed from the appropriate restraint only when it is necessary to move the arrestee to a different area of the booking room to complete the booking process or for release. This rule applies to all arrestees regardless of age, unless circumstances dictate a deviation from this procedure (e.g., “physical limitations”). If these circumstances are present, the arresting officer should contact the on-duty shift supervisor for guidance.
- f. During the booking room search all of the arrestee’s property shall be removed and placed in a property bin or plastic bag for the remainder of the booking process. The arrestee’s shoes should be removed and searched. While wearing gloves an officer should manually check an arrestee’s socks and soles of the feet. An arrestee’s property and shoes will be returned upon completion of the booking process and release.
- g. To ensure safety, during the time an arrestee is present with an officer in the booking room, the communications center shall monitor activity through use of the in-house video system.
- h. Absent exigent circumstances, an arrestee shall not be detained in the booking room in excess of 2 hours. Upon conclusion of any processing, questioning or testing, an arrestee shall either be released or transferred to an appropriate holding facility.

2. Fingerprinting

- a. Officers shall, in accordance with Wis. Stat. §165.83(2), fingerprint all persons arrested for the following:
 - 1) An offense which is a felony.
 - 2) An offense which is a misdemeanor, or ordinance violation, involving:
 - a) burglary tools
 - b) commercial gambling
 - c) dealing in gambling devices
 - d) contributing to the delinquency of a child
 - e) dealing in stolen property
 - f) controlled substances under Chap. 161
 - g) firearms
 - h) dangerous weapons
 - i) explosives
 - j) prostitution
 - k) sex offenses where children are victims
 - l) worthless checks
 - m) individuals with frequent police contact

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

n) any driving offense where a picture driver's license is not presented and identity of subject is in question

3) An offense charged as disorderly conduct, but which relates to an act connected with one or more of the offenses listed in sub. 2).

Each adult arrestee meeting the above criteria shall be fingerprinted on the LiveScan fingerprint machine and program. This will be transmitted to the State of Wisconsin upon completion of the booking process. When completed, a WI arrest disposition form will be printed for each charge and placed with the ticket jacket or state case file.

Warrant and non-criminal traffic, without picture identification, require fingerprinting with the Livescan machine and program. This will be transmitted to the State of Wisconsin upon completion of the booking process. Only traffic arrests will have an arrest disposition printed and placed with the ticket jacket or state case file.

b. The criteria listed in the above section does not preclude officers from fingerprinting/photographing persons arrested for other offenses. In those other cases, the guidelines listed below should be followed:

1) All adult offenders of other sections of the Municipal Code may be processed when positive identification is in doubt. The Fast ID shall be utilized when there is reason to doubt positive identification to assist with positive identification while in custody.

2) All juveniles shall be turned over to a responsible adult, verifying identification, without being processed (unless indicated in Section K(2), *Booking Procedures—Fingerprinting*).

3) No booking is required for the following:

<u>Offense</u>	<u>Statute §</u>
Fireworks Regulated.....	11.167.10
Negligent Handling of Burning Material	11.941.10
Underage Poss. of Tobacco Products.....	11.254.92
Loitering	11.25
Loud/Unnecessary Noise	11.26
Curfew Violations	11.80
Littering	11.41
Dogs at Large.....	7.40(e)
Vicious Dog.....	7.40(g)
Limitation on number of three dogs/three cats.....	7.44
Junked Motor Vehicles.....	10.65 and 10.66

c. Officers shall attempt to obtain positive identification and shall have a signed PR bond on all municipal violations prior to being released. A PR bond signature that has been refused shall be marked as 'refused to sign' and filed with the municipal packet. Any questions regarding whether or not to process the offender shall be directed to the shift commander.

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

3. Photographing

- a. All custodial arrests shall be entered into the Phoenix system as arrests. A photo from the front and from the left side shall be taken with all custodial arrests, to include custodial warrant arrests.
- b. The above criteria does not preclude officers from photographing persons arrested for other offenses.

L. Confinement

1. In situations where the arresting officer confines a defendant on a criminal matter, they shall do so in the jail facility of the county having jurisdiction in the matter.
2. In situations where the officer confines a defendant on a non-criminal matter—i.e., first offense OWI—they shall do so in the Oak Creek Police Department jail.
3. Juvenile detentions are addressed in Juvenile Procedures Policy #7-200.
4. Any time an officer confines an arrestee in a cell, they shall complete the jail and cell tabs under the arrestee's arrest entry in ProPhoenix. If the arrestee is taken to the Milwaukee County Criminal Justice Facility, a Milwaukee County Arrest Detention Report and a CR-215 must be completed and taken with the arrestee.

M. Release From Custody

1. Officers who have made a custodial arrest shall have the discretion to release a defendant with charges pending in situations where the gravity of the offense is minor, the defendant does not pose a risk of flight, and the safety of the victims or the public is not in question.
2. Defendants who are not subject to release shall, in many cases, have the option of posting a bond for the purpose of securing their release from custody. Bond amounts for misdemeanor crimes can be found in the State of Wisconsin Uniform Misdemeanor Bail Schedule. Bond amounts for felony crimes can be obtained by contacting the Duty Judge.
 - a. Preamble for Forfeiture and Misdemeanor Bail Schedules
 - 1) All persons arrested for a violation of a state or municipal forfeiture shall be released from custody without a cash bond if they:
 - a) Have a valid Wisconsin driver's license or can show sufficient evidence of ties to the community; or
 - b) The arresting officer is otherwise satisfied that the accused will make future court appearances.
 - 2) All persons arrested for a misdemeanor, including a misdemeanor traffic offense, shall be released from custody without a cash bond unless any of the following exist:

V. PROCEDURES FOR ON-DUTY ARRESTS – *Continued*

- a) The accused does not have proper identification.
 - b) The accused appears to represent a danger of harm to himself or herself, another person or property.
 - c) The accused cannot show sufficient evidence of ties to the community.
 - d) The accused has previously failed to appear in court or failed to respond to a citation.
 - e) Arrest or further detention is necessary to carry out legitimate investigative action in accordance with law enforcement agency policies.
- 3) All persons not released pursuant to 1) and 2) for a forfeiture, misdemeanor or misdemeanor traffic offense shall be released upon compliance with the state deposit or misdemeanor bail schedules unless bail is otherwise set by the court.
 - 4) These guidelines do not supersede specific statutorily-mandated detention.

Note: The accused may be issued a citation either in the field or at the headquarters pursuant to Wis. Stats. §968.085(2) and §345.11, and may be subject to identification/booking procedures under §165.83.

- b. Defendants requiring time to obtain the necessary bond shall be confined at the Oak Creek Police Department jail. When time permits, the defendant shall be transferred to the Milwaukee County Criminal Justice Facility for safekeeping.
- c. Bond shall only be accepted at the Municipal Court window of the Oak Creek Police Department when the defendant is in the custody of the Oak Creek Police. When the defendant is transferred to the Milwaukee County Criminal Justice Facility, bond will only be accepted at the Milwaukee County Criminal Justice Facility.

N. Reports

1. Every arrest situation shall be assigned a call number.
2. A report shall be completed to document every arrest situation. The type of report required—i.e., incident report, summons, citation—shall depend upon the nature of the offense.

VII. OFF-DUTY PROCEDURES

A. Off-Duty Responsibilities

1. While off-duty, Oak Creek Police Officers are responsible for immediately reporting any suspected or observed criminal activity to on-duty authorities of the appropriate jurisdiction.
2. Except as allowed by this policy, off-duty officers should not enforce minor violations such as harassment, disorderly conduct, or other nuisance offenses. On-duty personnel are to be contacted to respond to the situation where an off-duty officer becomes aware of such violations.

VII. OFF-DUTY PROCEDURES - *Continued*

3. When an arrest is necessary, the off-duty arresting officer shall abide by all Departmental policies and procedures, including those pertaining to off-duty weapons.

B. Prohibited Off-Duty Arrests

City of Oak Creek Police Officers are not to make off-duty arrests:

1. When the arresting officer is personally involved in the incident underlying the arrest; or
2. When engaged in off-duty employment of a non-police nature, and the officer's actions are only in furtherance of the interests of the private employer; or
3. When the arrest is made solely as enforcement of a minor traffic violation. Despite the fact that a police officer has police powers and responsibilities 24 hours a day throughout the jurisdiction, the off-duty officer should not enforce minor traffic violations.
4. When outside of the legal jurisdiction of the City of Oak Creek except as authorized by this procedure and Wis. Stat. §175.40 (6) [2005 Wis. Act 414].
5. Generally, officers will not make any arrest attempts while under the influence of alcohol or other prescription medication which may adversely impair judgment.

C. Permitted Off-Duty Arrests

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

VII. OFF-DUTY PROCEDURES - *Continued*

3. An officer electing to take action under this section shall, consistent with the exigencies of the situation, attempt to weigh reasonable responses to the situation including maintaining cover and observation, contacting the local law enforcement agency or asking others to do so, and directly intervening in the incident. In addition, the officer shall verbally identify himself as a police officer to both responding officers of the local jurisdiction as well as to bystanders. Officers shall comply with the directions given by the responding officers of the local jurisdiction.
4. Any officer acting under the authority of this section shall immediately notify and cooperate with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken within said jurisdiction. In addition, the officer shall, as soon as possible, notify this Department's on-duty shift commander and apprise him/her of the actions taken by the officer while off-duty and within another jurisdiction.

D. Liability Protection

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

VIII. AMERICANS WITH DISABILITIES ACT (ADA)

A. Rights for Disabled Persons

1. While in contact with citizens, officers are to understand that those with disabilities are entitled to the same services law enforcement provides to anyone else. The person may not be excluded or segregated from services, be denied services, or otherwise be treated differently than others.
2. Law enforcement agencies are subject to ADA Title II and affects the core activities of the department including, but not limited to, the following: receiving citizen complaints, interrogating witnesses, arresting, booking, and holding suspects; operating telephone (911) emergency centers, providing medical services, and enforcing the laws.

B. Accommodations

1. When dealing with a disabled person, officers shall attempt to provide reasonable accommodations when it is safe for them to do so. Although officers may properly investigate and arrest a person with a disability for a crime unrelated to that disability, officers shall try and accommodate the person's disability during the course of investigation or arrest, and shall continue to do so during the course of investigation, with the intention of not allowing a disabled person to suffer a greater injury or indignity during the process than most arrestees.
2. This agency will provide communication aids and services to those in need and when requested. Methods used to accommodate may include, but are not limited to; hand gestures or visual aids, paper and pencil, typing information on the computer for a subject to read, request for an interpreter, telephone or assistive listening devices.

VIII. AMERICANS WITH DISABILITIES ACT (ADA) – *Continued*

3. While affecting an arrest on a disabled person, traditional methods of handcuffing or transporting may not be feasible. This will have to be analyzed on a case-by-case basis. Examples may include, but are not limited to, individuals who are restricted to a wheelchair, are missing limbs, and/or are paralyzed. Officers may have to utilize other means for transportation, such as an Oak Creek Fire Department ambulance, or the disabled person's transport vehicle or service. In these situations, officers will advise their supervisor, who will assist the officer in coordinating a safe and reasonable accommodating plan of action.
4. Officers shall ensure that all areas, including a lavatory, are accessible to a disabled person. For space, the general population cell shall remain accessible to a disabled person while in the booking area when confinement is necessary and/or a bathroom in booking is needed.

IX. DISCLAIMER

The Arrest Procedures Policy developed by the Oak Creek Police Department is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety and care in an evidentiary sense with respect to third party claims. Violations of the Arrest Procedures Policy can only be the basis of a complaint by this department, and then only in a non-judicial administrative setting.

REFERENCE:

Municipal Lockup Facility Policy #11-100
Use of Force Policy #6-100
Countywide Arrest Authority Policy #7-400
Securing Weapons
Booking Procedures
Search Incident to Arrest
Arrests w/ and w/o Warrant
Custodial & Non-Custodial Arrests
Release from Arrest
Oak Creek Municipal Code #5.03 – Duties of the Chief & Subordinates
Wis. §968.07 – Authority to Arrest
Wis. §62.09(13) – Police
U.S. Supreme Court, *AZ v. Gant*



David R. Stecker
Chief of Police

DRS/tp

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