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# UW- Madison Police Department

## Policy: 1.2

**SUBJECT: LIMITS OF AUTHORITY**

**EFFECTIVE DATE: 06/01/10;**

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**STANDARD: CALEA 1.2.1 – 1.2.9**

**WILEAG 1.7.7, 6.3.6**

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### POLICY:

The UW–Madison Police Department shall take active measures to ensure that officers exercise their authority within constitutional and statutory limitations.

### DEFINITIONS:

“Bias profiling” refers to any police-initiated action that relies on the race, ethnicity, national origin, religion, sexual orientation, gender, or physical ability of an individual rather than the behavior of that individual or information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity. Two corollary principles follow from this definition:

1. Police may not use race, ethnicity, national origin, religion, sexual orientation, gender, or physical abilities as factors in selecting whom to contact, whom to stop, and whom to search; and
2. Police may use any of the above to determine whether a person matches a specific description of a particular suspect.

“Gender Expression” refers to the physical manifestation of one’s gender identity through clothing, hairstyle, voice, mannerisms, etc. (typically referred to as masculine or feminine). Gender expression will generally correspond with gender identity, but not exclusively.

“Gender Identity” refers to one’s internal sense of being a man, a woman, neither, both, or another gender identity (e.g. non-binary).

“Interrogation” refers to the questioning of suspects and hostile witnesses from whom officers attempt to obtain crime-related facts, admissions, or confessions.

“Interview” refers to the planned questioning of the following: witnesses, victims, confidential informants, cooperating individuals, and / or others who have information regarding an accident, crime, or other incident.

“Preferred Name” refers to the non-birth name/pronouns that a transgender, gender non-conforming, or other individual uses in self-reference (this may or may not correspond to the individual’s legal name.)

“Probation/Parole/Extended Supervision Searches”: refers to a search of a person, residence, or property under the control of an individual who was placed on probation, parole, or extended supervision on or after December 14, 2013, where a law enforcement officer has reasonable suspicion to believe that the person is committing, is about to commit, or has committed a crime or violation of the conditions of probation, parole, or release to extended supervision.

“Racial profiling” includes any law enforcement-initiated action that relies upon the race, ethnicity or national origin of an individual rather than the behavior of that individual.

“Sexual Orientation” refers to having or being perceived as having an emotional, physical, sexual or other attraction to another person(s) of a specific sex(s) and/or gender identity(s).

“Strip Search” according to Wisconsin statute 968.255 (1)(b) means a search in which a detained person's genitals, pubic area, buttock or anus, or a detained female's breast, is uncovered and

1. Exposed to view; or
2. Touched by a person conducting the search.

“TGNC” refers to Transgender/Gender Non-Conforming

“Transgender Individual” refers to the term used both as an umbrella term and as an identity. Broadly, refers to those who do not identify with or are uncomfortable with their assigned gender and gender roles. As an identity, the term often refers to anyone who transgresses traditional sex and gender categories. Trans people may or may not choose to alter their bodies hormonally and/or surgically.

“Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes made specifically applicable by statute.

## **PROCEDURE:**

### **1.2.1 LEGALLY MANDATED AUTHORITY OF SWORN OFFICERS**

- A. The U.S. Constitution, the Wisconsin Constitution, and the Wisconsin Statutes define the scope and limits of law enforcement authority as it pertains to the enforcement of laws, statutes, ordinances, and arrests.
  1. Wisconsin Statute 36.11(2)(b) grants the Board of Regents of the University of Wisconsin authority to employ police chiefs and police officers at system institutions.
  2. Employed police officers shall be considered peace officers under Wisconsin Statute 939.22(22). Such police officers shall meet the minimum standards established for police officers by the law enforcement standards board.
  3. Police officers shall meet the minimum standards established for police officers by the law enforcement training and standards board.
  4. University of Wisconsin System Administrative Code 18.03(1) grants authority for police officers to accept concurrent appointments as deputy sheriffs.
- B. On duty authority and responsibilities shall include:
  1. As provided by Wisconsin Statute 968.07(1), UW- Madison Police Department sworn personnel have full arrest authority. This statute permits a law enforcement officer to make an arrest when
    - a. The law enforcement officer has a warrant commanding that such a 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 has been issued in this state; or
    - d. There are reasonable grounds to believe that the person is committing or has committed a crime.
  - 2. As provided by Wisconsin Statute 36.11(2)(b), UW-Madison Police Department sworn officers shall preserve the peace on all university property and enforce all rules promulgated and all other laws, and for that purpose the Chancellor or the Chancellor's designee may call for aid from such other persons as is deemed necessary.
  - 3. As provided by Wisconsin Statute 29.941, all police officers are deputy conservation wardens and shall assist the Department of Natural Resources and its wardens in enforcement of Chapter 29 of the Wisconsin Statutes whenever notice of a violation is given to them by the DNR or its wardens.
  - 4. As provided by 18 U.S. Code 3041, police officers may make arrests for Federal crimes; however, such action shall only be taken upon direction of a supervisor.
- C. On-duty arrest authority outside territorial jurisdiction, as authorized under Wisconsin Statute 175.40, exists only if an agency adopts and implements written policy regarding the authority and the officer complies with the policy. Under Wis. Stat. 175.40, a police officer outside of their territorial jurisdiction may arrest a person or provide aid or assistance anywhere in the state if the following criteria are met:
  - 1. The police officer must be on duty and on official business.
  - 2. The police officer is taking action that they would be authorized by the Department to take under the same circumstances in their jurisdiction.
  - 3. The police officer is acting to respond to any of the following:
    - a. An emergency situation that poses a significant threat to life or of bodily harm or
    - b. An act that the police officer believes, on reasonable grounds, to be a felony.
- D. Authority and responsibilities while off-duty shall include the following:
  - 1. UW-Madison police officers have the same authority off duty as they have on duty, while within jurisdictional limits or while exercising the statutory authority afforded under Wisconsin Statutes 66.0313, 175.40(2), or 175.40(4).
  - 2. UW-Madison police officers who are off duty, outside of the jurisdictional limits, and not engaged in police action authorized under Wisconsin Statutes 66.0313, 175.40(2), or 175.40(4) are authorized to act under the authority granted by Wisconsin Statute 175.40(6m)(a), to include making an arrest and providing aid or assistance anywhere in the state of Wisconsin if the following conditions are met:
    - a. The officer is responding to an emergency situation that poses a significant threat to life or bodily harm.
    - b. If circumstances compel intervention, the officer should take action only after considering the tactical situation with regard to their own safety and the safety of others. The officer shall notify the appropriate jurisdiction at the earliest opportunity.
    - c. Responses made by off-duty plainclothes officers to armed threats are generally without adequate back up, and issues such as inadequate identification, body armor, and communications make the response potentially very dangerous. The Department discourages off-duty personnel from becoming involved in armed confrontations.
    - d. The officer should provide a statement and cooperate in the investigation by the law enforcement agency with primary jurisdiction. If an arrest is made, then the arrestee shall be turned over to the primary law enforcement agency for disposition.
    - e. For the purposes of civil and criminal liability, an off-duty police officer acting under this policy is acting in an official capacity and within the scope of their employment for workers compensation purposes.
    - f. Personnel taking action under this policy should immediately notify a supervisor unless unable to, due to injury or other extenuating circumstances.
    - g. Nothing in this section should be construed in a manner that compels an officer to intervene while off duty and outside of the jurisdiction of the agency.

### **1.2.2 AUTHORITY TO CARRY AND USE WEAPONS**

- A. The authority granted peace officers by Wisconsin Statute 62.09(13) and broadened by Wisconsin Statute 968.07 provides the legal authority to carry and use weapons by agency personnel in the performance of their duties.
- B. 18 U.S. Code 926B permits qualified active law enforcement officers to carry concealed firearms anywhere in the United States. UW-Madison Police Department officers electing to carry a concealed weapon under the authority granted by 18 U.S.C. 926B must, by law, be in possession of their UW-Madison Police Department

photo identification card and must not be under the influence of an intoxicant. Furthermore, 18 U.S.C. 926B does not speak to a broadened police authority. Officers remain bound by Department policy in matters related to the exercise of police authority.

- C. Additional direction in the carry and use of weapons by agency personnel in the performance of their duties is located in the Department Use of Force and Firearms Regulations policies.

### 1.2.3 CONSTITUTIONAL REQUIREMENTS OBSERVED

The following describes applicable constitutional requirements during interviews and interrogations and shall govern procedures for ensuring compliance with all applicable constitutional requirements associated with a person's access to counsel:

- A. Interrogations shall be conducted in accordance with all applicable constitutional requirements, state statutes, and Departmental directives.
  1. Any custodial interrogation of a juvenile shall be audio and video recorded per Wisconsin State Statute [938.195\(2\)\(a\)](#).
  2. Any interview of an adult felony suspect shall be at least audio recorded per Wisconsin State Statute [968.073\(2\)](#)
  3. Information obtained from interrogations should be documented via one or more of the following approved methods: handwritten notes recorded by an officer, handwritten or typed voluntary statements, audio/and or video recording.
  4. Due process definitions exclude confessions and any evidence obtained thereof, when physical force, threats, promises, or coercive tactics are used; such methods shall not be used during interrogations.
  5. Factors affecting the voluntariness and admissibility of statement(s) include suspect age, mentality, education, nationality, criminal experience, reasons for arrest, rights advisories, whether basic necessities were provided during questioning, and general interrogation methods.
  6. Generally, no more than two officers should conduct an interrogation. However, certain circumstances and officer discretion could dictate otherwise.
  7. The officers conducting the interrogation should be attentive to any undue stress or feelings of intimidation caused by the number of officers present and/or other related conditions.
  8. Restroom and refreshment needs shall not be denied or unduly delayed.
  9. The Miranda Warning shall be provided to suspects when the elements of custody and interrogation are both present. Custody shall exist when persons are under arrest or when they believe their freedom of movement is significantly curtailed. For purposes of this directive, interrogation shall mean asking incriminating questions.
  10. *Miranda v. Arizona* (1966) established the following due process protections: that the suspect has the right to remain silent; that if the suspect gives up the right to remain silent, anything the suspect says can and will be used against him or her in a court of law; that the suspect has a right to speak to an attorney and have an attorney present when being questioned by law enforcement officers; and that if the suspect cannot afford an attorney, one will be appointed to represent the suspect before any questioning occurs.
  11. Officers should ensure that suspects understand each of the foregoing rights as have been read to them.
  12. Translators should be provided in a timely manner when deemed necessary. A translator may be available through the city of Madison Police Department, from within the Eagle Heights community, or from the University of Wisconsin International Student Services.
  13. Officers shall obtain verbal and/or signed waivers before beginning custodial interrogations.
  14. Waivers should be recorded on Departmentally-approved forms whenever possible.
  15. *Maryland v. Shatzer*, (2010) established that once a suspect invokes silence during a custodial interrogation, then they may not be re-approached unless they re-initiate contact or after they've been released from custody or back into general population for 2 weeks.
  16. *Massiah v. United States* (1964) established that once criminal prosecution has been initiated, the government may not deliberately elicit statements from a defendant without a waiver. The Massiah Rule does not require custody and is purely crime specific. Before interrogation may commence for an offense already charged, the defendant must have been advised of, and voluntarily waived, the right to counsel.
- B. Field interviews may be conducted when one or more of the following conditions are present:

1. The officer has reasonable suspicion that the subject may have committed, may be committing, or may be about to commit a crime;
  2. The officer believes the subject may be a hazard to self or others;
  3. The officer believes the interview may have a preventive effect.
- C. Defendants shall be informed of access to counsel in accordance with applicable constitutional requirements, state statutes, and Departmental directives.
1. *Escobedo v. Illinois* (1964) established that when a person accused of committing a crime is being interrogated, such a person has a right to have an attorney present.
  2. Officers must cease an interrogation once an individual has expressed a desire to speak with an attorney or have an attorney present during questioning. This shall not preclude an interrogation from being conducted while an attorney is present.
  3. Officers shall bring arrested persons, unless they have been released on bond or their own recognizance, before a magistrate or other judicial official without delay, to file formal charges or complaints. Judicial officials shall then ensure that accused persons are guaranteed the right to court-appointed or private counsel.
  4. Occasionally, persons who have been charged will not request or receive the assistance of counsel until after the time of their initial court appearance and the filing of formal charges. Officers shall work with prosecutorial officials to determine whether such persons have obtained counsel and whether notice to counsel is required before having any further contact.
  5. Safety concerns require that a prisoner's right to communicate with attorneys shall not normally be exercised during the period that the prisoner is being transported. Supervisory approval shall be required before any such communication is allowed.
- D. The decision to waive a Constitutional protection belongs with the accused individual. Officers shall not attempt to coerce or unduly influence a suspect in the decision of whether or not to exercise any right.
- E. When a suspect invokes their right to counsel, all interrogation shall cease immediately. A request for counsel must be articulated clearly enough that a reasonable officer in the circumstances would understand the statement to be a request for an attorney. The suspect may not again be interrogated about the crime for which he or she is charged, other crimes, or by other officers (from this or another agency) unless:
1. The suspect's attorney is present at the questioning; or
  2. The suspect initiates new contact with the police. In this later case, Miranda rights must again be administered and a waiver obtained before any questioning may take place. Officers shall also document and, if possible, obtain written verification that the suspect initiated the communication.
- F. Upon request, a telephone shall be provided for access to counsel. Audio recording of attorney client conversation is prohibited.

#### **1.2.4 WARRANTLESS SEARCHES & SEIZURES**

The following shall govern procedures associated with warrantless search and seizure by agency personnel:

- A. Officers shall document any warrantless search that is conducted. Officers shall document any stop and frisk that occurs.
- B. Officers shall not stop, detain, frisk or search a person in whole or in part for the purposes of determining that person's gender or in order to call attention to the person's gender expression.
- C. Persons should be searched as soon as possible when taken into custody. As a safety precaution, everyone in police custody who is placed in a police facility shall be searched immediately upon entry to the facility. This search is mandatory even though a preliminary search has been conducted in the field prior to transport. This search can include, but is not limited to
  1. A pat down of clothing and the emptying of all pockets;
  2. Inspection of all packages, luggage, book bags, wallets or purses; and
  3. Removal of boots and shoes for inspection.

- D. Any item that may be used as a weapon by the person in custody shall be seized. Evidentiary material shall be seized and held.
- E. All persons in custody who are left unattended in a temporary detention room shall have their shoes, belts, and other items that could be used for self-harm or as a weapon removed from their person and clothing. All persons in custody shall be monitored in accordance with department directive 71.1.
- F. Officer discretion shall prevail as to whether any of these items are returned when, and if, the person is released from custody. Contraband shall be destroyed in the presence of another officer and documented if not used for evidence. If held and used for evidence, it shall be destroyed at the completion of the trial unless ordered otherwise by the court.
- G. Officers may search property or persons when voluntary consent has been given by a person who has the authority to do so; no threats or coercion may be used by officers to obtain such permission. The consent may be withdrawn by the authorizing person at any time during the search. Consent to search forms should be utilized by officers whenever possible.
- H. *Terry v. Ohio* (1968) established that officers may stop and frisk an individual under circumstances in which officers are able to articulate reasons to fear for their safety. Officers performing this type of action shall limit their scope to a protective pat-down search for weapons. *Michigan v. Long* (1983) extended this same principle to the search of a vehicle's passenger compartment.
- I. *Carroll v. United States* (1925) established that officers may search a vehicle without a warrant under a movable vehicle exception. A motor vehicle, including the trunk and other containers, may be searched without a warrant if officers have probable cause to believe they contain evidence. *California v. Carney* (1985) declared that this exception also applies to motor homes or mobile campers.
- J. *Mincey v. Arizona* (1978) established that there is no crime scene exception to the search warrant requirement. In this decision, the Supreme Court held that the seriousness of the offense under investigation does not in and of itself create exigent circumstances of the kind that would justify a warrantless search.
- K. Officers may search a person or property without a warrant under exigent circumstances, such as where public safety is endangered. An exigent circumstance occurs when an emergency exists and there is no time for officers to obtain a search warrant. That is, the evidence could be destroyed or displaced by the time a search warrant is obtained. Generally, the more serious the crime or greater the threat to public safety, the more likely it is that the courts shall recognize the situation as a true emergency justifying a search based on exigent circumstances.
- L. Officers shall conduct inventory searches of seized vehicles or other seized property without a warrant based on the following justifications: an inventory protects the property of the owner; an inventory protects the law enforcement agency against claims that property in its possession has been lost or stolen; and an inventory allows officers to discover any potential danger that may exist because of property in their possession.
- M. Officers may search a suspect's residence to execute an arrest warrant if they have probable cause to believe the suspect is present. Officers may not conduct a search of any other residence or location even though they possess an arrest warrant. For other locations, a search warrant must be obtained.
- N. *Chimel v. California* (1969) established that officers may search a person for weapons and evidence incident to arrest. This search must be limited to the area within the arrestee's immediate control. The entire interior of a motor vehicle may be searched if the person was an occupant at the time of arrest.
- O. *Arizona v. Gant* (2009) established that a police officer may perform a search incident arrest of a defendant's vehicle if one of two factors is present:
  1. The arrestee is within reaching distance of the vehicle's passenger compartment at the time of the search.
  2. The police have "reason to believe" that the vehicle contains evidence supporting the arrest.

- P. Officers may seize evidence in plain view, provided they have a legal right to be at the location where the evidence was observed.
- Q. *Oliver v. United States* (1984) established that officers may search open fields without a warrant. However, residences and their respective curtilage are generally protected from unreasonable or warrantless searches.
- R. Officers may search abandoned property, including bags or purses discarded while being chased, without a warrant. Garbage that has already been placed for collection may be searched, provided that it is located where the actual pickup is normally performed.
- S. When reasonable, a search of a suspect that goes beyond a frisk/pat down should be conducted by an officer of the gender requested by the suspect. If possible, a second officer should be present for these searches.

#### 1.2.4.1 PROBATION/PAROLE/EXTENDED SUPERVISION SEARCHES

- A. Wisconsin law (2013 Act 79) and WI State Statute 302.043(4) provides law enforcement officers with broad authority to search people who are on probation, parole or extended supervision.
- B. The authority granted by Act 79 only applies to:
  - 1. Persons on probation for a felony.
  - 2. Persons on probation for a misdemeanor violation under Chapters 940, 948 or 961.
  - 3. Persons on parole.
  - 4. Persons on extended supervision.
- C. The person's status must be a result of a Wisconsin conviction, and the person must have been placed on probation or released to parole/extended supervision after December 14, 2013.
- D. Prior to considering any search under this authority, the officer must verify that the person's status is one of those listed above, and that they were placed on that status after December 14, 2013.
- E. Officers may search a probationer, parolee or person under extended supervision (as limited above) if they have a reasonable suspicion that the person is committing, has committed or is about to commit a crime or violation of their probation/parole/extended supervision. Reasonable suspicion must be based on specific and articulable facts that are documented in a report.
- F. Searches may extend to any personal property under the control of the probationer, parolee or person under extended supervision at the time of the search. This would include purses, backpacks, etc. It could also include a vehicle being driven by the person at the time of the encounter, though it would not include other subjects in the vehicle or property belonging to others in the vehicle.
- G. Searches may also extend to the residence of the probationer, parolee or person under extended supervision, with limitations:
  - 1. Any effort to affect a search of a residence under Act 79 authority must be approved by a supervisor, unless it is impractical to do so.
- H. If the probationer, parolee or person under extended supervision lives with someone else, any search must be limited to common areas or those under the control of the probationer, parolee or person on extended supervision.
- I. Officers may not force entry to a residence to perform a search under Act 79 authority.
- J. Searches conducted under this authority shall not be conducted in a way that is arbitrary, capricious or harassing. The search itself must be reasonable, and the scope of the search must be related to the reasonable suspicion possessed by the officer.
- K. An incident report shall be completed by the officer(s) who performed the probation/parole/extended supervision searches.

#### 1.2.5.1 ARREST PROCEDURES WITH OR WITHOUT A WARRANT

The following shall specify procedures for any arrest, made with or without a warrant:

- A. Wisconsin statute 968.07(1) permits a law enforcement officer to make an arrest when
  - 1. He or she has a warrant commanding that such person be arrested;
  - 2. He or she believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state;

3. He or she believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state;
  4. There are reasonable grounds to believe that the person is committing or has committed a crime.
- B. Wisconsin statute 62.09(13) expands an officer's authority to arrest for violations of noncriminal 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."
- C. Wisconsin statute 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."
- D. In addition to statutory requirements, officers shall abide by all federal laws and court decisions pertaining to the following: use of authority, arrests, searches, seizures, interrogations, and due process.
- E. An incident report is required for any arrest, with or without a warrant.
- F. In accordance with Wisconsin statute [165.83\(2\)](#), officers shall book the offender into jail where fingerprints and photographs are collected by jail staff for the offenses listed below.
1. An offense, which is a felony.
  2. An offense which is a misdemeanor 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 [Chapter 961](#)
    - g. firearms
    - h. dangerous weapons
    - i. explosives
    - j. pandering
    - k. prostitution
    - l. sex offenses where children are victims
    - m. worthless checks
    - n. a fugitive from justice
    - o. An offense charged as disorderly conduct, but which relates to an act connected with one or more of the offenses listed in the preceding section.
    - p. For any other offense designated by the attorney general
- G. Per department policy, officers shall book the offender into jail where fingerprints and photographs are collected by jail staff for the offenses listed below:
1. Domestic abuse arrests;
  2. Operating while intoxicated arrests in which a responsible person cannot be located;
  3. Body only or probation warrants;
  4. Felony charges unless a book and release procedure is appropriate.
  5. Stalking
  6. Harassment
- H. Wisconsin law requires law enforcement agencies to obtain a DNA specimen at arrest from an adult or any juvenile taken into custody for specific violent crimes as defined in SS. 165.84(7)(ab) unless it is verified a valid sample is on file with the Databank. In addition, certain misdemeanor convictions by an adult or juvenile offender require submission of a DNA specimen – see department directive 83.2 Evidence Processing
1. Upon arrest, officers shall use the E-TIME system to check whether a DNA sample is required or not. Upon entering the offender information and potential charges, E-TIME shall provide the officer with information on whether a specimen is required or not or if the specimen required is for a previous conviction.
  2. Officers shall consult with the District Attorney's office prior to forcing a specimen.



3. Officers are immune from civil and criminal liability if the specimen is obtained in good faith and is reasonable as described in ss. 165.765 (2)(bm).
4. This immunity applies to medical staff and facilities unless they are negligent in the collection of the specimen.
5. Collection of the biological specimens from subjects or offenders taken for the UW – Madison Police Department shall be taken as directed by the Wisconsin State Crime Lab using the kit provided by them.
6. Biological specimen kits shall be handled in accordance with current Department property and evidence collection procedures.
7. Best practice includes obtaining a court order and blood draw for those resisting to give a DNA specimen.
8. The Dane County Sheriff's office has arranged to collect DNA samples from adults arrested for violent crimes at the time of booking into the Dane County Jail.
9. In cases of convictions where jail time is not required, the individual shall be assigned a report date and time for DNA submission at their sentencing hearing and may be found in contempt or charged with a Class A misdemeanor for Failure to Produce a Biological Specimen if they do not appear.
10. The Dane County Juvenile Reception Center (JRC) is unable to collect DNA samples. Officers shall obtain a biological sample prior to transport or at JRC.

### **1.2.5.2 ARREST PROCEDURES, SPECIFICALLY WITHOUT A WARRANT**

- A. 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 a warrant is obtained.
- B. 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.
- C. 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.
- D. When officers effect an arrest without a warrant at a private residence, officers shall be required to knock, state their identity and purpose, and await permission to enter. Without permission to enter, warrantless entries are generally considered unreasonable and the OIC or MOC should be notified unless the following circumstances exist:
  1. Probable cause exists to make a felony arrest and the officer has a reasonable belief the suspect is engaged in the destruction of evidence.
  2. Probable cause exists to make a felony arrest and the officer has a reasonable belief the suspect is attempting to escape.
  3. Probable cause exists for making a felony arrest and officers are justified in the belief that they, or the persons within, are in imminent peril of bodily harm.
  4. Officers with probable cause to make a felony arrest are in fresh pursuit of a defendant.
- E. When forcible entry is made, officers shall perform the following:
  1. Locate and control all persons on the premises and any property that might potentially serve as a weapon.
  2. Photograph any damage occurring as a result of the forcible entry and describe in the offense report how the damage occurred.
- F. When serving an arrest warrant at a residence, officers shall be required to knock, state their identity and purpose, and await permission to enter. The Captain of Investigative Services or designee may approve forced entry to service a warrant under the following circumstances:
  1. When sufficient personnel and equipment are present to safely force entry and secure the premise.
  2. When executing a warrant for a felony and, after announcement of identity and purpose, entry is refused;
  3. When those within, upon being made aware of the presence of someone outside, engage in activity that justifies officers in the belief that destruction of evidence is being attempted;
  4. When those within, upon being made aware of the presence of someone outside, engage in activity that justifies officers in the belief that escape is being attempted;

5. When officers have reasonable suspicion the subject or other persons within, are in imminent peril of bodily harm.

- G. When forcible entry is authorized, officers shall perform the following:
1. Ensure sufficient staffing and equipment is present to safely enter and secure the premise.
  2. Obtain authorization from the Captain of Investigative Services or designee.
  3. Announce their identity and request permission to enter.
  4. Allow adequate time for occupants to respond to the request to enter.
  5. Upon entry, locate and control all persons on the premises and any property that might potentially serve as a weapon.
  6. After the premise is secure, photograph any damage occurring as a result of the forcible entry and describe in the offense report how the damage occurred.

### **1.2.5.3 ARREST PROCEDURES, SPECIFICALLY WITH A WARRANT**

- A. An arrest warrant provides for independent prosecutorial or judicial review of an incident. Whenever time and circumstances allow, the warrant process should be used for an arrest.
- B. In situations in which the arresting officer is not in possession of the warrant, the officer 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.
- C. Temporary detention of an individual for the purpose of verifying warrant status is permissible.
- D. 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 the defendant is charged. If available, a copy of the warrant shall be provided to the defendant.
- E. 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 administrative codes, 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. The preferred time for service of these warrants is between 07:00 and 22:00 hours. This does not, however, preclude officers from serving such warrants outside of these hours if circumstances are reasonable.
- F. Upon execution of a warrant, officers shall notify the Communications Center and request that the warrant be removed from the TIME System.
- G. Outstanding warrants issued as a result of Department contact are filed alphabetically in the Communication Center. Active warrants shall not be removed from the Department. An officer may copy a warrant for service. The copy must be destroyed if the attempt was unsuccessful.
  1. Served warrants shall be signed by the officer and returned to the Court Officer with a note indicating the court date assigned or other disposition.
  2. The officer making an attempt at warrant service requires a new case number and disposition regardless of the outcome. Outside agency warrants require report completion under the UW–Madison Police Department case number. In addition, successful service of a Department warrant requires a supplemental report to the original case number.

### **1.2.5.4 ARREST PROCEDURES, SPECIFICALLY FOR A TEMPORARY FELONY WANT**

The following shall specify procedures for obtaining temporary felony wants:

- A. An arrest on the strength of a warrant is preferable to a temporary want; however, the immediacy of many police arrest situations makes it impractical to delay matters while a warrant is obtained.

- B. The entry of a temporary felony want should be considered when probable cause exists that a serious felony was committed and there is a known suspect, but the suspect was not located. It is important to remember that a temporary felony want does not take the place of a warrant. It does allow the police to get a want entered into the TIME system soon after the crime was committed. This may increase the likelihood that the suspect shall be quickly apprehended and decrease the danger to the public.
- C. The investigating officer must notify an on-duty supervisor and receive approval for the entry based on the following required elements being met:
  - 1. Probable cause that a serious felony was committed;
  - 2. Probable cause that a known suspect committed the felony; and
  - 3. The need to immediately apprehend the suspect.
- D. The officer or supervisor must call the District Attorney's office of jurisdiction. If the office is closed, notify the on-call DA and provide the details of the incident and the intent to enter the temporary felony want.
- E. As soon as possible (prior to the 48-hour expiration time), the officer shall attempt to secure a warrant through the District Attorney's office of jurisdiction.
- F. The investigating officer(s) shall complete the required offense reports.
- G. If a warrant is not issued, the temporary felony want shall not be reentered after the 48 hours has expired.

If the suspect is taken into custody by another agency on a temporary felony want, a supervisor shall make the decision to send on-duty officers or a transport team to take custody of the suspect. Once the suspect is in custody, the on-duty LED shall cancel the warrant.

#### **1.2.5.5 ACCEPTANCE OF BOND MONEY**

- A. Sworn officers shall not accept cash bond at any time.
- B. The bond envelope should be placed in the designated locked bin. The Court Officer has access to open the locked bin.
- C. Notification to the Court Officer shall be made via e-mail or voice mail as well as a written message left in Court Services of bond being placed in the locked box.
- D. A case number shall be assigned, either the original case number if one exists or a new case number for bond accepted for outside agency warrants, and a report shall be completed containing information on the amount of bond accepted, from whom, for what, and where it was placed. Case documentation shall be completed by anyone who handles the bond money.
- E. If credit cards are used to post bond, a receipt shall be issued by the person collecting the bond. The receipt should be issued to the card holder. A copy should be retained electronically. Information on bond collection shall also be forwarded to Court Services.

#### **1.2.6 ALTERNATIVES TO ARREST AND CONFINEMENT, PRETRIAL RELEASE**

- A. Officers may elect to exercise alternatives to arrest, pre-arraignment confinement, and/or pre-trial release when deemed appropriate. Such alternatives may include the following: issuing verbal and written warnings, referring persons to social service agencies and counseling organizations, issuing citations in lieu of arrest, and releasing persons after posting bond.
- B. The use of verbal and written warnings may provide a satisfactory solution to many cases. When determining whether a warning should be issued, officers should consider the following: the seriousness of the offense, the

circumstances surrounding the violation, the likelihood that the violator shall heed the warning, and the offense history of the violator. All warnings should be documented via CAD records and/or approved forms.

- C. If a warrantless arrest has already been made for a non-criminal or criminal misdemeanor offense, a citation may be issued in lieu of continuing custody.

### **1.2.7 USE OF DISCRETION BY SWORN OFFICERS**

- A. Officers shall use discretion in furtherance of established Department goals and objectives but only when in compliance with applicable laws and the law enforcement code of ethics.
- B. The exercise of discretion shall be guided by a combination of written enforcement policies, training, and supervision.
- C. Reasonableness and probable cause shall vary with each situation, and different facts may justify investigation, detention, search, arrest, warning, or no action at all. In each case, officers shall act reasonably and within the limits of authority as defined by statute and judicial interpretation.
- D. Arrests or other enforcement actions should generally be taken or effected when there is probable cause to believe that a person has committed a serious crime.
- E. For minor offenses, officers should consider the action that would most likely deter future violations. Such actions may include the following: physical arrest, citation, written warning, or verbal warning.
- F. The degree of enforcement action or inaction used by officers shall not be influenced by malice, vengeance, or prejudice based on race, gender, gender identity, ethnic background, religious belief, economic status, sexual orientation, physical ability, or political affiliation.
- G. Enforcement action shall not be more severe than can be reasonably and objectively justified. Officer contact shall not be extended unnecessarily for the purpose of delaying the release or inhibiting the free movement of any person.

#### **1.2.7.1 EMERGENCY CONTACT OF STUDENTS**

The following shall govern the situations where sworn officers may enter a classroom when class is in progress:

- A. Officers may enter a classroom when class is in progress for any active emergency involving threats of violence or actual violence, medical emergencies or other crimes in progress.
- B. Officers may enter classrooms when class is in progress in response to 911 calls or other summons for help or assistance.
- C. Officers may enter a classroom when class is in progress upon invitation of the professor, instructor or students.
- D. Officers may make notifications to students in an active classroom setting to deliver emergency messages that involve a death, illness, injury, accident, or a threat to a student's livelihood or property.
- E. Classroom interruptions when class is in progress for all other than emergency situations should be avoided.

#### **1.2.7.2- MANDATORY REMOVAL FOR CRIMINAL TRESPASS TO DWELLING**

The following shall define the requirement for sworn officers to remove a subject from the premises if probable cause exists to arrest for a violation of Wisconsin State Statute 943.14:

- A. If probable cause of a violation to 943.14 exists, there is no mandatory arrest provision, however the subject must be removed from the dwelling.

- B. Whoever intentionally enters or remains in the dwelling of another without the consent of some person lawfully upon the premises or, if no person is lawfully upon the premises, without the consent of the owner of the property that includes the dwelling, under circumstances tending to create or provoke a breach of the peace is to be considered in violation of 943.14.

#### **1.2.8.1 STRIP AND BODY CAVITY SEARCHES**

- A. Strip searches of adults and juveniles (if applicable) shall be conducted only upon specific written authorization of the Chief of Police or designee and only when special circumstances as defined in Wisconsin statute 968.255(1)(a), 1, 2, 3, and, 4 exist and there are indications that these extreme searching measures are necessary to retrieve evidence.
- B. A strip search of a juvenile shall only be conducted if there are reasonable grounds to believe that the juvenile has committed a violent felony, which if committed by an adult, would be covered under Wisconsin Statute 968.255 and meets the criteria of 1.2.8.1 (A) of this policy. Special consideration should be taken regarding the age and mental capacity of the individual being searched.
- C. Strip searches shall have the following restrictions:
  - 1. The officer(s) conducting the search shall be of the same identified and/or expressed gender as the person being searched unless the search is a body cavity search conducted by a person as defined in Wisconsin statute 968.255(3)—licensed medical personnel.
  - 2. The person being strip searched cannot be exposed to the view of any person(s) not conducting the search.
  - 3. The strip search shall not be reproduced through a visual or sound recording and therefore should be conducted in a restroom appropriate to the gender of the person being searched.
  - 4. The officer conducting the strip search shall prepare a report identifying the person detained; all persons conducting the search; the time, date, and place of the search; and the written authorization required. A copy of this report must be provided to the detained person who was searched.
- D. No person other than a physician, physician assistant or registered nurse licensed to practice in this state may conduct a body cavity search. A physician, physician assistant, or registered nurse acting under this section, the employer of any such person, and any health care facility where the search is conducted have immunity from civil or criminal liability under s. [895.535](#).
- E. For the purposes of a search, the mouth, nose and ears shall not be considered a body cavity and, as such, may be searched by an officer possessing lawful authority to search a person.
- F. The following safety exemptions shall be employed in regards to strip searches:
  - 1. If probable cause exists to believe that the detained person is concealing a weapon, the requirement to obtain authorization prior to the search is waived.
  - 2. If probable cause exists to believe that the detained person is concealing a weapon, the same identified and/or expressed gender requirements are waived.
- G. Whenever it appears that any of the foregoing rules should be modified or suspended because of special circumstances, specific authorization to do so should be obtained from the District Attorney's Office.
- H. The Department shall provide annual training regarding the policies and procedures to any employee or agent of the Department who may conduct a strip search.

#### **1.2.8.2 PATIENT DISROBEMENT AT UNIVERSITY HOSPITAL AND CLINICS**

- A. Pursuant to Wisconsin statute 968.255(7)(c), the "strip search" statute "does not apply to any person who...is committed, transferred or admitted under ch. 51 (Mental Health), 971 or 975." Officers responding to a request under this section shall be acting at the direction of medical personnel.

- B. Officers may be directed by on-scene medical personnel to assist in disrobing a patient to remove anything that may be used by the patient to harm him- or herself or someone else.
- C. Custody for all such seized property shall remain with the hospital unless it is a weapon or contraband. Such items may be turned over to the officer for disposition.
- D. In all instances in which officers are called upon to assist hospital personnel with the physical control of a patient, a report shall be completed. If officers are asked to assist in disrobing a patient, this should be noted in the report along with the name of the person making the request.
- E. Officers may be called to assist medical personnel in disrobing a patient in the course of the patient's medical treatment in other areas of the Clinical Sciences Center. This is not intended to be a search; however, the above sections apply.
- F. Whenever it appears that any of the foregoing rules should be modified or suspended because of special circumstances, specific authorization to do so should be obtained from the district attorney's office.

### **1.2.9 BIAS-FREE POLICING**

- A. The purpose of this directive is to reaffirm the long-standing position against bias-based policing or any other type of discriminatory practice, including racial profiling or race-based decision making. The Department has not tolerated, and shall not tolerate, discrimination against any person based on race, color, ethnic background, gender, gender identity, cultural group, sexual orientation, religion, economic status, age, physical ability or other identifiable group.
- B. Bias-based profiling constitutes discrimination. Such activities alienate a significant percentage of the population and foster a distrust of law enforcement by the community. Related practices invite corruption, judicial/legislative intervention, disciplinary action, and media scrutiny.
- C. Employees shall be strictly prohibited from engaging in bias-based profiling when conducting any law enforcement activity, to include traffic and field contacts, searches, investigatory detentions, asset seizure, and forfeiture proceedings. Such actions shall be based on a standard of reasonable suspicion or probable cause as required by federal laws, state statutes, and Department directives.
- D. Department personnel may not use racial or ethnic stereotypes as factors in selecting whom they stop and whom to search. Department personnel may use race or ethnicity in selecting whom they stop and whom they search when a person matches the specific description of an individual who is suspected of engaging in criminal behavior.
- E. Officers shall use approved interview techniques when contacting and detaining all individuals. Officers shall maintain professional objectivity through constant self-examination, evaluation, and awareness of personal prejudices. Accepted community and problem-oriented policing practices shall be utilized to identify problems and reduce crime.
- F. In an effort to prevent misperceptions of bias-based profiling, police officers shall provide traffic stop brochures to all motorists. These brochures contain information about what can be expected during a traffic stop and how to provide feedback regarding those experiences, as well as the name of the officer who initiated the stop.
- G. In addition, all vehicle traffic stops shall be documented with a Department case number at the time of the stop. The time, date and location of the stop are captured by the computer system upon initiation of the case number process; the following additional data must be collected and noted in the case number disposition or report:
  1. Name of vehicle operator;
  2. Sex/ Race;
  3. Date of birth;
  4. Reason for the stop;
  5. Disposition of stop (C=cited, WW=written warning, VW=verbal warning); and
  6. UW Affiliation.

- H. For bicycle or pedestrian education initiatives, a single case number may be generated. Group education projects do not require identification of individuals.
- I. Affected agency personnel shall receive initial training upon hire and annually thereafter in bias based policing issues, including legal aspects. Training should be used to address the following: cultural diversity; constitutional requirements; department directives; and other agency practices.
- J. Corrective measures shall be immediately implemented if bias-based profiling occurs. Remedial training and employee counseling may be conducted when deemed appropriate for the situation. Any officer found to be involved in such activity may also be subject to disciplinary action, to include written warning, suspension, demotion, or termination.
- K. The Chief of Police or designee shall be responsible for conducting a documented annual administrative review of agency practices, including citizen concerns, as they relate to bias-based profiling. The review should be disseminated to all personnel and at a minimum include: an analysis of citizen complaints, concerns and comments; a summary of pertinent statistical data; an overview of any training conducted; any corrective actions taken; and procedural or policy recommendations, if any.
- L. Bias-based profiling should not be confused with criminal profiling, which is recognized as a legitimate law enforcement tool. Criminal profiling is an investigative method in which officers, through observation of activities and the environment, identify suspicious people and develop a legal basis to stop them for questioning. Bias-based profiling refers to the decision by officers to stop and question people when their physical characteristics and/or surroundings are used as indicators of suspicious activity or criminal tendency.
- M. All UWPD employees have a duty to intervene, or request assistance to intervene, as soon it is safe and reasonable to do so and within their scope of authority and training if they reasonably believe another employee or sworn officer engaging in an activity to be a violation of civil rights, department policy, federal or state law or is a use of force that is clearly beyond what is objectively reasonable under the circumstances. This duty to intervene is required regardless of the experience or rank of personnel involved. If an employee intervenes or requests assistance to intervene, the employee shall notify a supervisor as soon as possible for possible investigation and complete a written statement of the incident, separate from the case incident report. Failure for an employee to intervene or report such violations of civil rights or unlawful use of force shall be investigated and may result in discipline. This report shall be completed and turned into the supervisor before the end of shift and shall include the following:
  - 1. Date, time, and location of incident
  - 2. Identity of officers involved
  - 3. Identity of suspects and victims
  - 4. Identity of witnesses
  - 5. List of all possible recordings of the event
  - 6. Description of the force used or violation and the circumstances and conduct which the employee believes to have constituted excessive force or violation of law or policy.
  - 7. Description of the intervention actions taken.
- N. Supervisors who receive notice or report of such violations and interventions shall notify the MOC as soon as practicable and forward the official written report to the Professional Standards Lieutenant and chain of command prior to the end of shift.
- O. The Captain of the involved work unit shall assign an internal investigation of the incident and the internal investigation shall follow the process outlined in written directive 52.1.
- P. If an employee intervenes or requests assistance based on their observations of a civil rights violation or an unjustified or excessive use of force, they shall not be disciplined for their actions. Retaliation against an employee who intervenes or requests assistance is prohibited and shall be subject to disciplinary action.

- Q. Off duty officers are expected to intervene only if it is safe to do so. In order to determine if it is safe to intervene, the following safety factors must be considered and therefore intervention by off duty officers is not likely to be safe in many situations when they are off duty.
1. Off duty officers would likely be unknown to the on duty officers.
  2. Off duty officers do not typically have their issued safety equipment and weapons available to them in order to protect themselves and safely control a violent or tactical situation.
  3. Off duty officers are typically not in uniform and are not recognizable as an officer to other on duty officers at the scene.
  4. Off duty officers may be outside their jurisdiction.
  5. Off duty officers' intervention attempts are likely to escalate the situation.
  6. Off duty officers' intervention attempts are likely to create a serious safety risk by interrupting or distracting the on duty officers during a violent or tactical situation.
  7. Off duty officers' intervention attempts are likely to result in use of force by on duty officers towards the off duty officer if they cannot immediately confirm the off duty officers' identity during a violent or tactical situation.
  8. Off duty officers will likely not have radio communications or other typical law enforcement communication methods needed to safely respond and control a violent or tactical situation, to summon assistance, or to determine the necessary information about the incident to know whether or not the on duty officers' use of force is excessive to the situation.

#### **1.2.10 ENFORCEMENT OF IMMIGRATION LAWS**

- A. The UW–Madison Police Department is committed to community policing. Therefore, the department shall continue to provide exceptional police service to all members of our community. An individual's immigration status is immaterial to the mission of the UW-Madison Police Department and shall only be relevant if the individual is involved in serious crimes as outlined below.
- B. The UW-Madison Police Department shall refrain from entering into voluntary agreements to enforce The United States Immigration and Customs Enforcement Agency (ICE) laws. The UW-Madison Police Department shall only participate in immigration-related investigations if the operation involves an individual who has committed serious crimes which impact the University of Wisconsin Campus.
- C. Officer shall not detain or arrest an individual solely based on a suspected violation of immigration law. The UW- Madison Police Department shall only cooperate with a lawful request for immigration related enforcement from ICE under the following circumstances:
- a. The individual is engaged in or is suspected of terrorism or espionage; or
  - b. The individual is reasonably suspected of participating in a criminal street gang; or
  - c. The individual is arrested for any violent felony (eg. Homicide or Attempt, Sexual Assault, Kidnapping, Armed Robbery, Substantial Battery, etc.); or
  - d. The individual is a previously deported felon.
- D. When time and circumstances permit, an officer should obtain approval from a supervisor or OIC prior to detaining any individual for the above-outlined reasons.
- E. An individual's immigration status has no bearing on the individual's ability to file a police report with the UW-Madison Police Department. Therefore officers should not routinely inquire to an individual's immigration status.
- F. Officers shall not ask for a passport, Alien Registration Card (Green Card) or any other immigration documentation in the normal course of business. This does not prohibit an officer from considering these documents as appropriate forms of identification when voluntarily provided by the individual.

#### **1.2.11 INTERACTIONS WITH TRANSGENDER, AND/OR GENDER NON-CONFORMING (TGNC)**



- A. Officers shall not consider a person's gender identity and/or sexual orientation as reasonable suspicion or prima facie evidence that an individual is or has engaged in a criminal act.
- B. Absent illegal, indecent, or otherwise problematic behavior, officers shall not use an individual's perceived gender and the restroom they are utilizing as a basis for a police contact.
- C. Employees should address TGNC individuals by the individual's preferred name, even if the individual has not received legal recognition of the preferred name, and/or it is different than the name listed on their government-issued identification.
- D. In addressing or discussing a TGNC individual, employees should use the pronouns appropriate for that person's gender identity (e.g. she/her/hers, he/him/his, they/them/theirs, etc.) If an employee is uncertain about which pronouns are appropriate, the employee should respectfully ask the individual.
- E. Employees shall not use language that a reasonable person would consider demeaning or derogatory; in particular, language aimed at a person's actual or perceived gender identity, gender expression and/or sexual orientation.
- F. Employees shall not disclose an individual's TGNC identity and/or sexual orientation to any other person or group, absent a proper law enforcement purpose and/or to comply with open records requests.
- G. LGBTQ+ related incidents or calls involving LGBTQ+ individuals should be brought to the attention of the department's LGBTQ+ liaison officer(s), whenever possible.
- H. LGBTQ+ specific training shall be provided to all personnel.