



**MADISON OFFICE**

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November 10, 2020

Kristie Goforth, Monona City Alder  
[kschilling@ci.monona.wi.us](mailto:kschilling@ci.monona.wi.us)

**Re: Riseling Group Report Recommendations**

Dear Alder Goforth:

Thank you for requesting Legal Action of Wisconsin’s (LAW) comments on the policy recommendations in the Riseling Group Independent After-Action Review report. (“RG Report”). The RG Report echoes concerns LAW raised in our letters dated June 23, 2020; July 18, 2020; August 10, 2020; and August 25, 2020: practices of police dictated by funding models,<sup>1</sup> reestablishing legitimacy, transparency, and trust,<sup>2</sup> disparate impact of Monona’s policing on Black people,<sup>3</sup> outdated policies, including those relating to use of force,<sup>4</sup> and deficiencies in training.<sup>5</sup> These comments focus on how the specific findings of fact by the RG Report, the policy recommendations in the RG Report, and LAW’s prior letters suggest a viable path forward that would benefit LAW clients, the City of Monona, and persons being policed.

In summary, the findings of fact and statistics in the RG Report call into question whether the current police funding levels and police practices make sense where the City of Monona has evidence indicating that unnecessary uses of force are occurring, and policing practices are systemically harming the Black community. While changes to police training are likely called for, that training is highly unlikely to be successful without policy changes and without addressing structural flaws.

The RG Report details the steps by which a non-emergency “check person” call from a neighbor who noticed a Black male sitting on the stoop of a house she believed to be vacant escalated into a warrantless entry into a private home, and the eventual detention, at gunpoint, with handcuffs, of a Black male who had committed no crime. Thankfully, this incident did not escalate further to deadly force against the victim, Mr. Furdge, or to a chase or standoff with police. But that potential was clearly present, as acknowledged by the officers involved.<sup>6</sup>

<sup>1</sup> RG Report at 40, LAW letter to Alder 7/18/20 at 1-2; LAW letter to Alder 6/23/20 at 2-3

<sup>2</sup> RG Report at 42, 45, 68; LAW letter to Alder, 6/23/20 at 4 -5

<sup>3</sup> RG report at 31 -35; LAW letter to Alder, 6/23/2020, p. 6-7; Ltr to Alder 8/25/2020, p.2

<sup>4</sup> Outdated policies (RG Report at 2, 37- 38. 43; Letter to Alder, 6/23/20, 5.); Modifications to Use of Force (RG Report at 37-38, 42 -44; Ltr to Alder, 6/23/20, 5; Ltr to Alder, 7/18/2020, 1 -5; Ltr to Chief, 8/10/20, 1-3.)

<sup>5</sup> RG Report, 2, 39-42, 44-45; Ltr to Alder, 6/23/20, 8; Ltr to Alder, 7/18/2020, 5

<sup>6</sup> RG Report at 19

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Furthermore, as the RG Report clearly recognizes, the incident did result in real injuries both to Mr. Furdge and to the community. Here, the police opened the door to a private residence without a warrant, and without the exigent circumstances that would make such an entry lawful.<sup>7</sup> There was no evidence that the furnished and well-lit residence had been burglarized.<sup>8</sup> These unlawful actions escalated to police pointing their firearms directly at Mr. Furdge and handcuffing him in a home he had every right to be in.<sup>9</sup> Reports of the incident created a further injury by eroding the public trust in the institution of policing.<sup>10</sup>

The RG Report identifies a series of particularly problematic police actions. It notes communication problems with the initial caller, citing difficulties in understanding her accent. There seems to have been no effort to clarify the information with the caller or engage a Spanish speaker.<sup>11</sup> In addition, the RG Report notes that the address from which the call emanated was one that regularly contacted the Monona Police Department with similar calls.<sup>12</sup> It does not appear from the RG Reports that the police considered the source of that call in assessing how to respond to the complaint about a Black man in pajamas making a call from the front porch of a residence.<sup>13</sup> No one attempted to contact the property owner to see if the house was properly occupied until after Mr. Furdge had suffered the trauma of being held at gunpoint and handcuffed.<sup>14</sup> Finally, when Mr. Furdge later filed a citizen's complaint, Lt. Weigel took the complaint despite being involved in the underlying incident.<sup>15</sup> That practice is particularly problematic because members of the public should feel that they have a safe and neutral procedure for citizen's complaints.

The incident involving Mr. Furdge supports re-evaluating the root cause of such incidents: how Monona expends resources. As the RG Report notes, police body-worn camera footage shows that "much of police work involves engaging and communicating with a diversity of people, many of who are upset, scared, traumatized, or who suffer from mental illness or addiction."<sup>16</sup> When 38% of Monona's operating budget is dedicated to Monona Police Department, it creates a system whereby police are handling tasks many believe would be more appropriately and cost effectively addressed by non-police.<sup>17</sup> Civil responders

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<sup>7</sup> RG Report at 1 (Finding 2), 12, 22, 25, 29

<sup>8</sup> RG Report at 9

<sup>9</sup> RG Report at 27

<sup>10</sup> The story was reported locally, statewide, and nationally. *See, e.g.,* <https://madison365.com/i-was-definitely-afraid-for-my-life-monona-police-enter-home-guns-drawn-to-discover-black-man-who-lived-there/>; <https://upnorthnews.com/2020/06/08/police-video-confirms-monona-police-entered-home-of-two-black-men-without-knocking-guns-drawn/>; <https://www.kansascity.com/news/nation-world/national/article245783160.html>

<sup>11</sup> RG Report at 7

<sup>12</sup> That call to police originated from 5109 Arrowhead, a residence from which 39 other calls to police have originated in the past 20 years. Most of those prior calls were similar in nature to the call on June 2. (RG Report at 82.) The report states, "calls such as this one, arrest data, traffic stops, and community service calls should be further reviewed and analyzed to ensure fair and equitable treatment is being applied regardless of the race, age, gender, sexual orientation, physical ability, ethnicity or other non-behavioral aspects of people involved in the call." (RG Report at 4.)

<sup>13</sup> RG Report at 4

<sup>14</sup> RG Report at 7, 13

<sup>15</sup> RG Report at 28

<sup>16</sup> RG Report at 40

<sup>17</sup> <https://mymonona.com/ArchiveCenter/ViewFile/Item/818>

would be forced to investigate in less obtrusive and harmful way — they would not have the authority to escalate a “check person” call to armed use of force incident, involving guns, handcuffs, and an “unnecessary seizure,” that was “likely humiliating” and resulted in federal litigation.<sup>18</sup> Of course, if the “check person” call is determined to be more serious, police back-up could be called as appropriate and necessary. As the President’s task force on 21<sup>st</sup> century policing emphasized, “our society should aim for the least ‘police-involved’ responses to crises.”<sup>19</sup> The structures and policies created by Monona’s funding and historical practices have created the expectation that police would respond to this call when different funding, policies, and practices could have led to better results without jeopardizing public safety.

Moreover, it is not happenstance that the escalation and trauma victimized a young Black man. The statistics presented in the report indicate that Monona’s style of policing results in systemic disparate treatment. Disturbingly, the RG Report found that Monona Police Department was exponentially more likely to stop, use force on, arrest, and cite Black individuals. In a city with less than 2% Black population and a county with less than 6% Black population, 84% of traffic stops, 52% of use of force instances, 44% of arrests, and 33% of traffic citations involved Black individuals.<sup>20</sup> These levels of statistical disparities are the kind of evidence the United States Supreme Court has said may constitute evidence of intentional, pattern and practice, racial discrimination.<sup>21</sup>

The City of Monona states in its cover letter to the RG Report that it has used Campaign Zero recommendations as a source of recent police policy changes. Campaign Zero has also called for communities to stop using police to respond to non-emergency calls like the one at issue in the RG Report in order to begin reversing systemic harms to communities of color.<sup>22</sup> Campaign Zero writes, “A decades-long focus on policing minor crimes and activities - a practice called Broken Windows policing - has led to the criminalization and over-policing of communities of color and excessive force in otherwise harmless situations.”<sup>23</sup> Here again, structural change would be foundational to addressing these glaring inequities.

Nearly half of the RG Report recommendations address police training. The Report also notes that Monona Police Department’s policies are out of date and not in line with best practices.<sup>24</sup> Before additional training can be effective, the policies themselves must therefore be revisited and made clear. To that end, LAW has attached proposed edits to Monona PD 1.11 Search and Seizure addressing one deficiency. The section in 1.11 on stop and frisk measures has been removed from the policy as “Stops, searches, and arrests impose significant costs on liberty, disproportionately affect

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<sup>18</sup> RG Report at 17, 27

<sup>19</sup> New Era of Public Safety, The Leadership Conference Education Fund, 2019 pp. xxiii, xviii, 16.  
[https://civilrights.org/wp-content/uploads/Policing\\_Full\\_Report.pdf](https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf)

<sup>20</sup> RG Report at 3, 30-35; <https://www.census.gov/quickfacts/danecountywisconsin>

<sup>21</sup> See, e.g., Hazelwood Sch. Dist. v. United States, 433 U.S. 299, 308-309 & n. 14. (1977).

<sup>22</sup> Monona’s 11/3/20 cover statement on the RG Report indicates that it has adopted policies recommended by Campaign Zero.

<sup>23</sup> End Broken Window Policing- Campaign Zero <https://www.joincampaignzero.org/brokenwindows>

<sup>24</sup> LAW previously reviewed a variety of Monona Police Department policies and pointed out concerns. See, e.g., 6/23/20 & 7/18/20 LAW letters to Alder Goforth Schilling and 8/10/20 LAW letter to Chief Ostrenga.  
<https://kristiegoforth.wixsite.com/2020/post/legal-action-of-wisconsin-policy-review-suggestions>

communities of color, and undermine vital relationships necessary for effective law enforcement.”<sup>25</sup> However, neither policy changes nor training alone can rectify structural inequities. In fact, if police budgets are inflated to allow for more training, the structural deficiencies caused by overinvestment in policing might be exacerbated, and the problems and inequities could become worse.

Legal Action of Wisconsin’s clients would benefit from institutional reform and from a reimagining of the ways our communities use police. Shifting resources away from ticketing, forceful policing, and the criminalization of people of color would free those resources for investment in unarmed response and community support.

Thank you for your consideration.

Sincerely,

*Mary C. Delaney*

Mary Delaney

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<sup>25</sup> New Era of Public Safety, at 22.



# GENERAL ORDER

MONONA POLICE  
DEPARTMENT

SUBJECT: **SEARCH AND SEIZURE**  
1.11

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NUMBER:

ISSUED: 05/15/201

4

SCOPE: All Department Personnel

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EFFECTIVE:

05/25/2014

DISTRIBUTION: General Orders Manual

RESCINDS  
 AMENDS

REFERENCE: WI State Statutes: 139.01 to 139.25,  
968.10, 968.256

WILEAG 4<sup>TH</sup> EDITION STANDARDS: 1.7.3

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INDEX AS: Consent Searches  
Crime Scene  
Searches Exigent  
Circumstances  
Inventory  
Searches  
Moveable Vehicle  
Exception  
Temporary Detentions- "Stop and  
Frisk" Warrant, Search and Seizure  
Without

PURPOSE: The purpose of this General Order is to provide general guidelines and procedures for members of the Monona Police Department to follow in conducting any variety of searches that can be accomplished without a with and without a warrant.

This General Order consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS

- III. SEARCH WARRANT PROCEDURE
- IV. SEARCH WARRANT EXECUTION
- V. CONSENT SEARCHES
- VI. STOP & FRISK - TEMPORARY DETENTIONS
- VII. STRIP SEARCHES
- VIII. BODY CAVITY SEARCHES
- IX. SEARCH OF PHYSICALLY DISABLED PERSON
- X. SEARCHES OF VEHICLES UNDER THE MOVEABLE VEHICLE EXCEPTION
- XI. CRIME SCENE SEARCHES
- XII. EXIGENT CIRCUMSTANCES
- XIII. OTHER SITUATIONS AS AUTHORIZED BY STATE AND FEDERAL CONSTITUTIONAL PROVISIONS

## I. POLICY

- A. It is the policy of the Monona Police Department that searches of persons, places and things will be accomplished in a manner that provides protection of constitutional rights, minimizes intrusion, preserves evidence or fruits of crime and provides for the safety of all parties. ~~If practical a search warrant should be obtained as they provide the detached scrutiny of a neutral judge.~~
- B. Except as described in this policy, officers shall not conduct a search without a valid search warrant. (Seattle Police Manual 6.180 at 1)
- C. The determination concerning when a search warrant must be obtained will be based on pertinent legal guidelines and consultation with a supervisor. The advice of a District Attorney (DA) should be obtained and adhered to when any questions arise concerning the search warrant procedure (Philadelphia PD Directive 5.7 at 1).

## II. DEFINITIONS.

- A. HOT PURSUIT: An immediate or continuous pursuit of a felony suspect from the scene of a crime.
- B. CURTILAGE: The area around a dwelling in which occupants carry on the activities of daily life or the zone of habitation, dwelling area, space necessary and convenient and habitually used for occupant purposes.

### III. SEARCH WARRANT PROCEDURE

A. A search warrant may be issued to search for and seize:

1. contraband, the fruits of a crime, or things otherwise criminally possessed; or
2. property which is or has been used as a means of committing a criminal offense; or
3. property, which constitutes evidence of the commission of a criminal offense. (Philadelphia PD Directive 5.7 at 1).

B. The premises or person to be searched and the items to be seized must be specifically described in the warrant so that the judge or bail commissioner and executing officer have no doubt as to who or what can be seized and where they may be found. (Philadelphia PD Directive 5.7 at 3).

C. Description of buildings should include:

1. Street name and number (no intersections.) When possible, where search will take place (vehicle/building), use exact numerical location.
2. Number or stories - apartment number.
3. Type of construction (brick, wood, etc.).
4. Type of property (single home, apartments, twin structure, etc.).
5. Particular markings, color, or any additional information which serve to identify that particular premise. (Philadelphia PD Directive 5.7 at 3).

D. Descriptions of persons should include:

1. Name, aliases or nicknames.
2. Date of birth.
3. Race, sex, height, weight, build.
4. Hair and eye color.
5. Tattoos, physical deformities, injuries, or any additional information, which serve to identify that particular person. (Philadelphia PD Directive 5.7 at 3).

E. The warrant MUST also include the following:

1. Name and/or description of owner, occupant(s), or possessor of the premise or property to be searched.

2. The particular crime that has been or is being committed.
  3. What probable cause exists for a search.
  4. Probable cause is the existence of facts and circumstances that would justify a person of reasonable caution to believe:
    - a) that an offense has been or is being committed;
    - b) that the particular person or item to be seized is reasonably connected to the crime; and
    - c) that the person can be found at a particular place or the item can be found in the possession of a particular person or at a particular place. (Philadelphia PD Directive 5.7 at 4).
- F. The warrant should also include, where applicable:
1. Any information obtained through a surveillance, by whom it was obtained and the date, time, and place of surveillance so long as it will not jeopardize the investigation or place anyone in danger. (Philadelphia PD Directive 5.7 at 4).
  2. Reasons for believing that the item(s) or person(s) are located at the premise specified and why they should be the subject of a seizure.
  3. Facts known to the officer concerning:
    - a) potential for destruction of evidence,
    - b) potential for the removal of evidence, contraband, etc., and
    - c) threats of harm to police personnel should be clearly indicated on the warrant. (Philadelphia PD Directive 5.7 at 4).
- G. **CAUTION:** The facts and information must be real and cannot be based on simple speculation or on a "hunch" by the officer applying for the warrant. (Philadelphia PD Directive 5.7 at 4).
- H. To obtain a search warrant, an officer MUST:
1. Have thoroughly investigated a complaint or gathered information as to convince a disinterested party (judge or bail commissioner) that probable cause exists to justify a search.
  2. Consult with his highest-ranking supervisor.
  3. **Optional:** Submit warrant to DA for pre-approval
  4. Present the original affidavit to a judge or commissioner. Testify to the truth

and accuracy of the information contained in the affidavit. (Philadelphia PD Directive 5.7 at 2).

- I. If a "nighttime" search is requested (i.e. 10:01 PM to 5:59 AM), state why the search should be carried out in other than daytime hours (i.e. 6:00 AM to 10:00 PM). The judge or bail commissioner must specifically note on the warrant that they are authorizing such a search and sign their name to it. (Philadelphia PD Directive 5.7 at 4)
  1. **NOTE:** There is a need for the officer to state additional probable cause to support a such search (e.g., evidence may be moved or destroyed, the threat of serious bodily injury or death or other exigent circumstances exist). (Philadelphia PD Directive 5.7. at 4).

#### IV. SEARCH WARRANT EXECUTION

- A. The search warrant must be served during the "daytime" hours (6:00 AM to 10:00 PM) unless a "night-time" search (10:01 PM to 5:59 AM) has been authorized by a judge or bail commissioner.
- B. A warrant must be served within a specified period of time not to exceed two (2) days from the date of issuance. A judge or bail commissioner may, however, designate a lesser period of time for its execution.
- C. Search and seizure warrants that have not been served within the specified period of time, (two days from the date of issuance), must be voided.
- D. Sworn personnel serving the warrant will thoroughly review it for accuracy, specifically concentrating on the exact location and description of property to be searched.
- E. Sworn personnel are expected to perform the search in a highly professional manner. Officers will not use abusive or derogatory language, threats, or intimidation while serving and executing a search warrant. Weapons should not be displayed unnecessarily after the safety of the officers has been ensured and the premises secured Officers engaging in improper or unprofessional conduct will be subject to disciplinary action.
- F. Property should never be damaged or destroyed unless the search cannot be conducted without such action. The unnecessary damage or destruction of personal property by police during a search is strictly prohibited and WILL result in severe disciplinary action as well as possible review by the courts.
- G. When Individuals are present while a residential search warrant is being served:
  1. According to the United States Supreme Court, the basis for the search warrant provides the necessary justification to lawfully detain the occupants in the immediate vicinity of a residential search, even if the officers have no reason to suspect criminal activity by the individuals.

2. While the search warrant allows the individuals present to be detained during the search, it does not automatically authorize an officer to frisk the individuals. Officers must have additional reasonable suspicion to believe the individual present during a search warrant has a weapon that could harm the officer. (Philadelphia PD Directive 5.7 at 7).

## V. CONSENT SEARCHES

- A. The consent to search is one of the few legally recognized exceptions, created by the U.S. Supreme Court, permitting law enforcement personnel to search a person or property without a search warrant. (Philadelphia PD Directive 5.7 at 14).
- ~~B. No search warrant is required if a person who officers reasonably believe has common authority over a place or thing to be searched freely and voluntarily consents to the search.~~
- C. Officers should only use the consent to search when there exists less than the requisite probable cause to conduct a warrantless search or to secure a search warrant.
- D. Consent to search will not be used as a substitute for a valid search warrant. If the officer has probable cause and there are no exigent circumstances, which require an immediate search, they MUST obtain a search warrant.
- E. The courts will uphold a consent to search only when the following conditions have been met:
  1. that a statement has been made consenting to the search;
  2. that it has been given by the owner or possessor of the premise; OR
  3. by a third party who possesses common authority over or other sufficient relationship to the property or effects to be searched; AND
  4. the consent is given voluntarily AND it is not the result of duress or coercion, either expressed or implied.
- F. Factors, which may suggest to a court that consent was voluntarily given, include but are not limited to:
  1. the consenting party was not in police custody at the time of their consent;
  2. the consenting party's custodial status was voluntary when consent was given;
  3. the consenting party believed police would find no contraband;
  4. the consenting party was aware of their right to refuse;
  5. the consenting party was informed by police prior to the request for consent what the police were searching for;

6. the consenting party signed a consent to search form prior to the search; or
  7. that the consenting party agreed to assist police in conducting the search. (Philadelphia PD Directive 5.7 at 15-16).
- G. ~~Ideally, the~~ Consent should be in writing and documented on the Monona Police Department Consent to Search form. It is always preferable to have a witness to a consent search if a witness is available.
- H. The scope of the consent to search ~~may be~~ is limited by the terms of its authorization.
- I. Whether verbal or written consent is given, it can be withdrawn at any time and officers must then stop the search.
- J. If a person feels compelled to comply with an officer's request, the consent is coerced and not voluntary.
- K. Factors, which may suggest to a court that consent was coerced, include but are not limited to:
1. the presence of abusive or overbearing police actions and procedures;
  2. police use of deception or trickery to gain consent to search;
  3. statements or actions by police indicating the consenting party was not free to refuse the search;
  4. where consent is given by a person already in police custody;
  5. where police had blocked or impaired the consenting party's freedom of movement; or
  6. where consent was granted but only after it had been refused initially (Philadelphia PD Directive 5.7 at 16).
- L. Factors about the grantor that officers should consider when determining the voluntariness of the consent include but are not limited to:
- a) Age
  - b) Intelligence
  - c) Education
  - d) Physical and emotional condition
  - e) Prior experience with the criminal justice system.
- M. If officers are unsure about a person's authority to grant consent, ~~all reasonable efforts will be made to verify common authority over the premises or~~

~~object before conducting the search shall not be conducted.~~

- N. Officers may not threaten to obtain a search warrant when they know there are no grounds for a valid warrant.
- O. On serious crimes that involve co-habitants of a residence in which one resident is a suspect, officers shall ~~give consideration to~~ obtaining a search warrant to resolve any conflicting consent to search issues.
- P. Officers will ensure they provide the consenting party with the following warnings:
1. that the consenting party has the right to require the police to obtain a search warrant; and
  2. that they have the right to refuse to consent to a search. (Philadelphia PD Directive 5.7 at 16).
- Q. If the person is in police custody, three (3) additional warnings must be provided:
1. that any items found can and will be confiscated and may be used against them in court;
  2. they have the right to consult with an attorney before making a decision to consent; and
  3. that they have the right to withdraw their consent at any time. (Philadelphia PD Directive 5.7 at 16).
- R. The following limitations are placed upon an officer who has been granted consent to search:
1. An officer may NOT exceed the limits of the consent.
  2. If consent has been granted to search for a particular object or person, the officer may only search those places where the person or object could be found.
  3. Consent may be revoked at any time during the course of the search.
  4. However, items found before consent was revoked remain subject to seizure.
- S. Sworn personnel should not open locked containers without specific permission from the consenting party.
- T. NOTE: A consent search may disclose the basis for an arrest or for the probable cause needed to acquire a search warrant. (Philadelphia PD Directive 5.7 at 16-17).

## ~~VI. STOP & FRISK – TEMPORARY DETENTIONS~~

- ~~A. When an officer has stopped a person for temporary questioning and reasonably~~

~~suspects that he/she or another is in danger of physical injury, the officer may “frisk” the person and/or vehicle for any weapons, instruments, articles, or substances that are readily capable of causing physical injury.~~

~~1. If an officer finds any such weapon or instrument, or any other property the possession of which causes the officer to reasonably believe constitutes the commission of a crime, or which may constitute a threat to his/her safety, the officer may take it and keep it until completion of the questioning, at which time the officer shall either return it, if it is lawfully possessed, or arrest the person so questioned.~~

~~B. The officer must be prepared to articulate the reasons that he/she felt the officer or another was in danger of physical injury. The reasons may include, but are not limited to:~~

~~1. The type of crime suspected, particularly crimes of violence where the use or threat of use of a weapon is involved.~~

~~2. Where more than one suspect is being handled by a single officer.~~

~~3. The hour of day and the location where the stop has taken place.~~

~~4. Prior knowledge of the person’s use of force and/or propensity to carry deadly weapons.~~

~~5. The appearance and demeanor of the person who has been stopped.~~

~~6. Visual indications that suggest that the person is carrying a firearm or other weapon which could cause physical injury.~~

~~C. During a frisk, officers are permitted to feel only the outer clothing of the person who has been stopped. Officers may not place their hands inside clothing or pockets unless they feel an object that could reasonably be believed to be a weapon.~~

~~1. If an officer reasonably believes based on reliable information, their own knowledge, or observations that a weapon or dangerous instrument is concealed at a particular location on the person, the officer may reach directly into the suspected area.~~

~~2. When an officer feels an object that they do not believe is a weapon or dangerous instrument, but based on training and experience can immediately identify as contraband, the officer may retrieve that item based on “plain feel.” With probable cause, the officer may arrest the person, and conduct a full search incident to that arrest.~~

~~a) The officer must be able to immediately identify the object and may not overly palpate the object in attempt to identify it.~~

~~D. When a person is carrying something that is immediately separable from them, i.e. a purse, shopping bag, or briefcase, it should be taken from the person. Officers will not search the object, but will put it in a safe place out of the person’s~~

~~reach for the duration of the detention, unless specific identifiable facts have been discovered about that object that gives the officer reason to search it.~~

## VII. STRIP SEARCHES

- A. Strip Search is the removal or rearrangement of clothing to permit the VISUAL inspection of a person's undergarments, buttocks, anus, genitals or breasts to search for a weapon or contraband such as controlled substances. (Philadelphia PD Directive 5.7 at 24)
- B. ~~A strip search is a search in which a detained person's genitals, pubic area, buttocks, or anus, or a detained female person's breasts, is uncovered and either is exposed to view or touch by a person conducting the search; refer to General Order 1.14: Strip Searches.~~
- C. A strip search may only be conducted when an individual has been lawfully taken into custody AND sworn personnel can identify specific factors, which establish a reasonable suspicion that the individual possesses a weapon or contraband, such as controlled substances, or evidence of a specific crime. (Philadelphia PD Directive 5.7 at 22).

## VIII. BODY CAVITY SEARCHES

- A. Body Cavity Search is the actual entering or touching, by instrument or appendage, a person's anal or vaginal area ONLY in an effort to search for a weapon, evidence or contraband such as controlled substances. (Philadelphia PD Directive 5.7 at 24).
- B. Body cavity search may only be conducted when an individual has been lawfully taken into custody AND sworn personnel have obtained a search warrant thereby establishing probable cause to search for:
  - 1. contraband, the fruits of a crime, or things otherwise criminally possessed; or
  - 2. property which is or has been used as a means of committing a criminal offense; or
  - 3. property, which constitutes evidence of the commission of a criminal offense.
  - 4. EXCEPTION: A search warrant is not required when an individual to be searched gives written consent to search. (Philadelphia PD Directive 5.7 at 23).
- C. Per WI Statute 968.255(3), no person other than a physician, physician assistant, or registered nurse licensed to practice in this state, may conduct a body cavity search; refer to General Order 1.14: Strip Searches.

## IX. SEARCH OF PHYSICALLY DISABLED PERSON

- A. Per WI Statute 968.256 a physically disabled person is a person who requires an assistive device for mobility, including, but not limited to, a:

1. Wheelchair.
  2. Brace.
  3. Crutch.
  4. Artificial limb.
- B. A search of a physically disabled person shall be conducted in a careful manner. If a search of a physically disabled person requires the removal of an assistive device or involves a person lacking sensation in some portion of his/her body, the search shall be conducted by a person who has had training in handling physically disabled persons.

For purposes of this section, a trained EMT may perform this search and may consult with hospital personnel should any question arise as to the removal of specific assistive devices.

#### X. SEARCHES OF VEHICLES UNDER THE MOVEABLE VEHICLE EXCEPTION

- A. Officers may no longer conduct a routine warrantless search of a vehicle incident to the arrest of an occupant (*Arizona v. Gant*, 2009).
- B. A warrantless search incident to arrest is permissible if the arrestee or others could gain access to the vehicle and present a safety risk or if officers have a reason to believe that evidence of the crime of arrest may be found in the vehicle. It is critical that officers do not compromise their safety by allowing an arrestee to remain unsecured to justify a search incident to arrest.
- C. Under the vehicle exception to the warrant requirement, if an officer has probable cause to believe that the vehicle contains evidence or contraband, the vehicle may be searched without a warrant. The vehicle must be “readily mobile”. Note that this is a higher standard to meet than the “reason to believe” standard.
1. If the probable cause is limited to a certain area in the vehicle, then the search must be limited to that same area.
  2. Officers do not have to be able to prove that a vehicle might or would be gone if they obtained a warrant before the search.
  3. When a vehicle is obviously broken down, or there is otherwise no reasonable chance the vehicle will be driven away or the evidence contained within will be removed or destroyed, the vehicle should be searched only after a warrant has been obtained.
- E. Officers may “frisk” a lawfully stopped vehicle if they have reasonable suspicion that a weapon that could be readily accessed and used against them is present in the vehicle. This search is limited to unlocked areas where the occupants could easily access a weapon.
- F. Officers may conduct an inventory search of a lawfully impounded vehicle if the

inventory is done in compliance with General Order 11.02 and section XI.R: Vehicle Inventory of this General Order. The basis for this search is to protect citizen property, as well as to protect law enforcement agencies from harm and against claims of theft or loss, but any evidence or contraband discovered in the course of the search may be used in criminal proceedings.

- G. Officers may seek consent to search a vehicle from someone who has apparent authority to provide consent.
- H. Officers must remember that all warrantless searches are presumed to be unreasonable unless properly justified as an exception to the warrant requirement. If an officer seeks to search a vehicle incident to arrest based on having a reasonable belief that evidence of the offense might be inside or that actual officer safety concerns exist, it is critical to document the facts supporting the officer's belief.

## XI. CRIME SCENE SEARCHES

- A. There is no crime scene exception to the search warrant requirement. However, officers may search a crime scene:
  - 1. To locate any victims in need of assistance.
  - 2. To conduct a protective sweep.
- B. Crime scenes will be kept secure until a search warrant can be obtained for a more thorough search of the scene; unless some other constitutional exception applies.

## XII. EXIGENT CIRCUMSTANCES

- A. In all cases which exigent circumstances exist, an immediate search may be made at the time of the arrest. However, the exigent circumstances must be clearly describable. (Philadelphia PD Directive 5.7 at 19).
- B. Officers will not conduct warrantless searches or seizures unless there is both subjective and objectively reasonable basis to believe that exigent circumstances exist. (Seattle Police Manuel 6.180 at 4).
- C. Officers may search otherwise constitutionally protected areas when officers have probable cause and any of the following exigent circumstances:
  - 1. Hot Pursuit
    - a) The arrest must be set in motion in a public place.
    - b) There must be some element of a chase, but it need not be a protracted pursuit in and about the public streets.
    - c) A person standing in a doorway is in a public place.
    - d) Officers may not pursue a "Terry" suspect into a home under the Hot

Pursuit doctrine.

2. Immediate threat of escape.
  3. Immediate threat of destruction of evidence of a crime.
  4. Immediate threat of death or great bodily harm to the officer or the general public.
- D. Officers should consider the totality of the circumstances when determining whether to make an entry based upon the exigent circumstances exception.
- E. During a protracted hostage or barricaded person incident, the longer on scene negotiating or maintaining a perimeter, the less likely that a warrantless entry can be justified under exigent circumstances. Therefore, as soon as practical, a search warrant should be obtained for the premises. There is no obligation to execute a warrant immediately, and it may not need to be executed at all if negotiations produce a voluntary exit by the suspect.
- F. Warrantless arrests and searches are permitted where exigent circumstances exist. However, courts generally review the reasonableness of police actions based upon exigent circumstances on a case-by-case basis and these issues are closely scrutinized. As a basic rule of procedure where time and circumstances permit, an arrest and/or search warrant must be obtained. (Philadelphia PD Directive 5.7 at 13)
- G. Some factors, which courts consider in determining whether exigent circumstances existed, are:
1. the reasonable belief that a threat of physical harm to police officers or others exists unless an arrest is made immediately;
  2. the seriousness of the offense;
  3. a strong reason to believe that the suspect is on the premises AND committed a crime;
  4. the likelihood that the suspect will escape;
  5. a "hot pursuit" of a suspect who flees into a building; and
  6. the manner of entry (i.e. peaceable, use of force, trickery) (Philadelphia Directive 5.7 at 14).
- H. Officers will be required to document the fact that such exigent circumstances existed and may be required to articulate such details through court testimony. (Philadelphia Directive 5.7 at 14).
- I. Exigent circumstances do not exist where officers create their own emergency.

(e.g. if an officer places themselves in a place where they are not legally permitted to be and they are forced to take police action. The courts may not protect these actions under exigent circumstances.) (Philadelphia Directive 5.7 at 14).

### XIII. OTHER SITUATIONS AS AUTHORIZED BY STATE AND FEDERAL CONSTITUTIONAL PROVISIONS

#### A. Abandoned Property

1. Abandoned property may be lawfully searched as it is not protected by the 4<sup>th</sup> Amendment.

#### B. Community Caretaker Function

1. Officers' freedom to act is not limited to the investigation of crimes. Officer may also act to assist individuals who appear to be in distress or in need of assistance.
2. Community caretaker activities must be totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.
3. The balance test for community caretaker activities is the degree of public interest and need versus the degree of intrusion on the person intruded upon.
4. When an officer stops to assist a citizen and evidence is discovered, the evidence and/or the person may constitutionally be seized.
5. Officers will act under a community caretaking role in emergency action, not in their evidence gathering role. (Seattle Police Manual 6.180 at 2).
6. Officers may conduct warrantless community caretaking searches when:
  - a) The officer has subjective belief that someone likely needs assistance for health or safety concerns.
  - b) Officers will attempt to rouse suspected unconscious persons prior to conducting searches. Suspected unconsciousness alone does not support a reasonable, objective belief of a need for immediate assistance.
  - c) A reasonable person in the same situation would similarly believe that there is need for assistance.
  - d) There is a reasonable basis to associate the need for assistance with the place searched.
  - e) There is an imminent threat of substantial bodily injury to persons or substantial damage to property.
  - f) A specific person or persons or property need immediate help for health or safety reasons. (Seattle Police Manual 6.180 at 2).

7. Officers must cease a search immediately upon dispelling the reason for the noncriminal investigation. (Seattle Police Manual 6.180 at 2)
8. Officers will not use community caretaking as pretext for an investigatory search. (Seattle Police Manual 6.180 at 3).

#### C. Curtilage and Open Fields

1. Curtilage is protected by the 4<sup>th</sup> Amendment requirement for a search warrant, however, open fields are not, even though both pertain to private property.
2. Officers may lawfully search open fields and seize evidence or contraband without first obtaining a search warrant.
3. The courts consider four factors when determining if a private area is curtilage or an open field.
  - a) The proximity of the area to the home.
  - b) Whether the area is enclosed in some fashion.
    - (1) Even if fenced and posted "No Trespassing," the area may be an open field if the area does not harbor the intimate activity associated with a person's home and the privacies of life.
  - c) If the area, if it is used for personal reasons, it is more likely to be seen as curtilage.
  - d) Steps taken by the owner to prevent the area from being observed by casual by passers.
4. Officers with legitimate business may enter the areas of curtilage that are implied to be open to use by the public i.e. a porch, sidewalk, or common entrance.
5. Owners of commercial property have a reasonable expectation of privacy in those areas immediately surrounding the property only if affirmative steps have been taken to exclude the public.

#### D. Fire Investigations

1. Entry into a private place to fight a fire requires no warrant. Once inside the building, officials may remain there for a reasonable length of time to investigate the cause of the fire.
  - a) Evidence of arson discovered in the course of such investigations is admissible at trial.
  - b) Any additional entries to investigate the cause of the fire must be made pursuant to a search warrant.

#### E. Incident to Lawful Arrest

1. Search of persons, places and objects made incident to lawful arrests shall be made in conformity with General Order 1.12: Arrest Procedures.

#### F. Nighttime Security Searches

1. Officers may conduct nighttime security checks of businesses to determine if unauthorized persons are inside. Officers may also check for owner or key holder information so notifications can be made if necessary.

#### G. Plain View

1. Plain view seizures by officers are lawful provided:

a) ~~The officer is lawfully in the place from which they see the item to be seized.~~ The police inadvertently discover contraband or evidence after making a lawful intrusion into a constitutionally protected area, such as a residence or a vehicle. (Seattle Police Manual 6.180 at 4).

b) The item(s) seized must be obviously identifiable as contraband or evidence.

c) The officer has constitutional access to the item seized.

2. Under this doctrine:

a) Officers may not lawfully use artificial devices that aid or enhance the officers' ability to view an item to be seized.

(1) Flashlights are generally considered to be acceptable.

(2) Officers may not lawfully move or re-arrange an item to further aid in identification of the item.

3. The key to the plain view doctrine is being in the protected place with consent or on legitimate police business. (Seattle Police Manual 6.180 at 5).

#### I. Probation/Parole Searches

1. Upon request, officers may assist agents from the Wisconsin Department of Corrections during their search of a probationer/parolee's home provided the agent has reasonable grounds to believe contraband is present in the home. Officers may offer security and take custody of evidence seized by the Department of Corrections.

#### J. Protective Sweep

1. If making an arrest in a home, in addition to a search incident to a lawful arrest, officers may conduct a protective sweep of those areas of the home in which an officer reasonably believes a person may be hiding.
  - a) This sweep is limited in nature and must be specifically targeted to the finding of people.

- b) The purpose of the sweep is to ensure the safety of officers/others and is not to be used as a ruse for an investigatory search for evidence.

#### K. Public Places

1. Officers may, without a warrant; search places open to the public except in certain situations where a person has a reasonable expectation of privacy. This includes public lands, common areas of apartment buildings, and places of business, but not the private office of the person conducting the business.

#### L. Right of Lawful Inspection

1. Officers may, at any reasonable hour, inspect any licensed premises, or any premises where fermented malt beverages or intoxicating liquors are manufactured, sold, exposed for sale, possessed, or stored for the purpose of inspecting the same and determining whether the taxes imposed by WI. Statutes 139.01 to 139.25 have been fully paid, and whether 139.01 to 139.25 are being complied with.

#### M. Vehicle Inventory Searches

1. Vehicle inventory searches are not to be done as a pretext to obtain search authority, where none would otherwise exist, for the purpose of obtaining evidence or contraband.
2. Vehicle inventory searches are not mandated on vehicles that are temporarily seized by this department
3. The officer who seizes a vehicle will be responsible for completing a vehicle inventory search under the following conditions:
  - a) The vehicle is to be stored in a non-secure location.
  - b) The vehicle is going to be permanently seized.
  - c) The officer seizing or impounding the vehicle can articulate, based on the totality of the circumstances, a reasonable need to inventory the contents of the vehicle in order to protect the Department, or vehicle owner's property rights.
4. Seized vehicles which need to be processed by a member of the Evidence Tech Team for physical evidence will be stored in a secure location until evidence collection is completed. After processing, identification officers will be responsible for conducting an inventory search of the vehicle if it meets the criteria above.
5. When an inventory search is done, the entire contents of the vehicle will be inventoried, not just those in a particular compartment. However, should access to a locked compartment be impossible without causing damage, supervisory guidance should be sought.
  - a) Contents of closed removable containers will not be inventoried

Walter J. Ostrenga  
Chief of Police

This General Order cancels and supersedes any and all written directives relative to the subject matter contained herein.

Initial 05/15/2014