POLICY & PROCEDURE

STURGEON BAY POLICE DEPARTMENT

SUBJECT: **ARREST PROCEDURES**

SCOPE: All Department Personnel
DISTRIBUTION: Policy & Procedures Manual

REFERENCE: WI State Statutes: 29.941, 62.09(13), 66.0313, 66.0513, 175.40, 349.02, 800.02(6), 968.07, 968.08, 968.085, 968.10, 968.11, 968.12, 968.24,968.25, 18USC.3041

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PURPOSE: The purpose of this Policy & Procedure is to define the authority of officers of the Sturgeon Bay Police Department to make arrests and to establish guidelines for affecting arrests, both with and without a warrant. Such guidelines shall serve to ensure that all rights and privileges afforded citizens during arrest situations will be diligently protected.

This Policy & Procedure consists of the following numbered sections:

I. POLICY

II. DEFINITIONS

III. ARREST AUTHORITY

IV. GEOGRAPHIC JURISDICTION

V. ARREST WITH A WARRANT

VI. ARREST WITHOUT A WARRANT

VII. ARREST BY CITATION OR FOR MISDEMEANOR(S) OR FELONY(S)

VIII. ARRESTEE RIGHTS

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X. ALTERNATIVES TO ARREST

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XII. OTHER ARREST PROCEDURES

XIII. MUTUAL AID

XIV. EXPANDED JURISDICTION

I. POLICY

A. It is the policy of the Sturgeon Bay Police Department that officers shall investigate violations of state laws and municipal ordinances. Arrests made for such violations shall be made in accordance with procedures imposed by the Constitutions of the United States and the State of Wisconsin; federal, state, and municipal legislation, and Department policy.

II. DEFINITIONS

A. CIVIL FORFEITURE: Conduct which is prohibited by City ordinance and punishable generally by monetary forfeiture or other penalties imposed by City ordinance or both.

B. CLOSE PURSUIT: The pursuit into another state by a law enforcement officer of a defendant the officer has probable cause to believe has committed a felony in the State of Wisconsin.

C. CRIME: Conduct which is prohibited by state law and punishable by fine or imprisonment or both.

D. CUSTODIAL ARREST: The act of depriving a person of their liberty by legal authority for the purpose of holding or detaining them to answer to a criminal charge or a civil forfeiture action. A custodial arrest is that type of arrest in which the suspect would normally be brought to the police department or detained at another facility.

E. EXIGENT CIRCUMSTANCES: Circumstances that are required in addition to probable cause for officers to lawfully enter an area without a warrant, where a subject has a reasonable expectation of privacy, to make an arrest. These circumstances are defined as:

1. The immediate threat of escape.

2. The immediate threat of destruction of evidence of a crime.

3. The immediate threat of death or great bodily harm to the officer or the general public.

F. FRESH PURSUIT: Means the pursuit by a law enforcement officer of someone he/she has probable cause to believe has violated any law or ordinance the officer is authorized to enforce. This means that the infraction took place within the officer's geographical jurisdiction and fresh pursuit allows the officer to follow that person outside of what normally would be his/her geographical limits. An officer now may, when in fresh pursuit, follow anywhere in the state and arrest any person for violation of any law or ordinance the officer is authorized to enforce. The officer must act without unnecessary delay as well as pursue continuously and uninterrupted.

G. HOT PURSUIT: requires the "immediate or continuous pursuit of a suspect from the scene of the crime." Merely receiving and responding to a call at a particular location is not sufficient to claim hot pursuit. Instead, "some sort of chase" is required. Additionally, it is not enough that the subject of the pursuit is suspected of committing a jailable offense; either the person must be suspected of committing a felony, or there must be another exigency (such as the threat of escape, destruction of evidence, or death or great bodily harm).

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

H. NON-CUSTODIAL ARREST: The act of temporarily depriving a person of their liberty by legal authority for the purpose of issuance of citation or summons with the intent of bringing that person into the judicial process to answer for an offense.

I. PROBABLE CAUSE: A reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that some kind of violation probably is being committed or has been committed.

J. WARRANT: A written order issued and signed by a judge, and directed to law enforcement officers, commanding the officer(s) to arrest the person named in the order. A warrant may be for violation of a criminal law or in connection with a civil proceeding.

III. ARREST AUTHORITY

A. Sturgeon Bay City Ordinance 5.06 and Wisconsin State Statutes 968.07, 349.02, and 62.09(13) grant law enforcement officers the authority to enforce laws and arrest under specific circumstances.

IV. GEOGRAPHICAL JURISDICTION

A. Officers of the Sturgeon Bay Police Department are authorized to exercise police powers and perform duties in all areas within the corporate City limits of Sturgeon Bay], Door County, Wisconsin; refer to Policy & Procedure 1.09: Jurisdiction for information regarding geographical jurisdiction.

V. ARREST WITH A WARRANT

A. The Sturgeon Bay Police Department maintains a file of all warrants issued as a result of Department action. This file is maintained in the Dispatch and Records section of the police department and is available to all officers on a 24 hour basis.

B. When an officer is making an arrest based on the existence of a warrant and does not have the warrant in their possession, they shall be responsible for confirming the validity of the warrant.

C. Temporary detention of an individual for the purpose of verifying the status of a warrant is permissible.

D. Upon making an arrest upon the existence of a warrant, the arresting officer shall inform the defendant as soon as practical of the nature of the crime/warrant with which they are charged.

E. Time of Service – A warrant may be lawfully served at any time.

F. Warrants are directed to all law enforcement officers and may be served anywhere in the state, but must be served by an officer with arrest power in the jurisdiction where it is served.

G. An officer receiving a request from another agency to execute a warrant on their behalf shall first confirm the warrant by checking NCIC and CIB sources. If the warrant does not appear in either of these sources, the officer shall request teletype confirmation of the warrant from the requesting agency. In exigent situations, officers may act on a telephone request from another agency. As soon as practical, a telephone request shall be followed by a teletype confirmation.

H. Serving warrants at residences.

1. Entry into a defendant's residence requires: consent from a person the officer(s) reasonably believe has authority to grant consent, exigent circumstances, or a warrant for a felony and probable cause to believe the defendant is inside the residence. Consideration should always be given to the totality of the circumstances and the severity of the charged offense when deciding whether to force entry into a residence.

2. Entry into a third party residence requires: consent from a person the officer(s) reasonably believe has authority to grant consent, exigent circumstances, or a search warrant listing the arrestee as the item to be seized.

3. When serving a warrant at a residence, officers will, before entering, knock and announce their identity and purpose then wait for permission to enter unless exigent circumstances require immediate entry or a no knock warrant has been authorized.

VI. ARREST WITHOUT A WARRANT

A. Officers may arrest without a warrant whenever it is impractical to obtain a warrant and there is probable cause to believe that:

1. The suspect is committing or has committed a crime.

2. The suspect is wanted for the commission of a felony in another state.

3. The suspect is wanted in this state.

B. Officers responding to a teletype request from another police agency to affect a warrantless arrest may conduct such an arrest if the defendant is located within the City of Sturgeon Bay and it is impractical to obtain a warrant under the circumstances.

C. Officer may also affect an arrest on the strength of a radio or telephone request from another agency. However, teletype confirmation shall be sought, preferably before the arrest is made. Again, it must be impractical to obtain a warrant under the circumstances.

D. Officers should be cautious of other agency requests that contain phrases such as “attempt to locate,” or “stop and detain,” and shall ascertain the clear nature of the request prior to taking “custodial arrest” action.

E. Under WI Statues 66.0313 & 66.0513, Officers upon the request of any law enforcement agency, personnel from another law enforcement agency may assist the requesting agency within their jurisdiction, and upon that request the assisting officer shall have full police powers within the requesting jurisdiction, including all protections for the officer such as worker’s compensation.

F. WI Statute 29.941 provides that all police officers are deputy conservation wardens and shall assist the DNR and its wardens in enforcement of fish and game law or other violations of Chapter 29 of the Wisconsin Statutes whenever notice of violations thereof is given to them by the department or its wardens. This action should normally only be taken at the request of the DNR or a warden.

G. 18 U.S. Code 3041 authorizes State law enforcement officers to make arrests for Federal crimes. Officers shall not utilize this authority unless so directed by a supervisory officer.

VII. ARREST BY CITATION OR FOR MISDEMEANOR(S) OR FELONY(S)

A. Certain warrantless arrest situations can be accomplished through the issuance of municipal ordinance citations, and State of Wisconsin Uniform Traffic Citations. These situations can be categorized as follows:

1. Violation of a City of Sturgeon Bay Municipal Ordinance.

2. Violation of a State of Wisconsin traffic statute.

3. Violation of a criminal statute that constitutes a misdemeanor.

B. The following guidelines shall apply to the issuance of a municipal ordinance citation:

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

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

3. The arrest shall generally be non-custodial in nature if the offense is not adopted from a State criminal offense. Exceptions can be made for alcohol offenses which have a high rate of false identification and carry a risk to the community. All other offenders arrested solely on the basis of a municipal ordinance violation shall be released upon being properly identified and issued the citation.

4. Arrestees, who cannot be properly identified, have no fixed address or cannot show sufficient evidence of ties to the community may be held in custody at the officer's discretion unless otherwise directed by supervisory personnel. All reasonable efforts to have bond posted shall be attempted.

C. The following guidelines shall apply to the issuance of a Uniform Traffic Citation.

1. The action for which the citation is being issued must constitute a violation of State of Wisconsin traffic statutes or a City of Sturgeon Bay Municipal Ordinance adopting the same statute.

2. In all cases where a municipal ordinance has adopted the state statute, the citation shall be written in a manner that has the City of Sturgeon Bay or the State of Wisconsin as the plaintiff.

3. The arrest shall generally be non-custodial in nature. An offender arrested solely on the basis of a violation of a traffic statute or ordinance in conformity therewith, shall be released upon the receipt of the citation.

4. Persons cited who cannot be properly identified, have no fixed address, or cannot show sufficient evidence of ties to the community, may be held in custody at the officer's discretion unless otherwise directed by supervisory personnel. All reasonable efforts to have bond posted should be attempted.

D. The following guidelines shall apply to collecting bond for Criminal offenses.

1. All persons arrested for a misdemeanor, including a misdemeanor traffic offense, shall be released from custody without a cash bond unless any of the following exist:

   a) The accused does not have proper identification.

   b) The accused appears to represent a danger of harm to himself or herself, another person or property.

   c) The accused cannot show sufficient evidence of ties to the community.

   d) The accused has previously failed to appear in court or failed to respond to a citation.

   e) Arrest or further detention is necessary to carry out legitimate investigative action is accordance with the Policy & Procedures of the Sturgeon Bay Police Department.

   f) A Domestic Violence Incident arrest.

2. If the action for which a person is arrested for a criminal offense also represents a violation of a municipal ordinance, the officer shall weigh the gravity of the offense, the demeanor of the offender, the safety of all parties involved, and previous department contacts with the offender in determining whether the offender should be arrested for a crime or issued a municipal ordinance citation.

   a) Subjects required to be fingerprinted: Refer to Policy & Procedure 10.01: Section V Master File Name, Subsection C, 3, d.

3. All persons taken into custody for a felony arrest should be transported to the Door County Sheriff's Department for booking, unless advised otherwise by a supervisor. The subject in custody should be fingerprinted and photographed during the booking procedure at the jail.

VIII. ARRESTEE RIGHTS

A. Officers shall use only that amount of force necessary to perform his/her duties including affecting arrests; refer to Policy & Procedure 5.01: Use of Force.

B. After making an arrest, officers shall conform to the policies and procedures set forth in Policy & Procedures 1.10: Law Enforcement Authority & 6.13: Custodial Interrogation, to assure compliance with all of the applicable constitutional rights and requirements pertaining to interviews and interrogations as well as access to counsel.

C. When investigating incidents involving juvenile offenders, officers shall conform to the policies/procedures set forth in Policy & Procedure 6.20: Juvenile Procedures.

IX. SEARCH INCIDENT TO ARREST

A. When a person is arrested and taken in custody for a violation, the officer may contemporaneously conduct a reasonable search of the person arrested and a search of the area readily accessible to the arrested person, including any items they may have in their possession for the purpose of:

1. Protecting the officer from attack;

2. Preventing the person from escaping;

3. Discovering and seizing the fruits of the crime/offense; or

4. Discovering and seizing any instruments, articles or things which may have been used in the commission of or which may constitute evidence of, the offense.

a) The courts have declared that the area immediately accessible to an individual is that area within reach of his/her outspread arms, or that area immediately surrounding him/her into which he/she can lunge to reach a weapon or destroy evidence.

B. If a person is arrested and taken into custody for a violation, and the “lunge” area is not contemporaneously searched, a search warrant is required if the officer(s) decide it is necessary to return to search for any reason unless the “lunge” area is in a place that is an exception to the warrant requirement i.e. a public place, or open field.

C. Searches of vehicles and the moveable vehicle exception.

1. Officers may no longer conduct a routine warrantless search of a vehicle incident to the arrest of an occupant (Arizona v. Gant, 2009); refer to Policy & Procedure 1.11: Search and Seizure for vehicle search information.

X. ALTERNATIVES TO ARREST

A. Operating within the guidelines for use of discretion, officers have the authority to explore arrest alternatives. Officers have a variety of alternatives to making an arrest that include, but are not limited to:

1. Warn and advise: Officers give a verbal warning to the subject and advise them of possible consequences of their actions. Warnings for traffic and City ordinance violations should be documented in the notes of the call. For minor infractions involving offenders with an active probation/parole status, officers should also forward the report to the offender’s respective agent in addition to warning for the offense.

2. Written warning: On traffic matters, officers may wish to issue a written warning to a subject for a violation.

3. Completing the offense report and forwarding the report and all related documents to the District Attorney’s office or the City Attorney’s office for review and the issuance of a criminal complaint and warrant or summons to appear.

XI. USE OF DISCRETION

A. The Department defines the limits of discretion and below provides guidelines for exercising discretion within those limits.

B. Police Officers, of necessity, exercise professional discretion in deciding whether or not to arrest citizens for violations of the law. Other specific laws, Department policies, or orders of a supervisor may further limit officer's discretion and direct an officer to affect an arrest.

C. Wisconsin State Statutes 968.07, 968.085, and 968.10 authorize law enforcement officers to make arrests, issues citations, and conduct searches and seizures.

D. With each situation, reasonable and appropriate police action varies. Different facts or circumstances may justify an investigation, a detention, a search, an arrest or no action at all.

To eliminate discriminatory enforcement of the law and to protect officers of the Department, sworn officers will exercise discretionary judgment in a reasonable manner within the confines directed by:

1. The Oath of Office.

2. The confines of authority as described by law.

3. The decisions and interpretations established by the courts of law.

4. The written directives of the Department and the City of Sturgeon Bay.

5. Written or verbal direction of a supervisory or command officer.

6. In general, police officers, using sound professional judgment, may take the following factors into consideration when deciding whether or not to arrest a citizen:

   a) The seriousness and nature of the offense (generally, the more serious the offense, the more likely arrest is the preferred course of action);

   b) The potential that arrest will effectively resolve a conflict;

   c) The availability of legal alternatives to arrest that would adequately resolve the conflict or problem;

   d) The likelihood that the citizen will be deterred from future violations by warning and education;

   e) The officer's belief that the citizen made an honest mistake in violation of the law;

   f) The victim-witness interest in prosecution;

g) The potential that arrest will create more serious breaches of the peace or the other problems (e.g., inciting riot);

7. The following factors are among those that are improper for a police officer to consider in deciding whether or not to make an arrest:

a) The citizen's economic status, race, ethnicity, gender or other status for which the law prohibits discrimination;

b) The revenue likely to be generated by fines or penalties imposed upon conviction;

c) The personal or professional relationship that the citizen has to the police officer or to other influential citizens;

d) The personal advantage to the officer for processing or avoiding processing of the arrest (e.g., overtime compensation, desire to finish tour of duty, avoidance of paperwork, etc.).

XII. OTHER ARREST PROCEDURES

A. All arrests shall require documentation in the form of a report; either an Incident Report or a call for service report, which ever the situation dictates.

B. Most arrests will also require a booking process where the arrestee will be photographed (a mug shot) and fingerprinted in addition to having a Booking Record filled out. When possible, all felony and misdemeanor arrests require this process, with municipal ordinance violations generally done but may be done on a case by case basis.

C. Refer to Policy & Procedures 6.30: DNA Collection at Arrest and 10.01: Records for further information regarding other arrest procedures.

D. Foreign Diplomats and Consulate Officers

1. Diplomatic immunity is granted by the United States Government under the provisions of the Vienna Convention on diplomatic relations. Generally, these provisions apply to two classes of immunity:

a) Diplomats and members of their families; and

b) Employees of diplomatic missions and members of their families in respect to acts performed in the course of their official duties.

2. When diplomats claim immunity through the presentation of valid credentials, the officer may, depending on the circumstances of the violation, wish to verify diplomatic status through the State Department or other agency. Refer to the following telephone numbers:

a) State Department, Consular Office, Liaison Division, (202) 647-1985

b) State Department, Consular Office, Operations Center -Duty Officer (202) 647-1512

3. Officers who encounter, detain, or arrest a person who claims diplomatic immunity from arrest, personally or as a family member, employee, or servant of a diplomatic mission shall immediately notify a supervisor.

a) Officers should refrain from physically restraining or handcuffing these individuals unless officer or citizen safety clearly requires such action be taken.

b) When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.

c) In some cases, the nearest consular officials *must* be notified of the arrest or detention of a foreign national, **regardless of the national's wishes.**

d) Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance.

e) The supervisor shall determine the appropriate action to be taken with respect to the person claiming diplomatic immunity and make the necessary notification to the embassy or consulate of the country concerned.

f) The investigating officer should document the incident, regardless of the underlying nature of the incident.

An incident report shall be completed and should contain a narrative describing the details and circumstances of the contact.

4. Family members of consular officers cannot claim immunity. If a family member must be immediately processed for a traffic violation, the processing should be consistent with that applied to the general citizenry. If the offense does not require immediate processing, the officer should seek the advice of a superior officer before proceeding further.

5. This agency should report all serious incidents involving diplomats, consular officers, and their families to the US Department of State.

6. Also refer to Policy & Procedure 6.38: Consular Notification.

XIII. MUTUAL AID

A. As a general rule, there will be no automatic mutual aid initiated by the Door County Dispatch or any other jurisdiction. When the Sturgeon Bay Police Department or any other agency needs mutual aid, it must be requested and approved by a shift supervisor from each agency involved. Refer to Policy & Procedure 1.09: Jurisdiction for specifics on providing and receiving mutual aid.

B. Wisconsin State Statues 66.0313 & 66.0513 adopted by this policy provides that upon the request of any law enforcement agency, personnel from another law enforcement agency may assist the requesting agency within their jurisdiction, and upon that request the assisting officer shall have full police powers within the requesting jurisdiction, including all protections for the officer such as worker's compensation.

C. Any Sturgeon Bay Police Department officer needing to exercise police powers outside the corporate City limits of Sturgeon Bay should contact the law enforcement agency that has jurisdiction and request assistance. If that agency is unable to provide the assistance, that agency may request mutual aid from the Sturgeon Bay Police Department to perform the task.

1. This section includes making arrests, executing warrants, taking custody of and transporting prisoners, or any other police duties requiring police authority.

XIV. EXPANDED JURISDICTION

A. The Chief of Police may select and authorize certain sworn officers to be deputized by the Sheriff of Door County. This will allow officers to perform duties and exercise police powers within the corporate limits of Door County.

1. Officers and detectives not deputized by the Sheriff of Door County may conduct the following Department business outside the corporate City limits of Sturgeon Bay:

a) Interviews of victims and witnesses from incidents occurring within the corporate limits Sturgeon Bay;

b) Surveillance of vehicles, properties, and individuals where it is unlikely the officer will be required to exercise police powers;

c) Other law enforcement business or duties that do not require law enforcement authority or powers.

2. Officers and Detectives needing to make arrests, or conduct Department business that may be confrontational or require law enforcement authority or power will request assistance from the appropriate jurisdiction.

a) In some investigations, consideration may be given to obtaining an arrest warrant or summons.

3. This section does not preclude officers from making arrests or providing aid or assistance in accordance with the following:

a) The Uniform Act on Close Pursuit;

b) When in close pursuit of a known or suspected felon;

c) When in fresh pursuit under Wisconsin Statute 175.40 (2);

d) When acting under Wisconsin Statute 175.40 (6);

(1) When acting under this statute, the officer shall make notification to and cooperate with the law enforcement agency that has jurisdiction regarding arrests made and other actions taken in that jurisdiction;

e) By statute (sec. 349.03(4), Stats), an officer may arrest for operating while under the influence (sec. 346.63, Stats.) or refusal to submit to an evidentiary alcohol test (sec. 343.305, Stats.) anywhere in the State of Wisconsin, as long as the offense occurred in the officer's jurisdiction, without necessarily being in fresh pursuit;

f) When providing mutual aid under Wisconsin Statute 66.0313.

B. The Chief of Police may authorize any officer assigned to a multi-jurisdictional task force to be deputized or granted other law enforcement powers to cover the appropriate jurisdictions.

C. Officers assigned to the Door County Special Weapons and Tactics and the Door County Drug Enforcement Unit may perform law enforcement duties under the supervision and direction of the Door County Sheriff's Department.

Clinton Henry
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

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