POLICY & PROCEDURE

STURGEON BAY POLICE DEPARTMENT

SUBJECT: **SEARCH AND SEIZURE**

SCOPE: All Department Personnel
DISTRIBUTION: Policy & Procedures Manual

REFERENCE: WI State Statutes: 139.01 to 139.25, 968.10, 968.256, Colorado v. Bertine 479 U.S. 367 (1987), U.S. v. Santana 427 U.S. 38 (1976)

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PURPOSE: The purpose of this Policy & Procedure is to provide general guidelines and procedures for members of the Sturgeon Bay Police Department to follow in conducting any variety of searches that can be accomplished without a warrant.

This Policy & Procedure consists of the following numbered sections:

I. POLICY

II. DEFINITIONS

III. CONSENT SEARCHES

IV. STOP & FRISK - TEMPORARY DETENTIONS

V. STRIP SEARCHES

VI. BODY CAVITY SEARCHES

VII. SEARCH OF PHYSICALLY DISABLED PERSON

VIII. SEARCHES OF VEHICLES UNDER THE MOVEABLE VEHICLE EXCEPTION

IX. CRIME SCENE SEARCHES

X. EXIGENT CIRCUMSTANCES

XI. OTHER SITUATIONS AS AUTHORIZED BY STATE AND FEDERAL CONSTITUTIONAL PROVISIONS

I. POLICY

A. It is the policy of the Sturgeon Bay 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.

II. DEFINITIONS

A. 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.

B. 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.

C. 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.

D. JAILABLE OFFENSE: Means any misdemeanor or violation that has a possible penalty, if there is a conviction, of jail or the jailing for non-misdemeanor offenses for an inability to post bail.

III. CONSENT SEARCHES

A. 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.

1. Ideally, the consent should be in writing and documented on the Sturgeon Bay Police Department Consent to Search form. It is always preferable to have a witness to a consent search if a witness is available.

2. The scope of the consent to search may be limited by the terms of its authorization.

3. Whether verbal or written consent is given, it can be withdrawn at any time and officers must then stop the search.

4. If a person feels compelled to comply with an officer's request, the consent is coerced and not voluntary.

5. 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.

6. 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.

7. Officers may not threaten to obtain a search warrant when they know there are no grounds for a valid warrant.

8. If any person that police reasonably believe is a co-occupant or co-resident of a home is present, either physically or by interacting with police remotely (e.g. telephone call, Facetime or anything similar, or a 2-way video doorbell or security camera system) and objects to a search of a home, the consent of another co-occupant or co-resident is not sufficient to waive the warrant requirement for the search, and a search warrant must be obtained. (Georgia v. Randolph, 547 U.S. 103 (2006).

IV. 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.

V. STRIP SEARCHES

A. 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 is touched by a person conducting the search; refer to Policy & Procedure 1.14: Strip Searches.

VI. BODY CAVITY SEARCHES

A. 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 Policy & Procedure 1.14: Strip Searches.

VII. 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.

VIII. 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.

D. 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.

E. Officers may conduct an inventory search of a lawfully impounded vehicle if the inventory is done in compliance with Policy & Procedure 11.01 and section XI.R: Vehicle Inventory of this Policy & Procedure. 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.

F. Officers may seek consent to search a vehicle from someone who has apparent authority to provide consent.

G. 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.

IX. 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.

X. EXIGENT CIRCUMSTANCES

A. Officers may search otherwise constitutionally protected areas when officers have probable cause and any of the following exigent circumstances:

1. Hot Pursuit (U.S. v. Santana 427 U.S.38 (1976)

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.

B. Officers should consider the totality of the circumstances when determining whether to make an entry based upon the exigent circumstances exception.

C. 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.

XI. 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 4th Amendment.

B. Community Caretaker Function

The community caretaker function does NOT apply to a search of private property (a home or curtilage). The U. S. Supreme Court ruled in Caniglia v. Strom (593 U.S__(2021) 20-157) that there are four exceptions to a search of private property: 1) a valid warrant, 2) rendering emergency aid to the injured, 3) rendering emergency aid to imminently threatened individuals, or 4) acting as a normal citizen, i.e. knocking on a door.

The community caretaker function remains a legitimate function in regards to vehicles and public property (except in certain places as noted in J. Public Places).

1. An Officer's freedom to act or search is not limited to the investigation of crimes. An 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.

C. Curtilage and Open Fields

1. Curtilage is protected by the 4th 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 Policy & Procedure 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.

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.

H. 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.

2. Warrantless Searches under Act 79, which became Wisconsin law in 2013. This act allows officers to search the person, the residence, or the property under his/her control, of anyone placed on probation for a felony; or for a misdemeanor under Wisconsin Chapters 940, 948, and 961; or released on parole, or extended supervision IF:

a) The Officer has reasonable suspicion the subject is committing, is about to commit, or has committed a crime OR the police have a reasonable suspicion that the subject is committing, is about to commit, or has committed a violation of his/her conditions of probation or release;

b) The person is currently supervised by the Wisconsin Department of Corrections on probation for a felony; or for a misdemeanor under Chapters 940, 948, and 961; or parole, or extended supervision related to a Wisconsin conviction; and

c) That period of supervision began on or after December 14, 2013. In other words, the same standard that permits a *Terry Stop* of any person allows for a search under this Act if the supervision requirement is met.

3. Inmates who are placed on Electronic Monitoring (EM), who have provided consent to search documentation to EM staff, are subject to have their residence searched at any times by Officers. These searches do not require a warrant; however, the search must cease if/when the Officer discovers evidence of a crime in the inmate's residence or the inmate requests that the search be stopped.

I. 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.

J. 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.

K. 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.

L. 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 the 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 be inventoried as standard procedure for all inventory searches (Colorado v. Bertine 479 U.S. 367 (1987).

Clinton Henry
Chief of Police

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

Initial XX/XX/20XX