



CITY OF MADISON POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE



Searches

Eff. Date 01/04/2021

Searches of Persons

A full search of an individual may only be performed under the following circumstances:

1. Incident to any lawful, custodial arrest authorized by Madison Police Department (MPD) procedures.
2. When a search of the person is authorized by a valid search warrant.
3. When the person has consented to a search of their person and articulable reasons for the search exist. Whenever an officer requests consent to search, the officer shall document the articulable reasons in a police report.
4. The person has been arrested for a criminal offense (non-traffic) which is a violation of state statute and the arresting officer elects to release the arrested person and issue a municipal or misdemeanor citation. A search may also be conducted for a violation of City Ordinance Trespass, which has a non-criminal corresponding state statute.
5. If the person to be searched is an elementary, middle, or high school student; the search is conducted in a school environment; the officer possesses reasonable suspicion that the student has committed a crime, ordinance violation, or school rule violation; and the search is being performed at the request of or in conjunction with school officials. The scope of the search must be related to the particular circumstances.
6. The person to be searched is a probationer, parolee, or under extended supervision; was placed on that status after December 2013; and the officer has reasonable suspicion that the person is committing, has committed, or is about to commit a crime or violation of their probation/parole/extended supervision. The scope of the search must be related to the particular circumstances.
7. The person has been lawfully taken into custody pursuant to provisions of Chapter 51 of the Wisconsin Statutes.

Strip Searches

DEFINITION OF A STRIP SEARCH

For purposes of this procedure, a strip search is defined as any search in which a person's genitals, pubic area, buttock or anus, or an arrested female's breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

A search warrant will be obtained prior to performing any non-consensual strip search, unless exigent circumstances exist. All non-consensual strip searches will comply with 968.255 Wis. Stats. and the following procedures:

STRIP SEARCHES AUTHORIZED

Strip searches or body cavity searches may only be performed in the following circumstances:

1. a. The person to be the subject of the search is an adult arrested for a felony or for a misdemeanor specified in State Statute 968.255(1)(a)2.; or is a child taken into custody under 938.19 if there are reasonable grounds to believe that the juvenile has committed an act which, if committed by an adult, would be covered under sub. A); and
- b. Probable cause exists to believe that the person to be the subject of the search is concealing contraband or evidence in such a manner that a strip search or body cavity search is necessary to discover or retrieve it.
2. a. The person to be the subject of the search is arrested for a misdemeanor not specified in 968.255(1)(a)2, a violation of state law punishable by forfeiture, or any local ordinance; and

- b. Probable cause exists to believe that the person to be the subject of the search is concealing a weapon or a thing which may constitute evidence of the offense for which they have been arrested in such a manner that a strip search or body cavity search is necessary.
3. The search is authorized by a valid search warrant or court order.

Strip Searches Must Be Conducted in the Following Manner

1. The officers conducting the search are the same gender as the person to be searched.
2. The officers conducting the search have obtained approval from a supervisor designated by the Chief to grant such approval, unless there is probable cause to believe that the person to be searched is concealing a weapon. The supervisor authorizing the search will complete and sign the strip search authorization form.
3. The search is conducted in a manner so that the person to be searched is not exposed to the view of anyone not conducting the search.
4. The person searched must be provided with written documentation of the search. Such documentation shall include the name of the officers conducting the search, the date and place of the search, and the written authorization from the Chief or his designee.
5. No visual or sound recording is made of the search.

DEFINITION OF BODY CAVITY SEARCH

For purposes of this procedure, a body cavity search is defined as any search of a body cavity that is also a strip search. Therefore, searches of the mouth, nose, or ears are not considered body cavity searches and do not fall within the restrictions provided by this procedure.

Body Cavity Searches Must Be Conducted in the Following Manner

1. The search is conducted by a physician, physician assistant, or registered nurse licensed to practice in Wisconsin.
2. The officer directing the search has obtained approval from a supervisor designated by the Chief to grant such approval, unless there is probable cause to believe that the person to be searched is concealing a weapon. The supervisor authorizing the search will complete and sign the strip search authorization form.
3. The search is conducted in a manner so that the person to be searched is not exposed to the view of anyone other than the officers directing the search and the medical personnel needed to perform the search. Officers directing the search must be the same gender as the person to be searched.
4. The person searched must be provided with written documentation of the search. Such documentation shall include the name of the officers directing the search, the date and place of the search, and the written authorization from the Chief or the Chief's designee.
5. No visual or sound recording is made of the search.

SUPERVISORS PERMITTED TO AUTHORIZE

The Chief may designate supervisors who are permitted to authorize searches under this procedure. In absence of contrary direction from the Chief, the following supervisors are designated to authorize searches under this procedure:

1. All command supervisors (Lieutenants and above).
2. Sergeants assigned to Patrol.
3. Sergeants assigned to the Dane County Narcotics Task Force.
4. Detective Sergeants.

SEARCHING PHYSICALLY DISABLED PERSONS

Searches of physically disabled persons shall be conducted pursuant to the requirements of State Statute 968.256 of the Wisconsin Statutes.

CRIME VICTIMS/PERSONS CONSENTING

The restrictions outlined in this procedure do not apply to strip searches or body cavity searches of crime victims, or to others who are not being detained, who have consented to the search. However, the officers conducting the search must be the same gender as the person to be searched, the search must be conducted in a manner that the person to be searched is not exposed to the view of anyone not conducting the search, and no visual or sound recording may be made of the search. Consensual strip searches or body cavity searches of non-victims must be approved by a supervisor.

CURRENT FORMS

Up-to-date Strip Search Forms are located in the filing cabinet in the OIC's Office.

BLOOD DRAWS

A search warrant will be obtained prior to performing any non-consensual blood draw, unless exigent circumstances exist.

Searches, Seizures, and Inventories of Motor Vehicles

These guidelines establish procedures for searches, seizures, and inventories of motor vehicles. Because seizures and inventories are treated differently as a matter of administration, they are subject to separate guidelines. A search is an examination of a person, place, motor vehicle, or any other thing with a view toward discovery of evidence (contraband, weapons, things used in committing a crime, and other evidence of crime). A seizure involves taking the vehicle itself into custody. An inventory is an examination of a motor vehicle in police custody to account for objects in the vehicle for which the police are responsible.

Search guidelines are grouped in terms of common situations in which search opportunities arise: when evidence is located in plain view or open view; when an arrest is made (either non-custodial, as in a minor traffic case, or, more typically, as in full-custody arrest, when the suspect is taken to a detention facility or before a judicial officer); when searching an unoccupied vehicle; and finally, when consent from the owner or driver is sought.

The procedure contained in the guidelines attempt to maximize police efficiency in controlling crime, while at the same time protecting persons from invasions of their privacy.

Searches of Vehicles Connected with Arrests

FULL-CUSTODY ARREST

Whenever an officer makes a custodial arrest of a person from a motor vehicle, the officer may conduct a search of the vehicle if there is a reason to believe the vehicle contains evidence of the offense for which the arrest has been made. The search is limited to those places in the passenger compartment where the evidence in question could be located. The search must be contemporaneous to the arrest.

STOP FOLLOWED BY CITATION

1. Street Citation

A person who is "stopped" by an officer and then is given a warning or issued a citation—but who is not placed under full-custody arrest—should not be searched, nor should any vehicle used by such person be searched, unless the officer has consent or reasonably suspects the person to be armed. In that case, the officer may "frisk" the person and vehicle for weapons.

2. Stationhouse Citation

Traffic violators and other persons who are asked to follow an officer to a police facility (e.g., non-resident drivers), but who are not placed under full-custody arrest, should not be searched nor should their vehicle be searched. If the officer making the stop reasonably suspects the person to be armed, the officer may “frisk” the person and vehicle for weapons.

Searches of Vehicles Not Connected with an Arrest

SEIZURE OF ITEMS IN PLAIN VIEW OR OPEN VIEW IN A VEHICLE

An officer lawfully in any place accessible to the public may, without obtaining a search warrant, seize from a motor vehicle any item which the officer observes in plain view or open view (including items observed through the use of a flashlight), if there is probable cause to believe that the item is contraband, anything used in committing a crime, or other evidence of crime. These categories of evidence are hereafter referred to collectively as “seizable items.”

SEARCH BASED ON PROBABLE CAUSE

If an officer has probable cause to believe that a vehicle either locked or unlocked, contains seizable items, all those areas of the vehicle which could contain such items may be searched without a search warrant unless:

1. The vehicle does not appear to be movable or easily rendered movable by minor repairs.
2. The vehicle is located on private property not readily accessible to the public.

Use of Search Warrant

A search warrant should be obtained when:

1. The vehicle does not appear to be movable or easily rendered movable by minor repairs.
2. The vehicle is located on private property that is not accessible to the public.

Entry Into Locked Vehicles or Areas

Whenever possible, an officer shall open a locked trunk or glove compartment by means of a key rather than by force. If keys are not available, instructions shall be obtained from a supervisor as to the method to be used in opening the locked trunk or glove compartment.

Consent Searches of Motor Vehicles

An officer may request consent to search from the person(s) in control of the vehicle whenever articulable reasons for the search exist. A consent search may not be conducted unless the officer has received from the person a voluntary and unequivocal consent to search the vehicle. A “Consent to Search of Vehicle” form may be completed as evidence that the search was consensual. Whenever an officer requests consent to search, the officer shall document the required articulable reasons in a police report.

Seizures of Motor Vehicles

A motor vehicle is “seized” or “impounded” when officers take custody of it and either remove it to a police facility or arrange its removal to a private storage facility. An “inventory” is an administrative process by which items of property in a seized vehicle are listed and secured. An inventory is not to be used as a substitute for a search. Vehicles coming into custody of MPD shall be classified for purposes of these guidelines into five categories: seizures for forfeiture; seizures as evidence; prisoner’s property; traffic/parking impoundments; and other non-criminal impoundments. The procedures for carrying out the seizure, the need for a warrant, the right to search or inventory a vehicle, and the time and scope of any such inventory depend upon how the vehicle is classified.

Seizures for Forfeiture: Vehicle Used Illegally

1. When Permitted

A vehicle may be seized for forfeiture when an officer has probable cause to believe any of the following (a supervisor's approval is required):

- a. That the vehicle has been used to facilitate the sale, delivery, or manufacture of controlled substances;
- b. That the vehicle has been used in the unlawful manufacture or commercial transfer of gambling devices;
- c. That the vehicle has been used to transport any property or a weapon used or to be used in the commission of any felony;
- d. That the vehicle was used in violation of 946.70 (Impersonating a Peace Officer);
- e. That the vehicle was used in violation of 944.30, 944.31, 944.32, 944.33 or 944.34 (Prostitution/Pandering/Solicitation);
- f. Other reasons authorized by 973.075 or by any other statute.

2. Exception for Federal Offenses

When an officer has probable cause to believe that a vehicle has been used to violate a federal law, which provides for forfeiture following violation, the officer may seize the vehicle regardless of the amount of contraband involved or the prior record of the owner or occupant and shall seek instructions from a supervisor concerning federal forfeiture procedures.

3. Necessity for Search Warrant

An officer shall obtain a search warrant prior to making a "seizure for forfeiture" whenever the vehicle to be seized is on private property not accessible to the public.

4. Inventory Procedure

A vehicle seized for forfeiture will be transported to a police facility for storage. An officer who seizes a vehicle for forfeiture shall completely inventory the contents as soon as practical upon its arrival at a police facility. The vehicle's contents will be documented in a report or by using the MPD vehicle inventory form. Upon completion of the inventory, the officer shall obtain instructions from a supervisor relating to appropriate further processing of the vehicle. If the vehicle's contents are documented by using the MPD vehicle inventory form, the form should be scanned into the MPD Law Enforcement Records Management System (LERMS) with the case documents.

Seizures as Evidence

1. When Permitted

When an officer has probable cause to believe that a vehicle has been stolen or used in a crime or is otherwise connected with a crime, the vehicle may be taken into custody and classified as a "seizure of evidence."

2. Exception for Minor Traffic Offenses

A vehicle involved in a minor traffic offense shall not be seized as evidence merely because it was used to commit the traffic offense.

3. Necessity for Search Warrant

An officer shall obtain a search warrant prior to making a "seizure as evidence" whenever the vehicle to be seized is on private property not accessible to the public.

4. Inventory and Release Procedures

A vehicle seized as evidence will be transported to a police facility for storage. A vehicle seized as evidence shall be completely inventoried as soon as practicable after its arrival at a police facility, unless such an inventory might damage or destroy evidence. The vehicle's contents will be documented in a report or by using the MPD vehicle inventory form.

If the vehicle's contents are documented by using the MPD vehicle inventory form, the form should be scanned into LERMS with the case documents. Vehicles seized as evidence shall not be released to any person until the appropriate prosecutor or other official has signed a release form indicating that the vehicle seized as evidence is found to be the property of a person having no criminal involvement in the offense, the vehicle should be returned to such person on an expedited basis.

5. Recovered Stolen Vehicles

Recovered stolen vehicles that are not believed to be connected to any other crimes generally should not be impounded. Instead, they should be processed for evidence at the location of recovery and released to the owner. If the owner is not available to take custody of the vehicle, it should be transported to a private storage facility for safekeeping pending release to the owner. An inventory should not be conducted.

Disposition of Arrested Person's Vehicle

When a person is arrested in a vehicle which that person owns or has been authorized to use and the vehicle is not otherwise subject to seizure, it should be locked and legally parked on the street. If it is not possible to lock the vehicle, any observable items of value should be secured in the trunk of the vehicle. Of course, dependent upon the fact situation, guidelines contained in other subsections may apply, for example, where probable cause exists to believe the vehicle contains seizable items or where probable cause to believe the vehicle has been stolen or used in a crime exists.

If the vehicle is found to be the property of a person having no criminal involvement in the offense, such person shall be notified of the location of the vehicle as soon as practicable.

Traffic or Parking Removals

When an officer causes a vehicle to be moved to a location on a public street as close to the original location as possible, consistent with prevailing traffic conditions; vehicles removed shall not be inventoried or searched in any way. However, the officer who caused the vehicle to be removed shall, if possible, close the windows and lock the doors before leaving the vehicle.

Abandoned and scofflaw vehicles (unpaid parking citations) may be towed pursuant to guidelines established by the Traffic Captain. These vehicles will be towed to a private storage facility and should not be inventoried.

Parked vehicles that are unreasonably leaking gas/oil/fluids or otherwise creating a safety hazard may also be towed. These vehicles should be towed to a private storage facility and should not be inventoried.

Other Non-Criminal Impoundments

1. Definition

An officer may take a vehicle into police custody because there is reason to believe that it is part of the estate of a deceased person, or the property of an incapacitated person, or because it is property turned over to the police at the scene of a fire or disaster.

2. Procedure Upon Non-Criminal Impoundment

A vehicle impounded under this section should not be inventoried and should be transported to a private storage facility.

Procedure for Vehicle Contents Inventory

Whenever an officer is authorized to inventory a vehicle, the passenger compartment, glove compartments, trunk, and other storage compartments, such as console and dashboard compartments, or ashtrays which may be infinitely varied by automobile designers, may be examined whether or not locked. Areas not included are gas tanks, fluid reservoirs, or structural cavities not likely to be used to store personal effects. The vehicle's contents will be documented in a report or by using the MPD vehicle inventory form.

Closed or sealed, locked or unlocked containers, found within any of the above compartments shall be inventoried as "a closed container or unit" and shall not be opened. Included are suitcases, purses, or closed or sealed containers.

Vehicle contents should be documented in a report or on the inventory form and returned to the vehicle in most instances. Contraband or evidence located during an inventory should be seized and property tagged. Immediately upon completion of the inventory, the officer shall, if possible, roll up the windows and lock the doors and the trunk.

When Foregoing Guidelines May Be Disregarded

Whenever it appears that any of the foregoing guidelines should be modified or disregarded because of special circumstances, supervisory approval is required. The District Attorney's Office should be consulted when feasible.

Consent Search of Residences

An officer may request consent to search a residence from any person who has apparent authority over and control of the premises, whenever articulable reasons for the search exist. A consent search will not be conducted unless the officer has received voluntary consent to do so. A "Consent to Search of Residence" form may be completed as evidence that the search was consensual. Whenever an officer requests consent to search, the officer shall document the required articulable reasons in a police report.

Officers shall make reasonable attempts to ensure that the person granting consent has the authority to give consent to the particular area(s) searched.

ENTRY TO RESIDENCES TO MAKE AN ARREST

Officers may enter a private residence to effect an arrest if there is a valid criminal arrest warrant for the subject; if there is probable cause that the subject is in the residence at the time; and if there is probable cause that the subjects resides at the residence. If the wanted subject is in the residence of a third party, the arrest warrant does not authorize entry and some other legal justification is required (consent, search warrant, exigency, etc.). Probable cause to arrest—by itself—does not provide authority to enter a residence.

Once an arrest is made, officers may conduct a lawful search of the area within the arrestee's immediate control at the time of the arrest. This search must be contemporaneous to the arrest.

A protective sweep of the residence may be conducted once officers have lawfully entered if a reasonable suspicion exists that a person or person(s) are in the residence and pose a threat to officers. The sweep is limited to places where a person could be concealed.

Officers considering entry to a private residence should be cognizant of the inherent risks to entry and utilize proper tactics, equipment, and resources to do so safely. In some instances, the appropriate course of action will be to wait for additional resources or to not make entry.

WARRANTLESS ENTRY TO RESIDENCES BASED ON EXIGENT CIRCUMSTANCES

Officers are permitted to make a warrantless entry to a residence when they have probable cause (to arrest or search) and exigent circumstances are present. Exigent circumstances are defined as a compelling need for action without having time to secure a warrant and fall into one of these categories:

- Hot pursuit
- A threat to the safety of the suspect or others
- A risk that evidence will be destroyed
- A likelihood that the suspect will flee

Officers must consider the severity of the underlying offense when determining whether a warrantless entry based on exigent circumstances is appropriate. The offense must be criminal; a warrantless entry for ordinance violations is not permitted.

The scope of the entry is limited to that needed to address the exigency; any searching must be legally justified (consent, search warrant, etc.). A protective sweep of the residence may be conducted once officers have lawfully entered if a reasonable suspicion exists that a person or person(s) are in the residence and pose a threat to officers. The sweep is limited to places where a person could be concealed.

Officers considering warrantless entry to a private residence should be cognizant of the inherent risks to entry and utilize proper tactics, equipment, and resources to do so safely. In some instances, the appropriate course of action will be to wait for additional resources or to not make entry.

ENTRY TO RESIDENCES BASED ON THE EMERGENCY DOCTRINE OR COMMUNITY CARETAKER STANDARD

Officers are permitted to make a warrantless entry to a residence under the emergency doctrine if it is reasonably believed that a person inside the residence is in immediate need of aid or assistance.

Officers are permitted to make a warrantless entry to a residence under the community caretaker doctrine when it reasonably appears that immediate action is required to address a non-investigative need (checking welfare, public safety risk, significant property risk, etc.). Officers' primary motivation must not be criminal investigation and alternatives to the warrantless entry must be exhausted.

The scope of the entry is limited to that needed to address the issue; any searching must be legally justified (consent, search warrant, etc.). A protective sweep of the residence may be conducted once officers have lawfully entered if a reasonable suspicion exists that a person or person(s) are in the residence and pose a threat to officers. The sweep is limited to places where a person could be concealed.

Officers considering warrantless entry to a private residence should be cognizant of the inherent risks to entry and utilize proper tactics, equipment, and resources to do so safely. In some instances, the appropriate course of action will be to wait for additional resources or to not make entry.

Original SOP: 03/04/2015
(Reviewed Only: 02/17/2016, 12/26/2017, 02/04/2022)
(Revised: 03/21/2016, 03/03/2017, 12/03/2018, 01/03/2020, 01/04/2021)