	MILWAUKEE POLICE DEPARTMENT
	STANDARD OPERATING PROCEDURE 085 – CITIZEN CONTACTS, FIELD INTERVIEWS, SEARCH AND SEIZURE

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ACTION: Creates SOP		

085.00 PURPOSE/POLICY

The purpose of this policy is to provide general guidance for enforcement actions, particularly citizen contacts (for traffic and field interviews), arrests, searches and seizures of persons or property, which shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution, statutory authority and applicable case law.

In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of citizens. Police members shall not stop, detain, arrest, search, or attempt to search anyone based **solely** upon the person's race, color, sex, sexual orientation, gender, national origin, ethnicity, age, religion or social economic status. In doing so, members will remain vigilant to the guiding principles of the Code of Conduct of the Milwaukee Police Department.

085.05 DEFINITIONS

Consent - A clear and voluntary expression by an individual to allow a law enforcement officer to search the person or property of the consenting party or property over which the consenting party has apparent control.

Contraband - Property or items that are unlawfully produced, possessed, or transported.

Exigent Circumstances - Situations for which law enforcement agents would be unable or unlikely to affect an arrest, search, or seizure unless they take immediate action without prior judicial authorization.

Field Interview – The brief detainment of an individual, whether on foot or in a vehicle, based on articulable reasonable suspicion, for the purposes of determining the individual's identity and resolving the member's suspicions concerning criminal activity.

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Pat-Down Search or Frisk – For a frisk to be warranted after a person has been stopped, the police member must reasonably suspect that he/she or another is in danger of physical injury from that person. The police member is then entitled to conduct a limited search for weapons or objects which might be used as weapons. This means a pat-down of the person's outer clothing and nothing more, unless an object is felt which might be a weapon.

Reasonable Suspicion – Articulable facts that, within the totality of the circumstances, lead a police member to reasonably believe that criminal activity has been, is being, or is about to be committed. This standard is also known as **articulable suspicion**.

Search - A search, as defined by the Wisconsin Supreme Court decisions, is looking into hidden places for contraband, instrumentalities of a crime, fruits of a crime or evidence of a crime with the intent of charging the individual with an offense.

Seizure – Seizure of property is limited to contraband, instrumentalities of a crime, fruits of a crime or evidence of a crime. The Fourth Amendment to the Constitution provides a high degree of protection for individuals from searches and seizures made by police members. Searches and seizures carried out by police members without a warrant must be clearly justified by members as falling into one of the well-defined exceptions to the Fourth Amendment warrant requirement. To avoid suppression of evidence and possible personal liability, police members should always attempt to obtain a warrant whenever reasonably possible before instituting a search and a seizure.

Strip Search – A search in which a detained person's genitals, pubic area, buttock or anus, or a detained female person's breast, is uncovered and either exposed to view or touched by a person conducting the search.

"Plain Feel" Doctrine - When a police member lawfully frisks a suspect's outer clothing without manipulating the clothing and feels an object, the contour or mass of which makes it immediately identifiable as contraband, in which case the police member may affect a warrantless seizure of the object.

085.10 CONTACT PROTOCOL

Police members can be expected to make numerous contacts with the public on a daily basis. These contacts form the basis for the relationship between the department and the community. While these contacts vary in nature, and each situation must be treated individually, the goal of the department is that each contact be conducted in a courteous, professional and lawful manner.

Contacts with the police and any police actions that may result from a contact are often subject to great scrutiny. Most contacts are governed by landmark court cases which define the boundaries for proper police conduct in this arena and police members must remain within the boundaries set forth.

Engaging in lawful contacts, traffic stops, field interviews (Terry Stops), and arrests generate useful, proactive tools that police members can use to combat criminal activity within their areas of responsibility.

A. Introduction

1. To the extent that safety considerations allow, police members will introduce themselves to all citizens they make contact with. A proper introduction will establish the identity of the police member, the authority of the police member, and the context surrounding the initiation of the contact. This provides the platform for the lawful actions or requests made by the police member during the contact. Introductions should be formulated so that they provide:

   a. The police member's name.

   b. The police member's rank or title.

   c. The police member's affiliation with the Milwaukee Police Department.

   d. The reason for the contact or stop.

2. The introduction shall occur as early in the contact as safety permits and will be given prior to the police member's request for identification or license and registration information from the citizen being contacted.

B. Closing a Contact

1. In an effort to prevent inaccurate perceptions of biased law enforcement, police members will make every attempt to provide a professional closing. This is an opportunity to ensure that the citizen leaves the contact with the best possible view of the police member, the department and the profession. In closing a contact, police members will:

   a. Return any identification, paper work and property obtained from the citizen.

   b. Ensure that the person understands when they are free to leave.

   c. Explain the results of the contact especially if the contact results in the reasons for the stop being dispelled or the person being cleared of suspicion.

   d. If the contact will result in the issuance of a citation, the police member will explain the options available to the person for disposing of the case. In cases of a traffic citation being issued, police members shall also issue Form MC-715 *How To Take Care of Your Citation.*

   e. If appropriate, close the contact by either thanking the person for their cooperation and/or express regret for any inconvenience the stop may have caused.

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085.15 SOCIAL CONTACTS

A social contact is contact with a citizen for the purpose of asking questions or for information gathering.

1. Reasonable suspicion and probable cause is not required to initiate a social contact, but a proper introduction as stated in 085.10 (A) *Introduction* should be utilized when appropriate.

2. The contact is consensual or voluntary. The citizen is under no obligation to answer any questions and is free to leave at any time.

   a. As with all encounters with the public, police members shall treat citizens in a professional, dignified and unbiased manner.

   b. Police members should safeguard their actions and requests so that a reasonable person does not perceive the contact as a restraint on their freedom. Police members will be respectful, attempt to build rapport, and keep the contact as brief as possible.

085.20 FIELD INTERVIEWS (FI's)

Field Interviews, or Terry Stops, are based on a police member's reasonable suspicion that the subject(s) has committed a crime, is in the process of the commission of a crime or may commit a crime. Reasonable suspicion, as defined in section 085.05, is more that a hunch. A "hunch", for the purpose of this section, is an intuitive feeling or premonition "gut feeling" and therefore, on its own, is not legal justification to conduct a "field interview".

1. Justification for Conducting a Field Interview

   The following points may be considered in establishing reasonable suspicion (these are not all inclusive, and one or more or even other circumstances may be present when formulating justification)

   a. The appearance or demeanor of an individual suggests that he or she is part of a criminal enterprise or is engaged in a criminal act.

   b. The actions of the subject suggest that he or she is engaged in a criminal activity.

   c. The hour of day or night is inappropriate for the subject's presence in the area.

   d. The subject's presence in a neighborhood or location is inappropriate.

   e. The subject is carrying a suspicious object.

   f. The subject's clothing bulges in a manner that suggests he or she is carrying a weapon.

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g. The subject is located in proximate time and place to an alleged crime.

h. The police member has knowledge of the subject's prior criminal record or involvement in criminal activity.

i. The individual flees at the sight of law enforcement.

2. Procedures for Initiating a Field Interview

Based on observance of suspicious circumstances or upon information from investigation, police members may initiate the stop of a suspect if he has reasonable suspicion to do so. The following guidelines shall be followed when making an authorized stop to conduct a field interview.

a. When approaching the suspect, the police member shall clearly identify himself as a law enforcement officer, if not in uniform, by announcing his identity and displaying departmental identification to include a badge and ID card.

b. Police members shall be courteous at all times during the contact but maintain caution and vigilance to a subject's actions which may be suggestive of an attempt to retrieve a weapon, conceal or discard contraband, or other suspicious actions.

c. Before approaching more than one suspect, individual police members should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives.

d. Police members shall confine their questions to those necessary to resolve the police member's suspicions. The questioning may only be for a reasonable length of time. This will vary in different circumstances, but will include enough time to call in a stolen vehicle inquiry or a wanted check.

e. Police members are not required to give suspects *Miranda* warnings in order to conduct field interviews unless the person is in custody and about to be interrogated.

f. The police member may demand the person's name and address and an explanation for his/her conduct. However, if the person quietly states, "I do not wish to say anything to you, even identify myself," and causes no trouble at all, and there is no further information or facts which could lead the police member to "probable cause", the police member must allow the person to go on his/her way. Refusal to answer a police member's questions in and of itself is not "obstructing an officer."

g. The temporary detention for questioning must be in the vicinity of the initial stop. It may, for example, be out of the rain, but not at the police station six miles away.

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h. Police members shall return any property temporarily seized (outside of what would be considered contraband) from a detainee as soon as it is reasonable to do so.

3. Reporting of Field Interviews (FI's)

a. If after conducting a field interview the police member has no basis for making an arrest or issuing a citation, the police member will record the facts of the field interview on the yellow FI card (Form PF-4).

b. All FI cards completed by a police member will be submitted to a supervisor at the end of their tour of duty.

c. FI cards are to be reviewed by a supervisor for completeness and accuracy. FI cards found to be incomplete or inaccurate are to be returned to the submitting police member who will make the necessary corrections and re-submit the card within 24 hours.

d. The work location from which the FI card originated will be responsible for entering the data from the FI card into the Tiburon FI module. Data entry must be completed within 72 hours of receipt.

e. Once the data entry from the FI card has been completed, the FI Card will be retained by the work location for ninety days and then destroyed in accordance with SOP 680.10(E)(5), as it relates to data protection and security.

Note: In lieu of filing an FI card, police members may elect to enter their own FI's into the Tiburon FI Module. Individual police member performance measures will be garnered from entries made into the FI module, therefore FI entry is critical.

085.25 PAT-DOWN SEARCHES

A. Justification for Conducting Pat-Down Searches

Law enforcement officers have the right to perform a pat-down search of the outer garments of a suspect for weapons if the suspect has been legitimately stopped with reasonable suspicion and only when the police member has reason to believe that the suspect possesses weapons on his or her person and poses a threat to the police member's or another person's safety. **Not every field interview poses sufficient justification for conducting a pat-down search.** Following are some criteria that may form the basis for establishing justification for performing a pat-down search. Police members should note that these factors are not all-inclusive; there are other factors that may be considered. The existence of more than one of these factors may be necessary in order to justify a pat-down search.

1. The type of crime suspected - particularly in crimes of violence where the use or threat of deadly weapons is involved.

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2. Number of subjects vs. police members present.

3. Police member vs. subject factors (age and gender considerations)

4. Factors such as time of day, location or neighborhood (i.e. high crime area, known drug trafficking area) where the stop occurs

5. Prior knowledge of the subject's use of force and/or propensity to carry deadly weapons.

6. The appearance and demeanor of the subject's (i.e. a long trench coat being worn on a warm summer night).

7. Visual indications that suggest that the subject is carrying a firearm or other deadly weapon.

B. Procedures for Performing a Pat-Down Search

When reasonable suspicion justifies a pat-down search, the search should be performed with due caution, restraint, and sensitivity. These searches may only be performed to protect the safety of police members and others. Pat-down searches should be conducted in the following manner.

1. Whenever possible, pat-down searches should be performed by police members of the same sex as the suspect.

2. Because pat-down searches are cursory in nature, they should be performed with the suspect in a standing position and the police member standing to the suspect's rear. Should a police member visually observe a weapon, a more secure search position may be used, such as the prone position.

3. In a pat-down search, police members are permitted only to feel the outer clothing of the suspect. When confronted with a suspect wearing multiple layers of clothing (i.e. multiple shirts, pants, coats) or otherwise difficult to pat-down clothing such as puffy jackets or long overcoats, police members with proper articulation based on the facts and unique circumstances of the particular stop, may be justified in removing, lifting, unzipping or adjusting the clothing in order to conduct a proper pat-down. Police members may not place their hands in pockets unless they feel an object that could reasonably be a weapon, such as a firearm, knife, club, or other item or an item immediately recognized as contraband under the "plain-feel" doctrine.

4. If the suspect is carrying an object such as a duffel bag, handbag, suitcase, briefcase, sack, or other item that may conceal a weapon, the police member should not open the item but instead place it out of the suspect's reach.

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5. If the external feeling of the suspect's clothing fails to disclose evidence of a weapon, no further search may be made. If evidence of a weapon is present, an officer may retrieve that item only. If the item is an illegal weapon, and the possession of which is a crime, the police member may make an arrest of the suspect and complete a full-custody search of the suspect.

C. Amount of Force Used to Conduct a Pat-Down Search

Police members shall use only that force which is reasonably necessary to conduct the pat-down.

D. Disposition of Items Seized in a Pat-Down Search

1. If it is contraband, the police member shall take the appropriate police action based upon the type of contraband seized.

2. If it is not contraband, the police member shall return it to the individual upon completion of the stop.

085.30 OPEN VIEW AND PLAIN VIEW DOCTRINES

1. Open View

a. The open view doctrine allows the police to see and possibly seize contraband. To apply open view, the officer must see the contraband or evidence from a vantage point available to the public. To seize the contraband or evidence, it must be located in an area open to the public and not protected by the Constitution.

b. Police officers are not allowed to enter and seize contraband if the contraband is exposed to the public from a constitutionally protected place. For example: If officers see a marijuana plant growing in the window of a residence, they cannot enter the home, but have probable cause to seek a search warrant.

2. Plain View

a. The plain view doctrine allows the police to inadvertently discover contraband or evidence after making a lawful intrusion into a constitutionally protected area, such as a residence or a vehicle. The contraband or evidence must be immediately recognizable as such and be in plain view.

b. The key to the plain view doctrine is being in the protected place with consent or on legitimate police business. Once the inadvertent discovery is made, police members have probable cause to seek a search warrant for a more thorough search.

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085.35 SEARCH UNDER THE MOVABLE VEHICLE EXCEPTION (CARROLL DOCTRINE)

Police members may conduct a warrantless search based on the moveable vehicle exception if the police member has probable cause to believe seizable items or evidence of a crime being investigated may be found within the movable vehicle, or any container in the vehicle.

085.40 SEARCH INCIDENT TO ARREST

A. Persons

1. A police member will conduct a full, thorough search of the individual at the time of arrest. The search may extend to objects in the actual possession of the arrested individual and search of areas in the arrested individual's immediate control.

2. The arrested individual will be searched for weapons, contraband, fruits and instrumentalities of crimes, and evidence connected with any offense.

3. Police members must conduct searches incidental to a lawful arrest immediately, or as soon as possible, after the arrest.

B. Places

Police members may conduct a lawful search of only that area under an arrestee's immediate control at the time of the arrest. Police members are only authorized to search other locations within a location if:

a. The police member reasonably believes that their safety is threatened, or

b. There is a reasonable chance the arrested person might escape or destroy evidence.

c. When making an arrest in a home, in addition to a search incident to the arrest, the police may conduct a protective sweep for those areas of the home for which an officer has a reasonable suspicion a confederate may be lurking. This sweep is limited in nature and must be specifically targeted to locating people who may pose a safety risk to police members.

C. Vehicles

1. After a person is detained outside a vehicle and it is no longer reasonable to believe the detainee may gain access to the vehicle at the time the search, police members do not have the lawful authority to search the passenger compartment and unlocked containers incident to arrest, unless the police member believes that evidence of the offense for which the subject was arrested is believed to be contained within the vehicle.

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2. While a search incident to arrest is restricted to the aforementioned conditions, an additional search is allowable under the following circumstances:

   a. Probable cause exists to believe that evidence of a crime is contained within the vehicle,

   b. Police members have consent to search,

   c. Articulable exigent circumstances exist, or

   d. The police member is performing an inventory search pursuant to the impoundment of the vehicle.

085.45 CRIME SCENE SEARCHES

A. Crime scene searches may fall into several areas of warrantless searches:

   1. Consent (see 085.50)

   2. PlainView (see 085.30)

   3. Search incident to arrest (see 085.40)

   4. Exigent circumstances (see 085.55)

B. According to the principles of the U.S. Supreme Court cases Thompson v. Louisiana and Mincey v. Arizona, there is no "crime scene exception" to the Fourth amendment mandates. Rather, police members must be able to articulate consent, plain view, search incident to arrest, or exigent circumstances. In most instances, it will be necessary to obtain a search warrant for a crime scene.

C. When uncertainty arises regarding the legality of a crime scene search, the Milwaukee County District Attorney's office should be contacted for advice. After hours, police members may contact the on-call duty District Attorney by obtaining contact information through the Technical Communications Division at extension 7472.

085.50 SEARCH BY CONSENT

A. Police members may conduct consensual searches of persons and/or property if:

   1. The police member has **articulable suspicion** criminal activity has, is or will be occurring or when a police member has personal knowledge of either a person or certain location having a history of criminal activity, being a known offender or a police member has reasonable and articulable belief that a fugitive and/or a missing person may be within a particular location.

   2. The consent is voluntary and not given because of the threat of force.

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3. The person giving consent has apparent authority over and control of the premises or articles to be searched.

4. The person giving consent understands the consequences of consent and the right to refuse.

B. Scope of the Search

1. The person giving consent may limit the scope of the search.

2. The person giving consent may revoke the consent at any time. If consent is revoked after an item is found that is readily recognizable as evidence, the item may be seized and the scene secured until a search warrant is obtained. Otherwise, the search must end immediately.

3. Police members may search closed containers found during a consensual vehicle search as long as the officer reasonably believes the consent extended to closed containers in the vehicle.

4. An adult who has regular, unrestricted access to a place can grant consent for a search of that place, but not for the personal belongings or storage spaces of another.

C. Guidelines for Obtaining Consent

1. Police members shall ensure the person whose consent is sought has the authority to give consent.

2. Police members must obtain consent from a person, who has a "right to privacy" in the area to be searched, or against whom the incriminating search is directed, or from a person who has a valid and equal right to privacy in the area to be searched.

3. Police members shall not claim authority to conduct a search without consent or a search warrant unless otherwise permitted by law.

4. Police members shall advise the person, whose consent is sought, of the right to refuse a search.

5. Police members may advise the person, whose consent is sought, about the general nature of the investigation and the purpose of the search.

D. Reporting of Consent Searches

1. Prior to conducting a consent search, Form PF-3 "*Consent to Search Authorization*" must be completed and the pink copy of the form will be provided to the person who consented to the search.

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2. When operationally feasible, an audible and visual record of consent utilizing the "in-car" video system should be made to assist in the mitigation of future claims that the search was coerced or non-consensual. This is especially true when the person does not wish to sign the consent form, but agrees to the search. The fact a recording is available shall be referenced in the incident report and on the consent form.

3. In the event contraband is located during a consensual search, the original completed Consent Form will become evidence and will be inventoried as such. Prior to inventorying the Consent Form, a copy of the completed form will be made and submitted to the police member's immediate supervisor for data entry into the search field of the Tiburon FI Module. Once entered, the copy will then be forwarded for imaging at Open Records.

4. If contraband is not located during a consensual search, the original Consent Form will be forwarded to the police member's immediate supervisor for data entry into the search field of the Tiburon FI Module and then the original forwarded for imaging at Open Records.

5. The yellow copy of the Consent Form will be submitted with the arrest / DA package (if any). If the yellow copy of the form is not required, it will be properly destroyed in accordance with SOP 680.10(E)(5), as it relates to data protection and security.

D. Third Party Consent Valid in Certain Circumstances

a. Consent is valid if the third person has equal authority over the business or residence and it can be concluded the absent person assumed the risk the cohabitant (roommate) might permit a search.

b. Consent to search is not allowed if one cohabitant (roommate) or business partner objects to the consent, even if the other person gives permission. Consent must be given by both people, if present.

c. Parents may consent to search a child's living area if the parents have routine access to the area (the child does not pay rent).

d. Landlords cannot give consent to search if a lease or rental agreement is still in effect.

085.55 EXIGENT CIRCUMSTANCES

Police may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that delay in getting a warrant would result in the loss of evidence, escape of the suspect, or a safety risk to police or the public.

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085.60 STRIP SEARCHES

A. Strip searches shall be conducted in accordance with Wisconsin Statute 968.255 (strip searches) and 968.256 (search of physically disabled person) and only with the approval of a captain or higher authority.

1. A strip search is defined as the uncovering and/or exposed to the view and/or touching of a detained person's genitals, pubic area, buttock or anus, or a females breasts by the person conducting the search. This would include having a person remove or arrange some or all of his or her clothing so as to permit an inspection of genitals, pubic area, buttocks, anus, or breasts of a female.

B. No person shall be subject to a strip search unless they are a detained individual. Wisconsin State Statute 968.255(1) defines detained as any of the following:

1. Arrested for any felony.

2. A person arrested for specified misdemeanors, which are primarily weapons-related offenses. These offenses are covered under the following Wisconsin Statutes:

- 167.30 (Use of firearms, etc., near park, etc.);
- 940.19 (Battery; substantial battery, aggravated battery);
- 941.20 (1) (Endangering safety);
- 941.23 (Carrying a concealed weapon);
- 941.237 (Carrying handgun and alcoholic beverages);
- 941.24 (Possession of switchblade knife);
- 948.60 (Possession of dangerous weapon by a person under 18);
- 948.605 (Gun-free school zone) or
- 948.61 (Dangerous weapons on school premises).

3. A juvenile taken into custody under Wisconsin Statute 938.19 and where there is reasonable grounds to believe the juvenile has committed an act which would be a felony if committed by an adult, or a juvenile taken into custody under one of the eight specified misdemeanors in subsection 2.

4. Arrested for any misdemeanor not specified above (sub. 2), any other violation of state law punishable by forfeiture, or any local ordinance violation, if there is probable cause to believe the person is concealing a weapon or an object which may constitute evidence of the offense for which he or she is detained.

5. Any person who intentionally violates the requirements outlined in Wisconsin State Statue 965.255 may be charged with a misdemeanor and be fined not more than $1,000 or imprisoned not more than 90 days or both.

C. Pursuant to Wisconsin State Statute 968.255(2): "No person may be the subject of a strip search unless he or she is a **detained** person and if:

1. The person (and the search witness) conducting the search is of the same sex as the person detained, unless the search is a body cavity search conducted under sub. (F);

2. The detained person is not exposed to the view of any person not conducting the search (witness excepted);

3. The search is not reproduced through a visual or sound recording. Strip searches **SHALL NOT** be conducted in the booking room due to the presence of video equipment;

4. A person conducting the search has obtained the prior written permission of the chief or his/her designee of the jurisdiction (i.e. Captain of Police or higher rank) where the person is detained, unless the person conducting the search has probable cause to believe that the detained person is concealing a weapon; and

5. A *Strip Search Authorization Report* (Form PS) is completed in the Administrative Investigations Management (AIM) System regarding the search.

D. Justification for a Strip Search

1. A strip search shall only be conducted when the detained person has been taken into custody for any of the offenses listed in 085.55 B. sub 1, 2 and 3 and the police member can articulate the reason why he/she believes the detainee is concealing an object which my pose a safety risk or may constitute evidence of a crime.

2. Any strip search of an individual being detained for any misdemeanor not specified in 085.60 B. sub 2, any other violation of State law punishable by forfeiture, or any other local ordinance, must be based on probable cause to believe the individual being detained is concealing a weapon or evidence of a crime for which he/she is being detained.

E. Strip Search Authorization Report (FORM PS)

1. A shift commander upon being notified a police member is requesting a strip search will attempt to locate an on-duty Captain or higher authority in order to receive written authorization to conduct a strip search, unless it is a probable cause weapon search. In the absence of an on-duty member with the rank of Captain or higher, an on-duty Lieutenant will have the authority to grant written consent.

2. The shift commander receiving approval for a strip search shall cause a *Strip Search Authorization Report* (Form PS) to be completed in the AIM system prior to the search being conducted. Minimally the following fields shall be completed on the report prior to the subject being provided a copy of the form as stated in subsection 5:

a. Date/time of incident

b. Location of stop or incident

c. Suspect's name/address and other demographics

d. Police member conducting the search and police member witness

e. Authorizing Command Officer (as specified in subsection 1)

f. Was justification or probable cause found to authorize search (yes or no)

g. Reason / Justification statement for the search entered in the incident notes section - (as specified in Subsection D)

3. Once all the data from subsection 2 has been entered into AIM, the form will be printed.

4. The strip search authorizing member in subsection 1 will sign the form next to his/her name on the report.

5. A copy of the completed form with the authorizing member's signature will be made and shall be provided to the person being searched.

6. The work location responsible for conducting the search will maintain custody and retention of the form containing the original signatures.

F. Body Cavity Searches

1. **Police members are prohibited from conducting a body cavity search whether manual or visual.** If a body cavity search is deemed necessary, such search can only be done by a physician, physician's assistant or registered nurse licensed to practice in the State of Wisconsin.

2. A body cavity search includes the following:

a. The manual inspection involving a digital (finger) or instrument intrusion into a person's anus or vagina.

b. The visual inspection of the anus or vagina even when no manual examination is performed.

3. **A search warrant is required for every body cavity search.**

G. Physically Disabled Persons

A physically disabled person, for the purpose of Wisconsin Statute 968.256, is defined as "a person who requires an assistive device for mobility, including, but not limited to, a wheelchair, brace, crutch or artificial limb". A search of a physically disabled person is to 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 or her body, the search shall be conducted with extreme care by a person who has had training in handling physically disabled persons.

085.65 OTHER SITUATIONS AUTHORIZED BY STATE & FEDERAL CONSITUTIONAL PROVISIONS

A. Fresh (Hot) Pursuit

1. Fresh pursuit means the pursuit by a police member of someone he/she has probable cause to believe has violated any law or ordinance the police member is authorized to enforce. This means that the infraction must take place within the City of Milwaukee and fresh pursuit will allow the police member to follow that person outside of what normally would be his/her geographical limits.

   a. Police members in fresh pursuit of a fleeing felon may make a warrantless entry into any place where the felon seeks refuge.

   b. The police member may conduct a warrantless search and seizure of the suspect, the suspect's clothing, and the area under the suspect's immediate control.

   c. The arresting police member's warrantless search is limited to a protective sweep and a search incidental to a lawful arrest.

   d. Whenever circumstances and public safety permit, the police member should obtain a warrant once the pursuit has been substantially interrupted.

B. Felony Arrest (with Warrant)

1. Police members must have a search warrant or consent to enter a residence legally; unless the member has knowledge the suspect resides full-time at the residence **and** the suspect has been seen inside the residence at the time of the warrant service.

2. Police members must obtain a search warrant to gain lawful entry to the premise of a third party to affect an arrest unless they have valid consent or some other exception to the warrant requirement exists.

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C. Misdemeanor Arrest with a Warrant

1. Police members must have a search warrant or consent to enter a residence legally; unless the member has knowledge the suspect resides full-time at the residence **and** has been seen inside the residence at the time of the warrant service. Police members must use good articulable discretion when making the decision to forcibly enter a residence for the purposes of making a misdemeanor (jailable offense) warrant arrest. When in doubt, seek direction from a supervisor.

2. Police members must obtain a search warrant to gain lawful entry to the premise of a third party to affect an arrest unless they have valid consent or some other exception to the warrant requirement exists.

D. Abandoned Property

1. This is another exception which is not really a search. A scrap of paper which turns out to be a policy slip or a cigarette butt containing marijuana and thrown on the ground is abandoned and may be seized. A person seen discarding such an object could then be arrested. Trash placed at the curb on truck pick-up day is generally considered abandoned.

2. Individuals do not have any reasonable expectation of privacy regarding property that they had abandoned prior to its seizure by law enforcement (i.e. the police approach a subject pursuant to a lawful traffic stop. The subject takes off on foot leaving his/her vehicle behind. The vehicle is deemed to be abandoned property and, thus, can be lawfully searched).

085.70 VEHICLE INVENTORY SEARCHES

Police members impounding a vehicle shall conduct and document a thorough inventory of the vehicle and its contents to the extent practical to protect the police member, the vehicle owner, and the Department from claims of loss or damage.

085.75 SOURCE AND INFORMATIONAL RESOURCES

This SOP was developed to provide police members with general guidance in search and seizure. The concepts in this SOP are governed by landmark State and Federal court cases that establish the boundaries for proper police conduct in this arena.

The following sources were referenced in the development of this SOP.

-*Wisconsin Law Enforcement Criminal Law Handbook (Blue Book), published by the Wisconsin Department of Justice, 2009 edition*
-*Federal and State Constitutions*
-*Federal and State Case Law*
-*Wisconsin State Statutes*
-*Milwaukee County District Attorney's Office*

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-Milwaukee Police Department Code of Conduct
-Milwaukee Police Department Standard Operating Procedures

EDWARD A. FLYNN
CHIEF OF POLICE

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