

Policy – Wauwatosa Police Department

POLICY: Arrest Authority

CHAPTER & SECTION: 4.1.1

DISTRIBUTION: Sworn Officers and City Attorney

AUTHORITY: Chief James MacGillis

PREPARED BY: Sergeant Kyle Strands

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I. INTRODUCTION

A law enforcement officer may, in accordance with Wisconsin Statute 968.07, arrest a person when:

- A. The law enforcement officer has a warrant commanding that such person be arrested; or
- B. The law enforcement officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or
- C. The law enforcement officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or
- D. There are reasonable grounds to believe that the person is committing or has committed a crime.

The purpose of this policy is to define the authority of City of Wauwatosa police officers to conduct investigations and make arrests in all jurisdictions within the State of Wisconsin. It is the intent of this policy to enhance the ability of officers to conduct official investigations and make arrests both within and outside of the geographical boundaries of the City of Wauwatosa, and within the limitations defined in Wisconsin Statute 175.40.

This policy rescinds policy #20-04.

II. DEFINITIONS

- A. Crime:** A crime is conduct that is prohibited by state law and punishable by fine, imprisonment or both. Conduct punishable only by forfeiture is not a crime. [Wisconsin Statute 939.12].
- B. Arrest:** Arrest is the act of depriving a person(s) of his / her liberty by legal authority.
- C. Jurisdiction:** The power, right, or authority to apply and enforce the law.
- D. County-Wide Jurisdiction:** For any county having a population of 750,000 or more, if any law enforcement officer has territorial jurisdiction that is wholly or partially within that county and has authority to arrest a person within the officer's territorial jurisdiction, the officer may arrest that person anywhere in the county. [Wisconsin Statute 175.40(5)(a)] For the purpose of this definition, any law enforcement officer employed by an agency within Milwaukee County has territorial jurisdiction and authority to investigate and make arrests within Milwaukee County.
- E. On Duty:** On Duty, for the purpose of jurisdiction as under Wisconsin Statute 175.40, is defined as those hours normally considered to be a part of the officer's tour of duty or when such officer is performing authorized duty for which compensation may be awarded or earned.
- F. Notification:** Notification means radio, telephone, electronic or personal contact with the agency in whose jurisdiction you are conducting official City of Wauwatosa Police Department business.

III. PROCEDURE

A. On-duty arrests within the City of Wauwatosa

Police officers while on-duty and within the geographical boundaries of the City of Wauwatosa have full authority to conduct investigations and make arrests and may, when in fresh pursuit, follow anywhere in the state and arrest any person for the violation of any law or ordinance the officer is authorized to enforce (Wisconsin Statute 175.40(2).)

B. On-duty arrests and notifications within Milwaukee County

Police officers while on-duty and within the geographical boundaries of Milwaukee County, but outside of the geographical boundaries of the City of Wauwatosa have the authority to conduct investigations and make arrests anywhere in Milwaukee County for violations of any law or ordinance that

occurred within the geographical boundaries of the City of Wauwatosa. Notification of the local jurisdiction is not mandatory, however may be appropriate based upon the specific facts of the investigation, officer safety and / or de-confliction issues.

On-duty officer(s) observing a person(s) committing a **crime** in another jurisdiction in Milwaukee County has the authority to arrest that person(s). The offense must be a crime as defined by Wisconsin Statutes, and not an ordinance violation. If the crime is not related to an on-going City of Wauwatosa investigation, notification of the local jurisdiction is mandatory. It will be the local jurisdiction's discretion as to who will continue the investigation, process the arrest and formal charging of the suspect.

On-duty officer(s) may arrest a person(s) in another jurisdiction for a **crime** not observed by a law enforcement officer, based on probable cause that a crime was committed. The offense must be a crime as defined by Wisconsin Statutes, and not an ordinance violation. If the crime is not related to an on-going City of Wauwatosa investigation, notification of the local jurisdiction is mandatory. It will be the local jurisdiction's discretion as to who will continue the investigation, process the arrest and formal charging of the suspect.

On-duty officer(s) involved in specialized investigations, specifically but not limited to drug investigations, may investigate or make arrest(s) in another jurisdiction, provided the investigation was authorized by a supervisor. Notification of the local jurisdiction is not mandatory, however may be appropriate based upon the specific facts of the investigation, officer safety and / or de-confliction issues.

On-duty officers involved in the execution of a search warrant in another jurisdiction are **required** to notify prior to the execution of the warrant, the local jurisdiction in which the warrant will be served.

On-duty officer(s) may arrest and take into custody any person for which a Federal, State or Municipal warrant has been issued. Notification of the local jurisdiction is not mandatory, however may be appropriate based upon the specific facts of the situation, officer safety and / or de confliction issues.

C. State Wide Arrest Authority – On duty

On-duty officers may arrest a person or provide aid or assistance anywhere in the State of Wisconsin if **all** of the following apply:

1. The officer is on duty and on official business.
2. The officer is taking action that he or she would be authorized to take under the same circumstances in his or her jurisdiction.

3. The officer is acting to respond to an emergency situation that poses a significant threat to life or of bodily harm or an act that the officer believes, on reasonable grounds, constitutes a felony.

Notification of the local jurisdiction is mandatory and the arrested person(s) shall be turned over to the local jurisdiction for continued investigation, processing of the arrest and formal charging.

D. Off-Duty Arrest Authority – Within the City of Wauwatosa

It is the specific intent of this policy to limit the arrest activities of off-duty officers to only those matters that the officer believes, on reasonable grounds, to constitute a **crime**. The officer may not make an arrest in a matter that he / she, a family member, or a friend becomes engaged in a dispute or incident with the person to be arrested or any other person connected with the incident. This does not apply to situations where the officer, family member or friend is a victim of a crime. No officer of the Wauwatosa Police Department may consume **any** intoxicants when armed with a weapon while off-duty.

An off-duty officer electing to take action under this policy shall, consistent with circumstances and exigencies of the situation, attempt to weigh reasonable responses to the situation including maintaining observation, contacting the appropriate law enforcement agency or asking others to do so, and directly intervening in the incident.

The off-duty officer shall as soon as tactically practical, verbally and if possible visibly (with badge and / or police identification card) identify him / herself as a police officer to the suspect and other bystanders.

An off-duty officer acting under the authority of this policy shall as soon as possible notify the Wauwatosa Police Department of the incident and turn the arrested person(s) over to on-duty officers to continue investigation and process the arrest. The on-duty shift supervisor will be notified and is responsible to prepare a written internal report regarding the matter and forward it to the applicable division commander.

For the purpose of civil and criminal liability, workers compensation and duty disability, the off-duty officer acting as authorized by this policy is considered to be acting in official capacity of the City of Wauwatosa.

E. Off-Duty Officer Acting Outside of Jurisdiction

2005 Wisconsin Act 414 created Wisconsin State Statute 175.40 (6m) authorizing an off-duty officer (as defined in s. 175.40(1) (c), Stats) to arrest a

person or provide aid or assistance outside of the officer's jurisdiction (but in Wisconsin) in certain situations as defined by statute.

Off-duty officer(s) are authorized to arrest a person or provide aid or assistance outside of the officer's territorial jurisdiction (but in Wisconsin) if **all** of the following apply:

1. The officer is responding to an emergency situation that poses a threat to life or bodily harm.
2. The officer is taking action that he or she would be authorized to take under the same circumstances in the officer's territorial jurisdiction.
3. The officer's actions follow the Wauwatosa Police Department written policies and procedures.

NOTE: This authority specifically applies to threats to life or bodily harm; it does NOT apply to property crimes, regardless of how significant the loss may be.

An off-duty officer electing to take action under this policy shall, consistent with the circumstances and exigencies of the situation, attempt to weigh reasonable responses to the situation including maintaining observation, contacting the local law enforcement agency or asking others to do so, and directly intervening in the incident.

The officer shall as soon as tactically practical, verbally and if possible visibly (with badge and / or police identification card) identify him / herself as a police officer to the responding officer(s) of the local jurisdiction, to bystanders, and to suspect(s).

Officers shall comply with the lawful actions and directions given by officers of the local jurisdiction without delay or question. These actions and directions may include having guns pointed at them, being handcuffed, searched, and questioned.

An off-duty officer acting under the authority of this policy shall as soon as possible notify and cooperate with the appropriate law enforcement agency regarding arrests made and other police action taken within that agency's jurisdiction.

An off-duty officer acting under the authority of this policy will as soon as possible notify the on-duty shift commander of this Department and appraise him / her regarding the police action taken while off-duty and within another jurisdiction. The shift commander will prepare a written internal report regarding the matter and forward it to the applicable division commander.

For the purpose of civil and criminal liability, an off-duty peace officer acting outside the officer's jurisdiction as authorized by s. 175.40 (6m), Stats. is considered to be acting in an official capacity as an officer of the state, state employee, or agent of the state.

For purposes of workers compensation, an off-duty officer acting outside the office's territorial jurisdiction as authorized by s. 175.40 (6m), Stats. is considered to be an employee of the state and the officer is eligible for the same benefits as is the officer had sustained the injury while performing services growing out of and incidental to the officer's employment with the employing supervising agency.

An off-duty officer acting outside the officer's territorial jurisdiction under s. 175.40(6m), Stats. is considered to be performing his / her duty and engaging in his / her occupation for purposes of duty disability eligibility.

A handwritten signature in black ink, appearing to read 'J. MacGillis', with a stylized flourish at the end.

James H. MacGillis
Chief of Police

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