



# POLICY & PROCEDURE

## ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **ARREST PROCEDURES**

SCOPE: All Department Personnel  
DISTRIBUTION: Policy & Procedure Manual

REFERENCE: WI State Statutes: 29.941, 62.09(13),  
66.0313, 66.0513, 175.40, 349.02,  
800.02(6), 968.07, 968.08, 968.085,  
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PURPOSE: The purpose of this Policy & Procedure is to define the authority of officers of the Elkhart Lake Police Department to make arrests and to establish guidelines for affecting arrests, both with and without a warrant. Such guidelines shall serve to ensure that all rights and privileges afforded citizens during arrest situations will be diligently protected.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. ARREST AUTHORITY

- IV. GEOGRAPHIC JURISDICTION
- V. ARREST WITH A WARRANT
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- VII. ARREST BY CITATION
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- X. ALTERNATIVES TO ARREST
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## I. POLICY

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

## II. DEFINITIONS

- A. CUSTODIAL ARREST: The act of depriving a person of their liberty by legal authority for the purpose of holding or detaining them to answer to a criminal charge or a civil forfeiture action. A custodial arrest is that type of arrest in which the suspect would normally be brought to the police department or detained at another facility.
- B. NON-CUSTODIAL ARREST: The act of temporarily depriving a person of their liberty by legal authority for the purpose of issuance of citation or summons with the intent of bringing that person into the judicial process to answer for an offense.
- C. CIVIL FORFEITURE: Conduct which is prohibited by Village ordinance and punishable generally by monetary forfeiture or other penalties imposed by Village ordinance or both.
- D. CLOSE PURSUIT: The pursuit into another state by a law enforcement officer of a defendant the officer has probable cause to believe has committed a felony in the State of Wisconsin.

- E. CRIME: Conduct which is prohibited by state law and punishable by fine or imprisonment or both.
- F. EXIGENT CIRCUMSTANCES: Circumstances that are required in addition to probable cause for officers to lawfully enter an area without a warrant, where a subject has a reasonable expectation of privacy, to make an arrest. These circumstances are defined as:
  - 1. The immediate threat of escape
  - 2. The immediate threat of destruction of evidence of a crime.
  - 3. The immediate threat of death or great bodily harm to the officer or the general public.
- G. FRESH PURSUIT: The pursuit into another jurisdiction in Wisconsin of a defendant by a law enforcement officer that the officer has probable cause to believe has violated any law or ordinance the officer is authorized to enforce.
- H. PROBABLE CAUSE: A reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that some kind of violation probably is being committed or has been committed.
- I. WARRANT: A written order issued and signed by a judge, and directed to law enforcement officers, commanding the officer(s) to arrest the person named in the order. A warrant may be for violation of a criminal law or in connection with a civil proceeding.

### III. ARREST AUTHORITY

- A. Elkhart Lake Village Ordinance 4 and Wisconsin State Statutes 968.07, 349.02, and 62.09(13) grant law enforcement officers the authority to enforce laws and arrest under specific circumstances.

### IV. GEOGRAPHICAL JURISDICTION

- A. Officers of the Elkhart Lake Police Department are authorized to exercise police powers and perform duties in all areas within the corporate Village limits of Elkhart Lake and Town of Rhine, Sheboygan County, Wisconsin; refer to Policy & Procedure 1.08: Jurisdiction for information regarding geographical jurisdiction.

### V. ARREST WITH A WARRANT

- A. The Elkhart Lake Police Department maintains a file of all warrants issued as a result of Department action. This file is maintained in the Records section of the police department and is available to all officers on a 24 hour basis.
- B. When an officer is making an arrest based on the existence of a warrant and does not have the warrant in their possession, they shall be responsible for confirming the validity of the warrant.

- C. Temporary detention of an individual for the purpose of verifying the status of a warrant is permissible.
- D. Upon making an arrest upon the existence of a warrant, the arresting officer shall inform the defendant as soon as practical of the nature of the crime/warrant with which they are charged.
- E. Time of Service – A warrant may be lawfully served at any time.
- F. Warrants are directed to all law enforcement officers and may be served anywhere in the state, but must be served by an officer with arrest power in the jurisdiction where it is served.
- G. An officer receiving a request from another agency to execute a warrant on their behalf shall first confirm the warrant by checking NCIC and CIB sources. If the warrant does not appear in either of these sources, the officer shall request teletype confirmation of the warrant from the requesting agency. In exigent situations, officers may act on a telephone request from another agency. As soon as practical, a telephone request shall be followed by a teletype confirmation.
- H. Serving warrants at residences.
  - 1. Entry into a defendant's residence requires: consent from a person the officer(s) reasonably believe has authority to grant consent, exigent circumstances, or a warrant for a felony and probable cause to believe the defendant is inside the residence. Consideration should always be given to the totality of the circumstances and the severity of the charged offense when deciding whether to force entry into a residence.
  - 2. Entry into a third party residence requires: consent from a person the officer(s) reasonably believe has authority to grant consent, exigent circumstances, or a search warrant listing the arrestee as the item to be seized.
  - 3. When serving a warrant at a residence, officers will, before entering, knock and announce their identity and purpose then wait for permission to enter unless exigent circumstances require immediate entry or a no knock warrant has been authorized.

## VI. ARREST WITHOUT A WARRANT

- A. Officers may arrest without a warrant whenever it is impractical to obtain a warrant and there is probable cause to believe that:
  - 1. The suspect is committing or has committed a crime.
  - 2. The suspect is wanted for the commission of a felony in another state.
  - 3. The suspect is wanted in this state.

- B. Officers responding to a teletype request from another police agency to affect a warrantless arrest may conduct such an arrest if the defendant is located within the Village of Elkhart Lake and it is impractical to obtain a warrant under the circumstances.
- C. Officer may also affect an arrest on the strength of a radio or telephone request from another agency. However, teletype confirmation shall be sought, preferably before the arrest is made. Again, it must be impractical to obtain a warrant under the circumstances.
- D. Officers should be cautious of other agency requests that contain phrases such as “attempt to locate,” or “stop and detain,” and shall ascertain the clear nature of the request prior to taking “custodial arrest” action.
- E. Under WI Statutes 66.0313 & 66.0513, Officers upon the request of any law enforcement agency, personnel from another law enforcement agency may assist the requesting agency within their jurisdiction, and upon that request the assisting officer shall have full police powers within the requesting jurisdiction, including all protections for the officer such as worker’s compensation.
- F. WI Statute 29.941 provides that all police officers are deputy conservation wardens and shall assist the DNR and its wardens in enforcement of fish and game law or other violations of Chapter 29 of the Wisconsin Statutes whenever notice of violations thereof is given to them by the department or its wardens. This action should normally only be taken at the request of the DNR or a warden.
- G. 18 U.S. Code 3041 authorizes State law enforcement officers to make arrests for Federal crimes. Officers shall not utilize this authority unless so directed by a supervisory officer.

## VII. ARREST BY CITATION

- A. Certain warrantless arrest situations can be accomplished through the issuance of municipal ordinance citations, and State of Wisconsin Uniform Traffic Citations. These situations can be categorized as follows:
  - 1. Violation of a Village of Elkhart Lake Municipal Ordinance.
  - 2. Violation of a State of Wisconsin traffic statute.
  - 3. Violation of a criminal statute that constitutes a misdemeanor.
- B. The following guidelines shall apply to the issuance of a municipal ordinance citation:
  - 1. The action for which the citation is being issued must constitute a violation of a municipal ordinance.

2. If the action for which the citation is being issued also represents a violation of a state criminal statute, officers shall weigh factors such as the gravity of the offense, the demeanor of the offender, the safety of all parties involved, and previous department contacts with the offender in determining whether the offender should be issued a citation or arrested for a crime.
3. The arrest shall generally be non-custodial in nature if the offense is not adopted from a State criminal offense. Exceptions can be made for alcohol offenses which have a high rate of false identification and carry a risk to the community. All other offenders arrested solely on the basis of a municipal ordinance violation shall be released upon being properly identified and issued the citation.
4. Arrestees, who cannot be properly identified, have no fixed address or cannot show sufficient evidence of ties to the community may be held in custody at the officer's discretion unless otherwise directed by supervisory personnel. All reasonable efforts to have bond posted shall be attempted.

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

1. The action for which the citation is being issued must constitute a violation of State of Wisconsin traffic statutes or a Village of Elkhart Lake Municipal Ordinance adopting the same statute.
2. In all cases where a municipal ordinance has adopted the state statute, the citation shall be written in a manner that has the Village of Elkhart Lake or the State of Wisconsin as the plaintiff.
3. The arrest shall generally be non-custodial in nature. An offender arrested solely on the basis of a violation of a traffic statute or ordinance in conformity therewith, shall be released upon the receipt of the citation.
4. Persons cited who cannot be properly identified, have no fixed address, or cannot show sufficient evidence of ties to the community, may be held in custody at the officer's discretion unless otherwise directed by supervisory personnel. All reasonable efforts to have bond posted should be attempted.

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

1. All persons arrested for a misdemeanor, including a misdemeanor traffic offense, shall be released from custody without a cash bond unless any of the following exist:
  - a) The accused does not have proper identification.
  - b) The accused appears to represent a danger of harm to himself or herself, another person or property.
  - c) The accused cannot show sufficient evidence of ties to the community.

- d) The accused has previously failed to appear in court or failed to respond to a citation.
  - e) Arrest or further detention is necessary to carry out legitimate investigative action in accordance with the Policy & Procedures of the Elkhart Lake Police Department.
  - f) A Domestic Violence Incident arrest.
2. If the action for which a person is arrested for a criminal offense also represents a violation of a municipal ordinance, the officer shall weigh the gravity of the offense, the demeanor of the offender, the safety of all parties involved, and previous department contacts with the offender in determining whether the offender should be arrested for a crime or issued a municipal ordinance citation.
- a) Subjects required to be fingerprinted: Refer to Policy & Procedure 10.01: Section V Master File Name, Subsection C, 3, d.
3. All persons taken into custody for a felony arrest should be transported to the Sheboygan County Detention Center for booking, unless advised otherwise by a supervisor. The subject in custody should be fingerprinted and photographed during the booking procedure at the jail.

#### VIII. ARRESTEE RIGHTS

- A. Officers shall use only that amount of force necessary to perform his/her duties including affecting arrests; refer to Policy & Procedure 5.01: Use of Force.
- B. After making an arrest, officers shall conform to the policies and procedures set forth in Policy & Procedures 1.09: Law Enforcement Authority & 6.13: Custodial Interrogation, to assure compliance with all of the applicable constitutional rights and requirements pertaining to interviews and interrogations as well as access to counsel.
- C. When investigating incidents involving juvenile offenders, officers shall conform to the policies/procedures set forth in Policy & Procedure 6.20: Juvenile Procedures.

#### IX. SEARCH INCIDENT TO ARREST

- A. When a person is arrested and taken in custody for a violation, the officer may contemporaneously conduct a reasonable search of the person arrested and a search of the area readily accessible to the arrested person, including any items they may have in their possession for the purpose of:
  - 1. Protecting the officer from attack;
  - 2. Preventing the person from escaping;
  - 3. Discovering and seizing the fruits of the crime/offense; or

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

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

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

C. Searches of vehicles and the moveable vehicle exception.

1. Officers may no longer conduct a routine warrantless search of a vehicle incident to the arrest of an occupant (Arizona v. Gant, 2009); refer to Policy & Procedure 1.10: Search and Seizure for vehicle search information.

## X. ALTERNATIVES TO ARREST

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

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

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

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

## XI. OTHER ARREST PROCEDURES

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



- B. Most arrests will also require a booking process where the arrestee will be photographed (a mug shot) and fingerprinted in addition to having a Booking Record filled out. When possible, all felony and misdemeanor arrests require this process, with municipal ordinance violations generally done but may be done on a case by case basis.
- C. Refer to Policy & Procedure 10.01: Records for further information regarding other arrest procedures.

## XII. MUTUAL AID

- A. As a general rule, there will be no automatic mutual aid initiated by the Elkhart Lake Dispatch or any other jurisdiction. When the Elkhart Lake Police Department or any other agency needs mutual aid, it must be requested and approved by a shift supervisor from each agency involved. Refer to Policy & Procedure 1.08: Jurisdiction for specifics on providing and receiving mutual aid.
- B. Wisconsin State Statutes 66.0313 & 66.0513 adopted by this policy provides that upon the request of any law enforcement agency, personnel from another law enforcement agency may assist the requesting agency within their jurisdiction, and upon that request the assisting officer shall have full police powers within the requesting jurisdiction, including all protections for the officer such as worker's compensation.
- C. Any Elkhart Lake Police Department officer needing to exercise police powers outside the corporate Village limits of Elkhart Lake and the Town of Rhine should contact the law enforcement agency that has jurisdiction and request assistance. If that agency is unable to provide the assistance, that agency may request mutual aid from the Elkhart Lake Police Department to perform the task.
  - 1. This section includes making arrests, executing warrants, taking custody of and transporting prisoners, or any other police duties requiring police authority.

## XIII. EXPANDED JURISDICTION

- A. The Chief of Police may select and authorize certain sworn officers to be deputized by the Sheriff of Sheboygan County. This will allow officers to perform duties and exercise police powers within the corporate limits of Sheboygan County.
  - 1. Officers and detectives not deputized by the Sheriff of Sheboygan County may conduct the following police department business outside the corporate Village limits of Elkhart Lake:
    - a) Interviews of victims and witnesses from incidents occurring within the corporate limits of Elkhart Lake;
    - b) Surveillance of vehicles, properties, and individuals where it is unlikely the officer will be required to exercise police powers;

- b) Other law enforcement business or duties that do not require law enforcement authority or powers.
- 2. Officers and detectives needing to make arrests, or conduct police department business that may be confrontational or require police authority or power will request assistance from the appropriate jurisdiction.
  - a) In some investigations, consideration may be given to obtaining an arrest warrant or summons.
- 3. This section does not preclude officers from making arrests or providing aid or assistance in accordance with the following:
  - a) The Uniform Act on Close Pursuit;
  - b) When in close pursuit of a known or suspected felon;
  - c) When in fresh pursuit under Wisconsin Statute 175.40 (2);
  - c) When acting under Wisconsin Statute 175.40 (6);
    - (1) When acting under this statute, the officer shall make notification to and cooperate with the law enforcement agency that has jurisdiction regarding arrests made and other actions taken in that jurisdiction;
  - d) By statute (sec. 349.03(4), Stats), an officer may arrest for operating while under the influence (sec. 346.63, Stats.) or refusal to submit to an evidentiary alcohol test (sec. 343.305, Stats.) anywhere in the State of Wisconsin, as long as the offense occurred in the officer's jurisdiction, without necessarily being in fresh pursuit;
  - e) When providing mutual aid under Wisconsin Statute 66.0313.
- B. The Chief of Police may authorize any officer assigned to a multi-jurisdictional task force to be deputized or granted other police powers to cover the appropriate jurisdictions.
- C. Officers assigned to the Sheboygan County SWAT team and the Sheboygan County Multijurisdictional Enforcement Group may perform law enforcement duties under the supervision and direction of the Sheboygan County Sheriff's Department.

Michael Meeusen  
Chief of Police

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

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