

# WATERTOWN POLICE DEPARTMENT GENERAL ORDER



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Subject: Arrest Procedures		Re-evaluationDate: July 2013
Distribution: ALL PERSONNEL	Related CALEA Standards:	

This order consists of the following numbered sections:

1. Purpose
2. Policy
3. Definitions
4. Procedures

## 1. PURPOSE

The purpose of this policy is to establish lawful detention, arrest and search procedures that support successful prosecutions.

## 2. POLICY

All department personnel will employ efficient and effective detention, arrest and search procedures that are in accordance with applicable law, department directives and that are respectful of individual rights.

## 3. DEFINITIONS

- a. **ARREST** -To deprive a person of his or her liberty by legal authority. Taking custody of another to bring him or her before a court of proper jurisdiction.
- b. **CONSENSUAL CITIZEN ENCOUNTER** - An officer engages a citizen in conversation with the citizen's consent. The officer has no reasonable suspicion that the person is involved in criminal activity. The citizen is free to without delay withdraw his or her consent, ignore the officer's questions, and walk away.
- c. **CONSENT SEARCH** - The voluntary granting of permission for an officer to enter an area that is protected by the 4<sup>th</sup> Amendment, by a person who is either an owner or a third party with common authority over the premises.
- d. **FRISK** - A pat-down search of a suspect by an officer, designed to discover weapons for the purpose of ensuring the safety of the officer and others nearby, and not to primarily recover contraband or other evidence for use at subsequent trial.
- e. **INVESTIGATORY FIELD STOP ("TERRY STOP")** - Temporary detention based upon reasonable suspicion that the person is involved in criminal activity.
- f. **PROBABLE CAUSE** - Facts and circumstances within an officer's knowledge, and of which he or she has reasonable trustworthy information sufficient in itself to warrant a person of reasonable caution to believe that an offense has been or is about to be committed. It is not necessary that the officer possess knowledge of facts sufficient to establish guilt, but more than mere suspicion is required.
- g. **PROBABLE CAUSE (SEARCH)**: Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
- h. **REASONABLE SUSPICION** - Knowledge sufficient to induce an ordinary prudent and cautious officer to believe criminal activity is at hand. It must be based on specific and articulable facts which, taken together with rational inference from those facts, reasonably warrant intrusion.
- i. **SEARCH INCIDENT TO LAWFUL ARREST** - When a lawful arrest is affected, an officer may search the person arrested and the area within the person's immediate presence for the purpose of protecting the officer from attack, discovering the fruits of a crime, or preventing the person from escaping or destroying evidence. The officer may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control, the seizure of which is reasonably necessary to protect the officer from attack, prevent the person's escape, or ensure subsequent lawful custody of the fruits of a crime or the articles used in the commission of a crime.

- j. STRIP SEARCH - Remove or arrange some or all of a person's clothing so as to permit a visual or manual inspection of the genitals, buttocks, anus, breasts in the case of a female, or undergarments of such person.
4. PROCEDURES
- a. There are three basic situations in which officers encounter citizens in order to gather information or take law enforcement action:
    - i. Consensual Citizen Encounter
      - 1. Officers will not do or say anything to induce the person to believe that he or she must answer questions and/or is not free to leave.
    - ii. Investigatory Field Stop ("Terry Stop")
      - 1. When an officer encounters a person in circumstances that reasonably indicate the person has committed, is committing, or is about to commit a violation of law, he or she may temporarily detain the person. The detention is to investigate the suspicious circumstances and ascertain the person's identity.
      - 2. When a officer temporarily detains or is about to detain any person, and he or she believes the person is armed with a dangerous weapon and, therefore, offers a threat to the safety of the officer or others, the officer is privileged to "pat down" the person only to the extent necessary to disclose the presence of such weapon. The initial search is limited to outer clothing. Only if a weapon is felt may a more extensive search of the clothing be made. If such a search discloses a weapon or any evidence of a criminal offense, it may be seized.
      - 3. If an officer feels an object during a frisk that is obviously contraband, he or she may seize it.
      - 4. Officers will not temporarily detain any person longer than is reasonably necessary to investigate the suspicious circumstances and verify identity. The temporary detention will not extend beyond the place where it was first affected or the immediate vicinity thereof.
    - iii. Arrest with or without a warrant
      - 1. In felony crimes, an officer may arrest without warrant in the following situations when the officer has probable cause to believe:
        - a. a felony is committed in the officer's presence,
        - b. a felony has been or is about to be committed,
        - c. the person being arrested is the perpetrator; or
        - d. a warrant for the person has been issued.
      - 2. In misdemeanor crimes and violations of municipal or State Statutes, an officer may arrest without a warrant in the following situations:
        - a. When a misdemeanor violation of municipal ordinance or a State Statute is committed in the presence of an officer, or upon probable cause that a class 1 misdemeanor has been committed and the person arrested committed it, although not in the officers presence (SDCL 23A-3-2)
        - b. For an act of domestic violence as defined in SDCL 23A-3-2.1
  - b. Circumstances permitting warrantless arrests. 23A-3-2.1.
    - i. A law enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, any person, without a warrant, at any time that the opportunity presents itself, if the officer has probable cause to believe that:
      - 1. An order has been issued under chapter 25-10 protecting the victim and the terms of the order prohibiting acts or threats of abuse or excluding the person from a residence have been violated; or
      - 2. An order has been issued under chapter 22-19A protecting the victim and the terms of the order prohibiting acts of stalking or physical injury have been violated; or
      - 3. The person is eighteen years or older and within the preceding forty-eight hours has assaulted
        - a. That person's spouse;
        - b. That person's former spouse;
        - c. The mother or father of that person's child; or
        - d. Any person eighteen years of age or older with whom that person resides or has formerly resided; and the officer believes:
          - i. An aggravated assault has occurred;

- ii. An assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or
    - iii. An attempt by physical menace has been made to put another in fear of imminent serious bodily harm.
    - iv. Other: If an arrestee escapes, the Officer from whose custody he or she escapes, or any other law enforcement officer, may immediately pursue and retake the person arrested without a warrant at any time and in any place.
- c. Alternatives To Physical Arrest
  - i. Promise to Appear
    - 1. In class 1-misdemeanor cases, an officer must have subject post bond according to current bond schedule, unless otherwise approved by a supervisor.
    - 2. An officer may issue a Notice to Appear in lieu of making a physical arrest for class 2 misdemeanors
  - ii. Filing charges with the State Attorney's Office:
    - 1. In criminal cases, when no further investigation is necessary and prosecution appears justified, a case report, sworn statements, and associated forms may be forwarded to the State Attorney's Office.
    - 2. The investigating officer will advise the complainant that an arrest warrant and subsequent prosecution will not follow in all cases. The ultimate decision to prosecute rests with the State Attorney, who will notify the complainant of said decision. The investigating officer may advise the complainant to call the State Attorney's Office for information on prosecution of the case.
- d. Privilege from Arrest:
  - i. The U.S. Constitution grants immunity from arrest to members of Congress while they are attending, or traveling to and from sessions of the House of Representatives or Senate. The exceptions to this immunity are treason, felonies, and breaches of peace. The immunity has little practical value. The U.S. Supreme Court has interpreted the exceptions to mean that members of Congress can be arrested for any criminal offense. Furthermore, the privilege does not apply to the service of any process in a civil or criminal matter.
  - ii. Diplomatic and Consular Immunity
    - 1. Background. Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and their personal activities. It should be emphasized, however, that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming to national and local laws and regulations.
      - a. Categories of persons entitled to diplomatic immunity are as follows:
        - i. Diplomatic Agent: Enjoys the highest degree of privileges and immunity. Diplomatic Agents may not be handcuffed (except in extraordinary circumstances), arrested, or detained for any criminal offense. Generally, they are immune from any civil suits, but are not immune from receiving a citation/summons. Family members of these persons enjoy the identical privileges and immunity.
        - ii. Diplomatic Administrative and Technical Staff: Enjoy privileges and immunity similar to Diplomatic Agents. Diplomatic Administrative and Technical Staff may not be handcuffed, arrested, or detained for any criminal offense. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for a motor vehicle violation. Family members enjoy identical privileges or immunity.
        - iii. Diplomatic Service Staff: They are accorded few privileges and immunities. Diplomatic Service Staff may be arrested or detained for criminal offenses. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for traffic violations. Family members enjoy no privileges or immunities.

- iv. Consular Officers: Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Officers may be arrested or detained, pursuant to an arrest warrant, for felony offenses. They may be prosecuted for misdemeanors, but may not be arrested or detained prior to trial or other disposition of charges. Officers may issue a citation for traffic violations. Generally, family members enjoy no privileges or immunity.
  - v. Consular Employees: Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Employees may be arrested or detained for criminal offenses. Officers may issue a citation for traffic offenses. Family members enjoy no privileges or immunity.
  - vi. Honorary Consuls: Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Honorary Consuls may be arrested or detained for criminal offenses. Officers may issue a citation for a traffic offense. Family members enjoy no privileges and immunity.
- e. Procedure for Notification When a Foreign National is arrested.
  - i. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
  - ii. All foreign nationals must be told of their right to Consular notification.
  - iii. If the foreign national's country is not on the mandatory notification list:
    - 1. Offer, immediately, to notify the foreign national's consular officials of the arrest/detention.
    - 2. If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country immediately.
  - iv. If the foreign national's country is on the list of mandatory notification countries:
    - 1. Notify that country's nearest consular officials, without delay, of the arrest/detention. Tell the foreign national that you are making this notification
  - v. Keep a written record of the provision of notification and actions taken.
- f. Arrest Pursuant to Military order. Officers will diligently employ available resources to confirm the identity of any person arrested pursuant to a Military Pickup Order.
  - i. Confirming the Pickup Order
    - 1. Officers will request Communications Center personnel to confirm that the Pickup Order is active. Confirmation may be made through the following agencies:
      - a. U.S. Army - U.S. Army Deserter Information Point, Fort Benjamin, Harrison, Indiana, telephone collect (317) 542-3711.
      - b. U.S. Navy - U.S. Navy Deserter Information Point. Washington D.C. (800) 336-4974.
      - c. U.S. Marine Corps - U.S. Marine Corps Deserter Information Point. U.S.M.C. Washington D.C. (703) 696-2085.
      - d. U.S. Air Force - U.S.A.F. Deserter Information Point, Randolph Air Force Base, San Antonio, Texas (210) 652-5118
  - ii. Arrest of the suspect
    - 1. After confirming the Pickup Order, an officer may physically arrest the subject of the Order.
    - 2. No report is required. However, if the arresting officer places additional non-traffic charges against the suspect, a report must be completed.
  - iii. Arrest of Persons in Military Service
    - 1. Officers are not prevented from arresting persons in the armed forces of the United States, either in peace or wartime, when such person is not engaged in actual combat or within the military jurisdiction.
    - 2. Officers are advised that neither the orders of a superior officer of the military, nor military necessity, excuse a criminal offense or give a member of the armed services privilege from arrest. Such circumstances are merely defensive in nature, which the court may consider in the adjudication process.
- g. Arrest of Law Enforcement Personnel

- i. The arresting officer will notify the shift supervisor when a member of a law enforcement agency is arrested.
    - ii. The shift supervisor will notify the Chief of Police or Assistant Chief of Police. The Chief of Police or his/her designee will notify the arrestee's agency.
    - iii. Booking personnel will be notified of the suspect's employment.
  - h. Arrest of WPD Employees:
    - i. If an employee of the Watertown Police Department is arrested, or the suspect in a criminal case, the Chief of Police shall be notified immediately. Refer to General Order A-151: Internal Complaints and Investigative Procedures.
  - i. Arrest of School District Employee or Students
    - i. When a school district employee is arrested, the School Superintendent will be notified.
    - ii. If a student (during school in session) is arrested, the SRO will be notified who in turn shall notify proper school administration.
  - j. Fingerprinting of Juveniles:
    - i. Officers shall obtain fingerprints from all juveniles that are taken into police custody when the following conditions are present:
      - 1. Whenever a juvenile is placed under arrest and transported to the CCDC or the WPD; and
      - 2. The juvenile has been charged with any felony or class 1 misdemeanor; and
      - 3. The jail staff does not obtain the juveniles fingerprints as part of the regular booking process.
    - ii. When the previous conditions exist, officers shall obtain a fingerprint card and a palm print card from the juvenile before the juvenile is released to a parent or guardian. The cards will be supplied at the WPD fingerprint station. The completed cards should be attached to the officer's case report and submitted to the officer's supervisor for approval, then submitted.
    - iii. In the event the jail staff will obtain fingerprints from a juvenile arrestee, officers are encouraged to request an extra copy of the print card to be submitted with the case report. At a minimum, officers should make a note in his/her case report that the juvenile's fingerprints were taken by jail staff.
    - iv. As is currently being done, jail staff will fingerprint adults.
  - k. Elements of an Arrest
    - i. When an officer decides to make an arrest, there are factors that must be considered prior to the actual physical apprehension of the suspect.
      - 1. Probable cause exists to believe that this specific person has violated a criminal law as defined in the South Dakota Codified Law, or other Federal or local applicable laws.
      - 2. The person is wanted by a warrant or other authorization as defined by law.
      - 3. The officer intends to immediately apprehend the person.
    - ii. Once the decision to arrest the person is made the officer will:
      - 1. Announce the intent to make an arrest. The announcement of authority does not have to be made when the officer reasonably believes that by making said announcement there is a danger of harm to the officer, other persons or the community. In addition, no immediate announcement is needed when the officer reasonably believes that a delay of notice will prevent the suspect from fleeing or resisting. However the person arrested should be advised as soon as it is practical.
      - 2. Once the suspect is secured, the officer will inform the suspect of the reason for the arrest and the nature of the charges.
  - l. Unarrest
    - i. If, after arrest, the officer determines the probable cause for which he or she arrested the suspect is, in fact, unfounded, the officer is obliged to unarrest the person. Such release from arrest is mandatory unless the arrestee indicates his or her desire to be taken before a court or official to officially remove the stigma that he or she believes the arrest has put upon him or her. This same release procedure applies to warrant arrests when it is determined the incorrect person has been arrested or the warrant is invalid.
    - ii. Whenever someone is unarrested, the officer should immediately notify his/her supervisor of the circumstances and actions relating to the release of person, and will be documented in a case report.
    - iii. Whenever an officer unarrests a person, and subsequently files criminal charges against him or her with the State Attorney's Office regarding the same incident, speedy trial time continues to run

from the date of the original arrest. Therefore, officers will clearly state the date of the original arrest in their reports, so the State Attorney's Office can expedite its review of these cases.

- m. Search of Arrested Persons
  - i. All persons placed under arrest will be searched prior to being placed in a vehicle.
    - 1. If circumstances arise that would place the officers safety in jeopardy the search should be completed at a time when it is safe to do so.
  - ii. Whenever possible, a prisoner will be searched by an officer of the same sex. When an officer must search a prisoner of the opposite sex, he or she will utilize the back of the hand around private areas, whenever possible. This search should be observed, if possible, by a witness or in front of the vehicles video camera.
  - iii. Any contraband, evidence, and/or fruits or instruments of a crime found during a search will be seized and secured as evidence.
  - iv. A WPD officer will not strip-search an arrestee. After a proper pat down has been conducted, and there is sound reasonable suspicion to believe the arrestee is concealing a weapon or contraband, then the officer will transport the arrestee to the appropriate correctional/holding facility for strip search.
  - v. Corrections personnel, in accordance with the written directives and procedures of the correctional/holding facility where the search is being conducted, will conduct all strip searches.
  - vi. Any strip searches will be properly documented and included in the case report.
  - vii. Watertown Police Department Employees will under no circumstances perform body cavity searches.
- n. Rules Which Govern the Actions of Officers when Conducting a Search:
  - i. Officers will not permit the prisoner to remain on balance.
  - ii. Officers should not be caught off balance.
  - iii. Officers should use one hand to conduct the search. The other hand should remain free to hold or control the prisoner.
  - iv. Officers should keep their eyes on the suspect's head and shoulders in order to detect any sudden movement.
  - v. No one should walk between the prisoner and a covering officer.
  - vi. Officers should remain well out of the prisoner's reach until he or she is in proper position to be searched.
  - vii. While searching, officers must grab and squeeze the clothing of a suspect, not simply pat it. Flat-handled knives, razor blades, and the like will not be discovered by merely patting the body.
  - viii. Officers will refrain from abusing the prisoner and will ignore any abusive remarks.
  - ix. All weapons must be removed from the prisoner. Anything, which may be used as a weapon, must also be taken prior to transporting. This includes pens, pencils, umbrellas, keys, nail clippers, etc.
  - x. Whenever an officer receives control of an arrestee from another law enforcement officer, he/she will search the arrestee to ensure his/her safety.
- o. Search and Seizure Incidental to Arrest:
  - i. An established exception to the rule that no search and seizure may be undertaken without a Search Warrant is search and seizure incident to a lawful arrest. The potential for personal danger is often greatest immediately after an arrest when the suspect must be searched for weapons and/or evidence. Upon completing an arrest, officers will immediately search all prisoners carefully and will seize all weapons and evidence.
  - ii. Purpose of Search Incident to Arrest - The purpose for which an officer may search incident to a lawful arrest are:
    - 1. To protect the officer from attack.
    - 2. To ascertain the presence of weapons or any implements of escape.
    - 3. To find things or instruments by which a crime is committed or has been committed.
    - 4. To find fruits of crime, such as stolen property.
    - 5. To find property (contraband) that is unlawful to possess.
    - 6. To prevent destruction of evidence by an arrestee.
  - iii. General Guidelines-Search Incident to Arrest:
    - 1. A search incident to arrest is conducted after a lawful arrest has been made. If the arrest is unlawful, the resulting search and seizure may also be unlawful.
    - 2. The right of an officer to search and seize is not limited to arrests for felonies. It also applies to misdemeanors and criminal traffic offenses when the accused is lawfully taken

into custody or offenses when the suspect is issued a Notice to Appear in lieu of physical arrest. Issuing a traffic infraction (non-criminal) citation without taking the accused into custody does not give the officer the right to search and/or seize. In no event can the validity of an arrest depend upon the results of an unlawful exploratory search conducted by an officer.

- iv. Incident to a lawful arrest, an officer may search:
  - 1. The person of an arrestee.
  - 2. Things in actual possession of the arrestee at the time and place of arrest (e.g., a carton, suitcase, purse).
  - 3. Things within reach or under the control of the arrestee.
- v. Officers are advised the constructive possession doctrine is no longer reliable to justify a search incident to a lawful arrest. Constructive possession of property exists where the person searched is physically separated from the property but has on his or her person some evidence of ownership, custody, or control (e.g., receipts, claim checks, locker keys). Following an arrest, if an officer reasonably believes that personal property belonging to the arrestee can be found at a remote location, a Search Warrant must be obtained before search and subsequent seizure.
- vi. Extent of Seizure Incident to Arrest:
  - 1. After conducting a search incident to a lawful arrest, officers may seize:
    - a. Contraband or instruments of any crime.
    - b. Weapons or implements of escape.
    - c. Evidence implicating the arrestee with the crime for which the arrest is made or which implicates him with another crime.
    - d. Personal property found upon the person for purposes of safekeeping in order to prevent its loss or theft.
    - e. Clothing worn at the time of arrest for laboratory examination.
- vii. Seizure of Abandoned Property:
  - 1. An officer may seize property, which has been abandoned or discarded by a person in the hope of avoiding arrest. Recovery of such property is not considered to be a search or seizure. Property is not considered abandoned if the act of dropping or discarding such property is in response to an illegal act by the officer, such as making an arrest without probable cause. However, if an officer merely observes that an item is discarded, in the absence of an official detention on his or her part, and such item is identified on sight as a fruit of a crime, an instrument, or contraband, the officer may seize it.
- viii. Search of Premises Incident to a Lawful Arrest
  - 1. Officers may, at the time of the arrest, search the room the subject is arrested in once a lawful arrest is made.
  - 2. Officers may, at the time of arrest, also look into, but not go into, areas adjoining the room of arrest, from which an attack could be launched.
  - 3. Officers may conduct a protective sweep, limited to those places where a person could be, in cases where the officers have reasonable suspicion to believe someone else on the premises poses a danger to the officer.
- p. Search of Vehicles: (see also WPD General Order B-172)
  - i. Since an automobile or other motor vehicle is capable of being moved quickly before a search warrant can be obtained, or before a formal arrest can be made, the search of vehicles presents special problems.
    - 1. **Frisk of a Vehicle:** An officer who has reasonable suspicion to believe that a lawfully stopped vehicle contains a weapon may search the vehicle subject to the following limitations:
      - a. The search is limited to subject's immediate area of control, which would be the passenger compartment of the vehicle.
      - b. The search is limited to those areas in the passenger compartment capable of holding a weapon.
    - 2. Search Incident to Arrest (Vehicle)
      - a. Following the lawful arrest of a subject from a vehicle or who has exited the vehicle just prior to arrest, officers may search the vehicle incident to arrest subject to the following limitations:
        - i. The arrest must be lawful and must be a full-custodial arrest.
        - ii. The search must take place at the time of the arrest.

- iii. A search incident to arrest may not take place once the arrestee is secured in handcuffs and secured in a law enforcement vehicle unless the officer has reasonable grounds to believe that the vehicle contains evidence of the particular crime for which the subject was arrested.
    - iv. The search incident to arrest is limited to the arrestee's immediate area of control (passenger compartment only) but is a thorough search.
    - v. Unlocked containers within the vehicle may be searched irrespective of who the containers belong to.
    - vi. The person of other occupants may not be frisked or searched simply because another person in the vehicle has been arrested.
  - 3. If the person arrested by the officer was not observed operating a vehicle, but is merely approaching or walking away from it, and such person is not in a position to reach any part of the vehicle, a search incident to an arrest does not extend to the vehicle unless an emergency situation presents an immediate threat to the preservation of evidence within the vehicle.
  - 4. If an officer has probable cause to believe that a moving or a moveable vehicle contains contraband or evidence of a crime, the officer may conduct a search of the entire vehicle. The right to search under these circumstances is not dependent on the right to make an arrest. However, such a warrantless search must be confined to those parts of the vehicle where it would be reasonable to discover the type of evidence for which there is probable cause to search.
  - 5. If it is not practical to search the vehicle of an arrestee at the scene, the officer may remove the vehicle to a towing or other facility and search it there after obtaining a warrant or consent. The vehicle may be taken to City owned facility with approval from a Captain or above.
  - 6. The following are valid reasons for moving a vehicle before a search.
    - a. The position of the vehicle impedes or endangers the flow of traffic.
    - b. The flow of traffic creates a safety risk to the officer.
    - c. Poor lighting at the scene would interfere with an effective search.
    - d. The nature of the location is such that, under the circumstances, remaining in that location would subject the officer to the danger of physical attack.
    - e. Inclement weather would unreasonably hamper and impede an effective search.
  - 7. If an Officer does not search the vehicle of an arrested person at the scene and the officer has probable cause to believe it contains evidence, fruits of a crime, etc., the officer may impound and remove it to a towing facility or a City owned facility with Captain or above approval and thereafter obtain a warrant to search. The officer has the right to impound the vehicle even though none of the reasons cited in the preceding sections exist.
  - 8. An officer will be required to obtain a search warrant for a vehicle when sufficient opportunity to obtain a search warrant exists, absent consent.
  - 9. In cases involving the search of a vehicle, the search may be conducted within the presence of the operator and/or occupant when possible. This may refute or prevent later claims that the evidence was placed in the vehicle by the officer
  - 10. When a vehicle is impounded and invasive forensic techniques are required to obtain evidence, the officer/agent will obtain a search warrant or consent to search the vehicle.
- q. Vehicle Inventory: (see also WPD General Order B-172)
  - i. The purpose of the vehicle inventory is to protect property in police custody, ensure against false claims of lost, stolen, or damaged property, and protect the officer and the community against dangerous instrumentalities.
  - ii. In the event a vehicle is towed or impounded, an officer will ensure that a vehicle inventory is completed.
  - iii. The scope of the inventory search must be limited to those parts of the vehicle, to include closed containers that are likely locations for important or valuable items or any dangerous instrumentality to be stored.
  - iv. If evidence or contraband is discovered, it may be seized and used in any resulting criminal trial.
- r. Search and Seizure With Consent:
  - i. A consent search is a well-recognized exception to the search warrant requirement.
    - 1. Consent to search may be valid if:

- a. The consent is given with the suspect's knowledge that he or she has the right not to consent to a search.
  - b. The suspect freely gives voluntary consent to search without duress or coercion.
  - c. The consent to search is specific and absolutely clear, not merely implied.
- ii. Informing the suspect of his or her right to consent:
  - 1. Reliance on consent to search does not require that an officer advise the person consenting that he or she has the right to refuse prior to the search. An officer will routinely give warnings prior to obtaining consent to search. In so doing, the officer is in an advantageous position to support an argument that the person consenting is knowledgeable of the 4th Amendment protection he or she is yielding. This will be a factor in determining the voluntariness of the consent.
- iii. Prior to conducting a consent search, an officer must:
  - 1. Not make threats or engage in physical intimidation, actual or implied. Mere silence, submission, or non-resistance to the authority of an officer does not constitute a waiver of a person's constitutional rights. Obtaining verbal consent is permissible, but questions of fact may arise as to whether the verbal consent was in fact given, and whether it was given knowingly and voluntarily. Officers may attempt to obtain consent in writing.
- iv. Officers will not obtain consent by fraud, misrepresentation, coercion, or duress.
- v. If consent to search is given without any limitation, an officer may search all areas within the scope of the consent. Consent may be revoked or limited at any time before the completion of the search. Evidence obtained prior to revocation or limitation may be used as evidence or may be used to establish probable cause.
- vi. Who May Give Consent to Search
  - 1. A person's constitutional rights cannot ordinarily be waived by another person. Therefore, only the person whose privacy is invaded, or the person who has a right to the lawful use and control of the property, may legally consent to a search without a warrant and not incident to arrest. The words "use" and "control" as related to property do not necessarily imply ownership.
- s. Custodial Interrogations:
  - i. When admonition (Reading of Miranda Warnings) must be rendered:
    - 1. Officers must admonish a criminal suspect of his or her constitutional rights before questioning the suspect about a crime when:
      - a. The suspect is in custody (not free to leave) and the officer intends to interrogate the suspect about a specific criminal act to which the suspect is the primary focus of this criminal investigation.
  - ii. When Miranda is Generally Not Required
    - 1. When an ordinary traffic citation is issued.
    - 2. When an officer is conducting a field sobriety test.
    - 3. When a person approaches an officer and states that he or she wishes to confess to a crime.
    - 4. When an officer is engaged in general on-the-scene interviewing to determine the basic facts surrounding a crime, or during other general interviewing of citizens as part of the fact-finding process.
    - 5. When an arresting officer does not wish to question a suspect.
  - iii. Miranda Procedures
    - 1. When a suspect is in custody and an officer wishes to question him or her about the crime being investigated, whether it be a felony or misdemeanor, the officer must first admonish the suspect:
      - a. You have the continuing right to remain silent and to stop questioning at any time;
      - b. Anything you say can be used as evidence against you;
      - c. You have the continuing right to consult with and have the presence of an attorney; and
      - d. If you cannot afford an attorney, an attorney will appointed for you.
    - 2. The following questions will be asked:
      - a. Do you understand these rights?
      - b. Do you wish to waive these rights and talk with us at this time?

3. The specific wording of the admonition and waiver of rights is printed on a designated form provided for all sworn personnel. Officers will have an adequate supply of these forms in their possession at all times.
  4. An officer will read Miranda warning to the suspect and will indicate in the arrest report that he or she admonished the suspect as required.
- iv. The officer will note date and time the Miranda warning was presented, and will note the suspect's responses to the individual questions.
1. These warnings must be made clear to the accused. It may be necessary to repeat them several times and at different occasions.
- v. Waiver of Constitutional Rights
1. An accused may waive his/her right to remain silent and/or his/her right to counsel. However, such a waiver is not effective unless made knowingly and intelligently, and unless specifically made after the requisite admonishment has been given.
  2. If an accused later denies having made an effective waiver, the prosecution has a heavy burden to show it was, in fact, made. Therefore, officers must make a clear record of the effective waiver.
  3. An effective waiver may be withdrawn by the accused at any time. In such a case, the Officer will cease interrogation, or cease interrogation until an attorney is present and the suspect consents to resuming the interrogation or the suspect voluntarily reinitiates the interrogation.
  4. If the suspect makes an ambiguous reference to counsel, e.g., "Maybe I need a lawyer", the officer may continue questioning him or her without asking for clarification. However, the officer may choose to ask the suspect for clarification. If the suspect clarifies that he or she wants a lawyer, the officer must stop the interrogation. If the suspect clarifies that he or she does not want a lawyer, the officer may continue questioning the suspect.
  5. If the suspect makes an equivocal or ambiguous reference to stopping the interrogation, e.g., "I don't know if I want to talk any more", the officer must ask for clarification, or discontinue the interrogation.
  6. Officers are reminded that complying with all of the rules related to admonishment will not necessarily ensure admissibility of a confession. The confession must also meet the test of "voluntariness". Therefore, even if an accused has been appropriately admonished and makes an effective waiver, a confession may still be "coerced" as that concept has been developed in the law. If coercion is used, a confession may be inadmissible in evidence.
  7. In cases of extreme emergency, an officer may question a suspect without admonishing him/her of their rights if immediate action is necessary to prevent a crime which might result in death or injury to another.
- vi. Juvenile interview\interrogation procedures
1. South Dakota Law mandates that law enforcement officers immediately notify a juveniles parents, guardian, or custodian when a child is taken into custody, and the courts have determined that a child's waiver of Fifth Amendment rights obtained while in custody without prior notice to the parents, guardian, or custodian is a significant factor in weighing the admissibility and voluntariness of the child's confession. Failure to do so does not automatically deem any statements of confessions inadmissible, but are a significant factor in determining such admissibility. When conducting an interview with a juvenile, it is best to limit the number of police officers to one if possible, limit the duration of the interview, and if appropriate explain the agency and juvenile justice system procedure to the juvenile.
  2. If questioning is necessary, it is most helpful to solicit the support of the parents. This can be accomplished by first advising the parents, not in the presence of the juvenile, of the department and juvenile justice procedures, and if appropriate a synopsis of the situation.
  3. When a juvenile in custody is to be questioned regarding a crime in which he (she) is a suspect, the child must be advised of their rights pursuant to Miranda. A reasonable attempt must be made to locate a parent or guardian to advise them of those rights either in person or by telephone. Furthermore, those rights must be waived by both child and parent/guardian before questioning if the statements/admissions obtained are to be

admissible in court. No Miranda is necessary for non-custodial situations, but parental\guardian consent should still be sought.

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