

	<b>Marquette University Police Department</b>	
	<b>Policy and Procedure Manual</b> Citizen Contacts and Search & Seizure	
<b>Policy: 4.10</b>	<b>Issued: May 1, 2015</b>	<b>Date Revised: N/A</b>
<b>WILEAG Standards: 6.2.3, 10.1.1, 10.1.3,</b>		<b>IACLEA Standards: 2.2.5</b>

**4.10.00**      **Purpose**

The purpose of this Policy is to provide 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 set forth in this Policy. In addition, safety warnings are addressed.

**4.10.10**      **Policy**

It is the policy of the Marquette University Police Department (MUPD) that in all enforcement decisions, MUPD 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.

MUPD officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, color, sex, sexual orientation, gender expression, national origin, ethnicity, age, religion or socioeconomic status. In doing so, members will remain vigilant to the guiding principles of the Code of Conduct of the Marquette University Police Department. In no event shall any of these criteria serve as the basis, in whole or in part, for a decision by a Marquette University Police Department officer to initiate contact with any person.

**4.10.15**      **Scope**

This policy applies to all sworn agency employees.

**4.10.20**      **Definitions**

A. 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.

#### B. CONTRABAND

Property or items that are unlawfully produced, possessed, or transported. For purposes of this Policy, only weapons, stolen goods, and illegal drugs are properly considered Contraband.

#### C. EXIGENT CIRCUMSTANCES

Situations for which MUPD officers would be unable or unlikely to prevent an imminent risk to the safety of one or more persons unless they take immediate action without prior judicial authorization.

#### D. 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.

#### E. PAT-DOWN SEARCH OR FRISK

For a frisk to be warranted after a person has been stopped, the MUPD officer must have a reasonable suspicion that s/he or another person is in danger of imminent physical harm from that person. The MUPD officer is then entitled to conduct a limited search for weapons or objects that might be used as weapons. This means a pat-down of the person's outer clothing and nothing more, unless an object is felt that might be a weapon.

#### F. REASONABLE SUSPICION

An honest belief, based on circumstances and behaviors observed by the officer or reliably reported to the officer, that would cause a reasonable and properly trained law enforcement officer to believe that criminal activity has occurred, is occurring, or will occur.

#### G. PROBABLE CAUSE

A reasonable conclusion by an officer that it is more likely than not that a crime has been committed by the person(s) in question, based on

evidence and information that is reasonably believed by the officer to be factual.

#### H. SEARCH

A search consists of 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.

#### I. SEIZURE

Seizure of property is limited to Contraband, instrumentalities of a crime, fruits of a crime, or evidence of a crime. MUPD officers should always attempt to obtain a warrant whenever reasonably possible before instituting a search or seizure.

#### J. STRIP SEARCH

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

#### K. "PLAIN FEEL" DOCTRINE

When a MUPD officer 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 MUPD officer may effect a warrantless seizure of the object.

### **4.10.25 Procedure**

MUPD officers can be expected to make numerous contacts with the public on a daily basis. These contacts form the basis for the relationship between MUPD 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. Nevertheless, engaging in lawful contacts, traffic stops, field interviews (Terry Stops), and arrests are useful, proactive tools that, when used in accordance with this policy, promotes the safety of the University community.

## A. Introduction

1. To the extent that safety considerations allow, MUPD officers will introduce themselves to all citizens with whom they make contact. A proper introduction will establish the identity of the MUPD officer, the authority of the MUPD officer, and the context surrounding the initiation of the contact. This provides the platform for the lawful actions or requests made by the MUPD officer during the contact. Introductions should be formulated so that they provide:
  - a. The MUPD officer's name.
  - b. The MUPD officer's rank or title.
  - c. The MUPD officer's affiliation.
  - 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 MUPD officer's request for identification or license and registration information from the citizen being contacted.

## B. Closing Contact

1. In an effort to prevent inaccurate perceptions of biased law enforcement, MUPD officers 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 MUPD officer, the department and the University, and the profession. In closing a contact, MUPD officers will:
  - a. Return any identification, paper work and property obtained from the citizen.
  - b. Ensure that the person understands when he/she is 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 MUPD officer will explain the options available to the person for disposing of the case.
- e. If appropriate, close the contact by thanking the person for his/her cooperation.

### C. 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 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, MUPD officers shall treat citizens in a professional, dignified and unbiased manner.
  - b. MUPD officers should safeguard their actions and requests so that a reasonable person does not perceive the contact as a restraint on freedom. MUPD officers will be respectful, attempt to build rapport, and keep the contact as brief as possible.

### D. Field Interviews

Field Interviews, or Terry Stops, are based on a MUPD officer'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.

#### 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 actions of an individual suggests that he or she is part of a criminal enterprise.
- b. The actions of the subject suggest that he or she is engaged in criminal activity.
- c. The subject is carrying a suspicious object.
- d. The subject's clothing bulges in a manner that suggests he or she is carrying a weapon.
- e. The subject is located in proximate time and place to an alleged crime.
- f. The MUPD officer has knowledge of the subject's prior criminal record or involvement in criminal activity.

## 2. Procedure for Initiating a Field Interview

Based on observance of suspicious circumstances or upon information from investigation, MUPD officers 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 MUPD officer 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. MUPD officers 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 MUPD officers 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. MUPD officers shall confine their questions to those necessary to resolve the MUPD officer'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. MUPD officers 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 MUPD officer may request 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 MUPD officer to "probable cause", the MUPD officer must allow the person to go on his/her way. Refusal to answer a MUPD officer'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.
- h. MUPD officers 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

- a. If after conducting a field interview the MUPD officer has no basis for making an arrest or issuing a citation, the MUPD officer will record the facts of the field interview on the yellow FI card (Form PF-4).
- b. All FI cards completed by a MUPD officer 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 MUPD officer who will make the necessary corrections and re-submit the card within 24 hours.
- d. 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.

## E. Pat-Down Searches

### 1. Justification for Conducting Pat-Down Searches

MUPD 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 MUPD officer has reason to believe that the suspect possesses weapons on his or her person and poses a threat to the MUPD officer'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. MUPD officers 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:

- a. The type of crime suspected - particularly in crimes of violence where the use or threat of deadly weapons is involved.
- b. Number of subjects vs. MUPD officers present.
- c. Prior knowledge of the subject's use of force or propensity to carry deadly weapons.
- d. Illogical and not readily explained behavior (i.e. a long trench coat being worn on a warm summer night).

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

## 2. Procedures for Performing a Pat-Down Search

- a. Whenever possible, pat-down searches should be performed by MUPD officers of the same sex as the suspect.
- b. Because pat-down searches are cursory in nature, they should be performed with the suspect in a standing position and the MUPD officer standing to the suspect's rear. Should a MUPD officer visually observe a weapon, a more secure search position may be used, such as the prone position.
- c. In a pat-down search, MUPD officers 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, MUPD officers 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. MUPD officers 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.
- d. 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 MUPD officer should not open the item but instead place it out of the suspect's reach.
- e. 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 MUPD officer may make an arrest of the suspect and complete a full-custody search of the suspect.

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

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

### 4. Disposition of Items Seized in a Pat-Down Search

- a. If it is Contraband, the MUPD officer shall take the appropriate police action based upon the type of Contraband seized.
- b. If it is not Contraband, the MUPD officer shall return it to the individual upon completion of the stop.

## F. 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, MUPD officers have probable cause to seek a search warrant for a more thorough search.

G. Search Under The Movable Vehicle Exception (Carroll Doctrine)

MUPD officers may conduct a warrantless search based on the moveable vehicle exception if the MUPD officer has probable cause to believe sizable items or evidence of a crime being investigated may be found within the movable vehicle, or any container in the vehicle.

H. Search Incident to Arrest

1. Persons

- a. A MUPD officer 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.
- b. The arrested individual will be searched for weapons, Contraband, fruits and instrumentalities of crimes, and evidence connected with any offense.
- c. MUPD officers must conduct searches incidental to a lawful arrest immediately, or as soon as possible, after the arrest.

2. Places

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

- a. The MUPD officer 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 MUPD officers.

### 3. Vehicles

- a. 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, MUPD officers do not have the lawful authority to search the passenger compartment and unlocked containers incident to arrest, unless the MUPD officer believes that evidence of the offense for which the subject was arrested is believed to be contained within the vehicle.
- b. While a search incident to arrest is restricted to the aforementioned conditions, an additional search is allowable under the following circumstances:
  - 1. Probable cause exists to believe that evidence of a crime is contained within the vehicle,
  - 2. MUPD officers have consent to search,
  - 3. Articulable exigent circumstances exist, or
  - 4. The police member is performing an inventory search pursuant to the impoundment of the vehicle.

#### I. Crime Scene Searches

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

- a. Consent
  - b. Plain View
  - c. Search Incident to Arrest
  - d. Exigent Circumstances
2. 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, MUPD officers 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.
  3. When uncertainty arises regarding the legality of a crime scene search, the Milwaukee County District Attorney’s office should be contacted for advice.

#### J. Search By Consent

1. MUPD officers may conduct consensual searches of persons or property if:
  - a. The MUPD officer has Probable Cause to believe that criminal activity has, is or will be occurring or that a person has a history of criminal activity, is a known offender, fugitive, or may be hiding a missing person.
  - b. The consent is voluntary and not given because of the threat of force.
  - c. The person giving consent has apparent authority over and control of the premises or articles to be searched.
  - d. The person giving consent understands the consequences of consent and the right to refuse.
2. Scope of the Search

- a. The person giving consent may limit the scope of the search.
- b. 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.
- c. An MUPD officer 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.
- d. 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.

### 3. Guideline for Obtaining Consent

- a. MUPD officers shall ensure the person whose consent is sought has the authority to give consent.
- b. MUPD officers 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.
- c. MUPD officers shall not claim authority to conduct a search without consent or a search warrant unless otherwise permitted by law.
- d. MUPD officers shall advise the person, whose consent is sought, of the right to refuse a search.
- e. MUPD officers may advise the person, whose consent is sought, about the general nature of the investigation and the purpose of the search.

### 4. Reporting Consent Searches

- a. 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.
- b. 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 MUPD officer’s immediate supervisor.
- c. If Contraband is NOT located during a consensual search, the original Consent Form will be forwarded to the MUPD officer’s immediate supervisor.
- d. 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.

5. 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. Such a conclusion cannot apply to a residence hall room or student apartment with more than one resident.
- 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 all persons 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.

## K. 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 immediate threat of escape or of the immediate threat of death or great bodily harm to the officer or the general public.

## L. Strip Searches and Body Cavity Searches

### 1. Strip searches

Strip Searches may never be conducted by MUPD officers or personnel.

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.

### 2. Body Cavity Searches

**MUPD officers 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 (WI Stat 968.255 (3)).

## M. Anatomical Gifts

Anatomical gift searches and notifications shall be conducted in accordance with Wisconsin Statute 157.06(12) (Anatomical Gifts).

MUPD officers who reasonably believe an individual to be dead or near death shall make a reasonable search of the individual for a record of gift or a record of refusal or other information identifying the individual as a donor or as an individual who has refused to make an anatomical gift. If a record of gift or record of refusal is located and the individual or deceased individual to whom the record of gift or record of refusal

relates is taken to a hospital, the MUPD officer responsible for conducting the search shall send the record of gift or record of refusal to the hospital.

N. Other Situations Authorized by State and Federal Constitutional Provisions

1. Felony Arrest (with Warrant)

- a. MUPD officers 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.
- b. MUPD officers must obtain a search warrant to gain lawful entry to the premises of a third party to effect an arrest unless they have valid consent or some other exception to the warrant requirement exists.

2. Misdemeanor Arrest with a Warrant

- a. MUPD officers 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. MUPD officers shall not forcibly enter a residence for the purposes of making a misdemeanor warrant arrest.
- b. MUPD officers must obtain a search warrant to gain lawful entry to the premises of a third party to effect an arrest unless they have valid consent or some other exception to the warrant requirement exists.

3. Abandon Property

- a. 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.

- b. 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).

#### O. Vehicle Inventory Searches

MUPD officers impounding a vehicle shall conduct and document a thorough inventory of the vehicle and its contents to the extent practical to protect the MUPD officer, the vehicle owner, and the Department from claims of loss or damage.