

**POLICIES FOR COMMENT | 600**

**600** Investigation and Prosecution

**601** Sexual Assault Investigations

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# Investigation and Prosecution

## 600.1 PURPOSE AND SCOPE

**Best Practice**

The purpose of this policy is to set guidelines and requirements pertaining to the handling and disposition of criminal investigations.

## 600.2 POLICY

**Best Practice**

It is the policy of the Fitchburg Police Department to investigate crimes thoroughly and with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

## 600.3 INVESTIGATIVE PROCEDURES

**Best Practice**

The Detective Bureau Section Commander or the authorized designee shall be responsible for developing, maintaining and reviewing detailed investigative procedures. Such procedures will minimally include:

- (a) Case file management.
- (b) Preliminary and follow-up criminal investigations.
- (c) Vice, narcotics and organized crime investigative and administrative protocols.
- (d) Multi-jurisdictional investigative task force roles and responsibilities.
- (e) Polygraph or other truth-telling device examinations.
- (f) Cold case definition, evaluation criteria and documentation.
- (g) Undercover surveillance, decoy and raid operations.
- (h) Dignitary protection plans.
- (i) Photographic (conventional and digital) and other digital evidence collection.
- (j) Known source evidence collection for physical evidence comparison.
- (k) Forensic laboratory evidence submission.
- (l) Latent fingerprint preservation.
- (m) Interrogations of adults and juveniles.
- (n) On-call schedule to ensure 24-hour availability of investigative personnel.

### 600.3.1 OFFICER RESPONSIBILITIES

**Best Practice** **MODIFIED**

An officer responsible for an initial investigation shall complete no less than the following:

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- (a) Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
  - 1. An initial statement from any witnesses or complainants.
  - 2. A cursory examination for evidence.
- (b) If information indicates a crime has occurred, the officer shall:
  - (a) Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
  - (b) Determine if additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required.
  - (c) If assistance is warranted, or if the incident is not routine, notify a supervisor.
  - (d) Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
  - (e) Collect any evidence.
  - (f) Take any appropriate law enforcement action.
  - (g) Complete and submit the appropriate reports and documentation.
- (c) If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the informant or complainant of this information.

#### 600.3.2 NON-SWORN MEMBER RESPONSIBILITIES

##### **Best Practice**

A non-sworn member assigned to any preliminary investigation is responsible for all investigative steps, except making any attempt to locate, contact or interview a suspect face-to-face or take any enforcement action. Should an initial investigation indicate that those steps are required, the assistance of an officer shall be requested.

#### 600.4 CUSTODIAL INTERROGATION REQUIREMENTS

##### **Federal**

Suspects who are in custody and subjected to an interrogation shall be given the Miranda warning, unless an exception applies. Interview or interrogation of a juvenile shall be in accordance with the Temporary Custody of Juveniles Policy.

#### 600.4.1 AUDIO/VIDEO RECORDINGS

##### **State** **MODIFIED**

Any custodial interrogation of a person who is suspected of having committed a criminal offense shall be electronically recorded (audio/video or both as available) in its entirety. Regardless of where the interrogation occurs, every reasonable effort should be made to secure functional recording equipment to accomplish such recordings (Wis. Stat. § 968.073(1)(a)); Wis. Stat. § 968.073(2)).

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- (a) Exceptions to an audio/visual recording of the interrogation include (Wis. Stat. § 972.115(2)(a)):
  - (a) The person refused to respond or cooperate in the interrogation if a recording was being made. The refusal shall be recorded or documented in a written report.
  - (b) The statement was made in response to a question asked as part of the routine processing.
  - (c) The statement was made spontaneously and not in response to a question.
  - (d) The officer in good faith failed to make a recording because the recording equipment did not function, malfunctioned, stopped operating or the officer inadvertently failed to operate the equipment properly.
  - (e) Exigent public safety circumstances existed that prevented the making of a recording or rendered the making of such a recording infeasible.
  - (f) The officer conducting the interrogation believed at the commencement of the interrogation that the offense for which the person was taken into custody or for which the person was being investigated was not a felony.

Consideration should also be given to recording any investigative interview, for any other offense when it is reasonable to believe it would be appropriate and beneficial to the investigation and is otherwise allowed by law.

Generally, questioning during an interrogation should be performed by no more than two persons, although others may be present during the interrogation and may also provide notes to those persons conducting the questioning. Interrogations shall be of a reasonable duration considering the age of the person under interrogation, the time of day, and the physical, emotional, and mental condition of the person under interrogation. Reasonable breaks for meals, beverages and rest should be considered as may be appropriate.

No recording of a custodial interrogation should be destroyed or altered without written authorization from the District attorney. Copies of recorded interrogations or interviews may be made in the same or a different format as the original recording, provided the copies are true, accurate and complete and are made only for authorized and legitimate law enforcement purposes.

Officers shall continue to prepare reports of all custodial questioning and investigative interviews. If applicable, written statements from suspects may be accepted by officers or detectives and will be included in the case file. Written statements from suspects will be summarized in the officer's or detective's report. Recordings of any interview will not take the place of an officer's report.

#### 600.4.2 INTERROGATIONS, INTERVIEWS AND QUESTIONING JUVENILES

##### **Agency Content**

All interrogations, interviews and questioning of juveniles will be conducted with full regard for principles of fundamental fairness and be so structured as to ensure the maximum protection of the juvenile's constitutional rights. Officers should exercise good judgment in accepting a waiver

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from a juvenile. The child's physical condition, age, intelligence, educational level, prior experience with the juvenile justice system and his/her ability to comprehend the meaning and effect of his/her statements should be carefully evaluated in each case.

#### 600.4.3 PERSONS WITH COMMUNICATION BARRIERS

##### Agency Content

Upon the arrest of a person with a communication disability or barrier and before interrogation or the taking of his/her statement, the officer should make an interpreter available to that person. The officer will use a language line service during interrogations for criminal investigations.

#### 600.5 DISCONTINUATION/CONTINUANCE OF INVESTIGATIONS

##### Best Practice MODIFIED

The investigation of a criminal case or efforts to seek prosecution should only be discontinued if one of the following applies:

- (a) All reasonable investigative efforts have been exhausted, no reasonable belief that the person who committed the crime can be identified, and the incident has been documented appropriately.
- (b) The perpetrator of a misdemeanor has been identified and a warning is the most appropriate disposition.
  - (a) In these cases, the investigator shall document that the person was warned and why prosecution was not sought.
  - (b) Warnings shall not be given for felony offenses or other offenses identified in this policy or by law that require an arrest or submission of a case to a prosecutor.
- (c) The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.
- (d) The case has been submitted to the appropriate prosecutor, charges have been filed, and further investigation is not reasonable, warranted or requested, and there is no need to take the suspect into custody.
- (e) Suspects have been arrested, there are no other suspects, and further investigation is either not warranted or requested.
- (f) Investigation has proven that a crime was not committed (see the Sexual Assault Investigations Policy for special considerations in these cases).

The Domestic Abuse, Child Abuse, Sexual Assault Investigations and Adult Abuse policies may also require an arrest or submittal of a case to a prosecutor.

#### 600.6 FOLLOW-UP INVESTIGATIONS

##### Agency Content

Follow-up investigations on all cases are evaluated and assigned by the Support Services Section Commander based upon caseload, case assignment and an evaluation of case solvability factors.

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### **600.7 COMPUTERS AND DIGITAL EVIDENCE**

**Best Practice**

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, officers should request that computer forensic examiners assist with seizing computers and related evidence. If a forensic examiner is unavailable, officers should take reasonable steps to prepare for such seizure and use the resources that are available.

#### **600.7.1 PROCESSING DIGITAL EVIDENCE**

**Best Practice** **MODIFIED**

The Deputy Chief shall be responsible for developing procedures concerning the collection, processing and preservation of digital evidence (i.e., still cameras, video cameras, cell phones, computers) to include:

- (a) Procedures for secure shutdown of electronics.
- (b) Procedures for property packaging and transportation of electronics.
- (c) Storage of original image or document.
- (d) Protocol for processing digital evidence, to include:
  - (a) Gathering
  - (b) Editing
  - (c) Ensuring authenticity
- (e) Training of personnel to handle digital evidence.

### **600.8 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES**

**Best Practice**

Use of social media and any other Internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the Internet should only be accessed by members while on-duty and for purposes related to the mission of this department. If a member encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the member should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practicable. The member, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using department equipment.

Information obtained via the Internet should not be archived or stored in any manner other than department-established record keeping systems (see the Records Maintenance and Release and Criminal Organizations policies).

#### **600.8.1 ACCESS RESTRICTIONS**

**Best Practice**

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Information that can be accessed from any department computer, without the need of an account, password, email address, alias or other identifier (unrestricted websites), may be accessed and used for legitimate investigative purposes without supervisory approval.

Accessing information from any Internet source that requires the use or creation of an account, password, email address, alias or other identifier, or the use of nongovernment IP addresses, requires supervisor approval prior to access. The supervisor will review the justification for accessing the information and consult with legal counsel as necessary to identify any policy or legal restrictions. Any such access and the supervisor approval shall be documented in the related investigative report.

Accessing information that requires the use of a third party's account or online identifier requires supervisor approval and the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

Information gathered from any Internet source should be evaluated for its validity, authenticity, accuracy and reliability. Corroborative evidence should be sought and documented in the related investigative report.

Any information collected in furtherance of an investigation through an Internet source should be documented in the related report. Documentation should include the source of information and the dates and times that the information was gathered.

#### 600.8.2 INTERCEPTING ELECTRONIC COMMUNICATION

State

Intercepting social media communications in real time may be subject to federal and state wiretap laws. Officers should seek legal counsel before any such interception.

#### 600.9 MODIFICATION OF CHARGES FILED

Best Practice MODIFIED

Employees should consult with a supervisor prior to recommending to the District Attorney, City Attorney, or to any other official of the court that charges on a pending case be altered or the case dismissed. Engaging in discussions initiated by the prosecutor representing the District Attorney or City Attorney is not restricted. In all cases resulting in court prosecution, any intent by a member of the Department to modify the charges filed or to recommend dismissal of charges in a pending case shall be discussed with a Deputy Chief or the Chief of Police or the authorized designee prior to taking action.

# Sexual Assault Investigations

## 601.1 PURPOSE AND SCOPE

### State

The purpose of this policy is to establish guidelines for the investigation of sexual assaults. These guidelines will address some of the unique aspects of such cases and the effects that these crimes have on the victims.

Mandatory notifications requirements are addressed in the Child Abuse and Adult Abuse policies.

### 601.1.1 DEFINITIONS

#### Best Practice

Definitions related to this policy include:

**Sexual assault** - Any crime or attempted crime of a sexual nature, to include, but not limited to, offenses defined in Wis. Stat. § 940.22(2); Wis. Stat. § 940.225; Wis. Stat. § 948.02; Wis. Stat. § 948.025; Wis. Stat. § 948.05; Wis. Stat. § 948.06; Wis. Stat. § 948.085; and Wis. Stat. § 948.095.

**Sexual Assault Response Team (SART)** - A multidisciplinary team generally comprised of advocates, law enforcement officers, forensic medical examiners, including sexual assault forensic examiners (SAFEs) or sexual assault nurse examiners (SANEs) if possible, forensic laboratory personnel and prosecutors. The team is designed to coordinate a broad response to sexual assault victims.

## 601.2 POLICY

### Best Practice

It is the policy of the Fitchburg Police Department that its members, when responding to reports of sexual assaults, will strive to minimize the trauma experienced by the victims, and will aggressively investigate sexual assaults, pursue expeditious apprehension and conviction of perpetrators, and protect the safety of the victims and the community.

## 601.3 QUALIFIED INVESTIGATORS

### Best Practice

Qualified investigators should be available for assignment of sexual assault investigations. These investigators should:

- (a) Have specialized training in, and be familiar with, interview techniques and the medical and legal issues that are specific to sexual assault investigations.
- (b) Conduct follow-up interviews and investigation.
- (c) Present appropriate cases of alleged sexual assault to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and medical personnel as needed.
- (e) Provide referrals to therapy services, victim advocates and support for the victim.



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- (f) Participate in or coordinate with the SART or other multidisciplinary investigative teams as applicable.

### **601.4 REPORTING**

**Best Practice**

In all reported or suspected cases of sexual assault, a report should be written and assigned for follow-up investigation. This includes incidents in which the allegations appear unfounded or unsubstantiated.

#### **601.4.1 VICTIM INTERVIEWS**

**Best Practice** **MODIFIED**

The primary considerations in sexual assault investigations, which begin with the initial call to Dispatch, should be the health and safety of the victim, the preservation of evidence, and preliminary interviews to determine if a crime has been committed and to attempt to identify the suspect.

Whenever possible, a Qualified Investigator should be included in the initial victim interviews.

An in-depth follow-up interview should not be conducted until after the medical and forensic examinations are completed and the personal needs of the victim have been met (e.g., change of clothes, bathing). The follow-up interview may be delayed to the following day based upon the circumstances. Whenever practicable, the follow-up interview should be conducted by a qualified investigator.

No opinion of whether the case is unfounded should be included in a report.

#### **601.4.2 POLYGRAPH EXAMINATIONS**

**State**

Victims shall not be asked or required to take a polygraph examination nor shall an officer suggest a victim submit to a polygraph or provide the victim with any information regarding tests using polygraphs unless the victim requests information (34 USC § 10451; Wis. Stat. § 968.265).

#### **601.4.3 VICTIM CONFIDENTIALITY**

**State**

Victims should be apprised of applicable victim's rights provisions, as outlined in the Victim and Witness Assistance Policy.

### **601.5 COLLECTION AND TESTING OF BIOLOGICAL EVIDENCE**

**Best Practice**

Whenever possible, a SART member should be involved in the collection of forensic evidence from the victim.

When the facts of the case indicate that collection of biological evidence is warranted, it should be collected regardless of how much time has elapsed since the reported assault.

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If a drug-facilitated sexual assault is suspected, urine and blood samples should be collected from the victim as soon as practicable.

Biological evidence from all sexual assault cases, including cases where the suspect is known by the victim, should be submitted for testing.

Victims who choose not to assist with an investigation, do not desire that the matter be investigated or wish to remain anonymous may still consent to the collection of evidence under their control. In these circumstances, the evidence should be collected and stored appropriately.

#### 601.5.1 COLLECTION AND TESTING REQUIREMENTS

**State**

All evidence from cases where the suspect is a stranger to the victim shall be transmitted in a timely manner to the proper forensics lab for processing all relevant biological evidence (Wis. Stat. § 175.405).

Additional guidance regarding evidence retention and destruction is found in the Property and Evidence Room Policy.

#### 601.5.2 DNA TEST RESULTS

**Best Practice** **MODIFIED**

Members investigating sexual assault cases should notify victims of any DNA test results as soon as reasonably practicable.

Delivery of biological testing results to a victim should be done in such a way that is intended to minimize victim trauma, especially in cases where there has been a significant delay in getting biological testing results (e.g., delays in testing the evidence or delayed DNA databank hits). Consideration should be given to involving victim advocates. Members should make reasonable efforts to assist the victim by providing available information on local assistance programs and organizations as provided in the Victim and Witness Assistance Policy.

Members investigating sexual assaults cases should ensure that DNA results are entered into databases when appropriate and as soon as practicable.

#### 601.6 DISPOSITION OF CASES

**Best Practice** **MODIFIED**

If the assigned investigator has reason to believe the case is without merit, the case may be classified as unfounded only upon review and approval of the Support Services Section Commander.

Classification of a sexual assault case as unfounded requires the Support Services Section Commander to determine that the facts have significant irregularities with reported information and that the incident could not have happened as it was reported. When a victim has recanted his/her original statement, there must be corroborating evidence that the allegations were false or baseless (i.e., no crime occurred) before the case should be determined as unfounded.

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### **601.7 RELEASING INFORMATION TO THE PUBLIC**

**Best Practice** **MODIFIED**

In cases where the perpetrator is not known to the victim, and especially if there are multiple crimes where more than one appear to be related, consideration should be given to releasing information to the public whenever there is a reasonable likelihood that doing so may result in developing helpful investigative leads. The Support Services Section Commander, in consultation with the rest of command staff and investigating detective, should weigh the risk of alerting the suspect to the investigation with the need to protect the victim and the public, and to prevent more crimes.

### **601.8 TRAINING**

**Best Practice** **MODIFIED**

Subject to available resources, periodic training should be provided to:

- (a) Members who are first responders. Training should include:
  - 1. Initial response to sexual assaults.
  - 2. Legal issues.
  - 3. Victim advocacy.
  - 4. Victim's response to trauma.
- (b) Qualified investigators, who should receive advanced training on additional topics. Advanced training should include:
  - (a) Interviewing sexual assault victims.
  - (b) Medical and legal aspects of sexual assault investigations.
  - (c) Serial crimes investigations.
  - (d) Use of community and other federal and state investigative resources, such as the Violent Criminal Apprehension Program (ViCAP).
- (c) Techniques for communicating with victims to minimize trauma.

# Asset Forfeiture

## 602.1 PURPOSE AND SCOPE

### Best Practice

This policy describes the authority and procedure for the seizure, forfeiture and liquidation of property associated with designated offenses.

### 602.1.1 DEFINITIONS

#### State

Definitions related to this policy include:

**Fiscal agent** - The person designated by the Chief of Police to be responsible for securing and maintaining seized assets and distributing any proceeds realized from any forfeiture proceedings. This includes any time the Fitchburg Police Department seizes property for forfeiture or when the Fitchburg Police Department is acting as the fiscal agent pursuant to a multi-agency agreement.

**Forfeiture** - The process by which legal ownership of an asset is transferred to a government or other authority.

**Forfeiture reviewer** - The department member assigned by the Chief of Police who is responsible for reviewing all forfeiture cases and for acting as the liaison between the Department and the assigned attorney.

**Property subject to forfeiture** - This includes:

- (a) Property, real or personal, including money, used in the course of, intended for use in the course of, or directly or indirectly derived from, or realized through the commission of any crime (Wis. Stat. § 973.075).
- (b) Motor vehicles, boats, and planes that are used in any of the following ways (Wis. Stat. § 973.075):
  1. To transport any property or weapon used, to be used, or received in the commission of any felony.
  2. To commit a crime involving impersonating peace officers, firefighters, or other emergency personnel in violation of Wis. Stat. § 946.70.
  3. In the commission of prostitution (Wis. Stat. § 944.30); patronizing prostitutes (Wis. Stat. § 944.31); soliciting prostitutes (Wis. Stat. § 944.32); pandering (Wis. Stat. § 944.33); keeping a place of prostitution (Wis. Stat. § 944.34); human trafficking (Wis. Stat. § 940.302); sexual assault of a child (Wis. Stat. § 948.02); engaging in repeated acts of sexual assault of the same child (Wis. Stat. § 948.025); sexual exploitation of a child (Wis. Stat. § 948.05); trafficking of a child (Wis. Stat. § 948.051); causing a child to view or listen to sexual activity (Wis. Stat. § 948.055); incest with a child (Wis. Stat. § 948.06); child enticement (Wis. Stat. § 948.07); soliciting a child for prostitution (Wis. Stat. § 948.08); patronizing a child (Wis. Stat. § 948.081); sexual intercourse with a child age 16 or older (Wis. Stat. § 948.09); exposing genitals (Wis. Stat. § 948.10); or possession of child pornography (Wis. Stat. § 948.12).

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4. In the commission of a crime relating to a submerged cultural resource in violation of Wis. Stat. § 44.47.
5. To cause more than \$2,500 worth of criminal damage to cemetery property in violation of Wis. Stat. § 943.01(2)(d) or Wis. Stat. § 943.012.
6. In the commission of any of the following crimes:
  - (a) Domestic abuse restraining orders and injunctions (Wis. Stat. § 813.12(8)).
  - (b) Child abuse restraining orders and injunctions (Wis. Stat. § 813.122(11)).
  - (c) Restraining orders and injunctions for individuals at risk (Wis. Stat. § 813.123(10)).
  - (d) Harassment restraining orders and injunctions (Wis. Stat. § 813.125(7)).
  - (e) Foreign protection orders (Wis. Stat. § 813.128(4)).
  - (f) Stalking (Wis. Stat. § 940.32).
- (c) Property that is used, or intended for use, as a container for either controlled substances or objects used to manufacture, deliver, distribute, etc., controlled substances (Wis. Stat. § 961.55).
- (d) Vehicles used to sell or receive controlled substances (simple possession of a controlled substance is generally excluded) (Wis. Stat. § 961.55).
- (e) Vehicles used to transport any property or weapon used, to be used, or received in the commission of any felony under the Uniform Controlled Substances Act (simple possession of a controlled substance is generally excluded) (Wis. Stat. § 961.55).
- (f) Property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under the Uniform Controlled Substances Act (Wis. Stat. § 945.05).
- (g) A motor vehicle or aircraft used or employed to aid in or to facilitate the unlawful manufacture or commercial transfer of illegal gambling devices (Wis. Stat. § 945.05).
- (h) Real or personal property used in the course of, or intended for use in the course of, derived from, or realized through, racketeering or an ongoing criminal enterprise (Wis. Stat. § 946.86; Wis. Stat. § 946.87)
- (i) Cigarettes acquired, owned, imported, possessed, kept, stored, made, sold, distributed, or transported in violation of Chapter 139 (Tobacco Taxes) and all personal property used in connection therewith (Wis. Stat. § 139.40).
- (j) Any property used in the commission of an unauthorized release of animals (Wis. Stat. § 943.75).
- (k) Any property used in the commission of a child enticement (Wis. Stat. § 948.07).
- (l) Bootlegged recordings and devices to make them (Wis. Stat. § 943.207 et. seq.).

**Seizure** - The act of law enforcement officials taking property, cash, or assets that have been used in connection with or acquired by specified illegal activities.

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#### 602.2 POLICY

##### Best Practice

The Fitchburg Police Department recognizes that appropriately applied forfeiture laws are helpful to enforce the law, deter crime, and reduce the economic incentive of crime. However, the potential for revenue should never compromise the effective investigation of criminal offenses, officer safety or any person's due process rights.

It is the policy of the Fitchburg Police Department that all members, including those assigned to internal or external law enforcement task force operations, shall comply with all state and federal laws pertaining to forfeiture.

#### 602.3 ASSET SEIZURE

##### State

Property may be seized for forfeiture as provided in this policy.

##### 602.3.1 PROPERTY SUBJECT TO SEIZURE

##### State

The following may be seized upon review and approval of a supervisor and in coordination with the forfeiture reviewer:

- (a) Property subject to forfeiture identified in a search warrant or court order (Wis. Stat. § 968.13; Wis. Stat. § 973.075; Wis. Stat. § 961.55).
- (b) Property subject to forfeiture not identified in a search warrant or court order may be seized in any of the following circumstances:
  1. The seizure is legal as incident to an arrest or an inspection under an administrative or inspection warrant.
  2. There is probable cause to believe that the property:
    - (a) Was derived from or realized through a crime or was used for child enticement (Wis. Stat. § 948.07; Wis. Stat. § 973.075).
    - (b) Is a vehicle that was used to transport any property or any weapon that was used, was to be used or was received in the commission of any felony, used in the commission of a crime relating to a submerged cultural resource in violation of Wis. Stat. § 44.47, used in the commission of child enticement under Wis. Stat. § 948.07, or used to cause more than \$2,500 worth of criminal damage to cemetery property in violation of Wis. Stat. § 943.01(2)(d) or Wis. Stat. § 943.012 (Wis. Stat. § 973.075).
  3. There is probable cause to believe that the property was used or is intended to be used in violation of the Uniform Controlled Substances Act, that the property was derived from or realized through a crime under the Uniform Controlled Substances Act, or that the property is a vehicle subject to forfeiture under the Uniform Controlled Substances Act (Wis. Stat. § 961.55).
  4. There is probable cause to believe that the property is directly or indirectly dangerous to health or safety (Wis. Stat. § 961.55; Wis. Stat. § 973.075).

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- (c) The officer reasonably believes that a vehicle or aircraft was used or employed to aid in or to facilitate the unlawful manufacture or commercial transfer of gambling devices (Wis. Stat. § 945.05).

Whenever practicable, obtaining a search warrant or court order for seizure prior to making a seizure is the preferred method.

A large amount of money standing alone is insufficient to establish the probable cause required to make a seizure.

#### 602.3.2 PROPERTY NOT SUBJECT TO SEIZURE

**State**

The following property should not be seized for forfeiture:

- (a) Cash and property that does not meet the forfeiture counsel's current minimum forfeiture thresholds
- (b) Property that the officer reasonably believes the owner or interest holder of did not know about the related offense (an innocent owner) (Wis. Stat. § 961.55; Wis. Stat. § 973.075)
- (c) A vehicle used for a simple possession in a controlled substance violation (Wis. Stat. § 961.41(3g)(b) to Wis. Stat. § 961.41(g); Wis. Stat. § 961.55)

#### 602.4 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS

**Best Practice** **MODIFIED**

When property or cash subject to this policy is seized, the officer making the seizure should ensure compliance with the following:

- (a) Complete and submit a report detailing the items and reason for seizure within 24 hours of the seizure, if practicable.
- (b) Forward the original and all related reports to the forfeiture reviewer within two days of seizure.

The officer will book seized property as evidence.

Photographs should be taken of items seized, particularly cash, jewelry and other valuable items.

Officers who suspect property may be subject to seizure but are not able to seize the property (e.g., the property is located elsewhere, the whereabouts of the property is unknown, it is real estate, bank accounts, non-tangible assets) should document and forward the information in the appropriate report to the forfeiture reviewer.

#### 602.5 MAINTAINING SEIZED PROPERTY

**Best Practice**

The Property and Evidence Room supervisor is responsible for ensuring compliance with the following:

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- (a) All property received for forfeiture is reasonably secured and properly stored to prevent waste and preserve its condition.
- (b) All property received for forfeiture is checked to determine if the property has been stolen.
- (c) All property received for forfeiture is retained in the same manner as evidence until forfeiture is finalized or the property is returned to the claimant or the person with an ownership interest.
- (d) Property received for forfeiture is not used unless the forfeiture action has been completed.

#### 602.6 FORFEITURE REVIEWER

**Best Practice** **MODIFIED**

The Chief of Police will appoint a forfeiture reviewer. Prior to assuming duties, or as soon as practicable thereafter, the forfeiture reviewer should attend a course approved by the Department on asset forfeiture.

The responsibilities of the forfeiture reviewer include:

- (a) Remaining familiar with forfeiture laws, particularly Wis. Stat. § 973.075 et seq., Wis. Stat. § 961.55 et seq., and the forfeiture policies of the forfeiture counsel.
- (b) Serving as the liaison between the Department and the forfeiture counsel and ensuring prompt legal review of all seizures.
- (c) Making reasonable efforts to obtain annual training that includes best practices in pursuing, seizing, and tracking forfeitures.
- (d) Reviewing each seizure-related case and deciding whether the seizure is more appropriately made under state or federal seizure laws. The forfeiture reviewer should contact federal authorities when appropriate.
- (e) Ensuring that responsibilities, including the designation of a fiscal agent, are clearly established whenever multiple agencies are cooperating in a forfeiture case.
- (f) Ensuring that officers who may be involved in asset forfeiture receive training in the proper use of the seizure forms and the forfeiture process. The training should be developed in consultation with the appropriate legal counsel and may be accomplished through traditional classroom education, electronic media, Daily Training Bulletins (DTBs), or General Orders. The training should cover this policy and address any relevant statutory changes and court decisions.
- (g) Reviewing each asset forfeiture case to ensure that:
  - 1. Written documentation of the seizure and the items seized is in the case file.
  - 2. Independent legal review of the circumstances and propriety of the seizure is made in a timely manner.
  - 3. Notice of seizure has been given in a timely manner to those who hold an interest in the seized property.



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## Policy Manual

### Asset Forfeiture

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4. Property is promptly released to those entitled to its return.
  5. All changes to forfeiture status are forwarded to any supervisor who initiates a forfeiture case.
  6. Any cash received is deposited with the fiscal agent.
  7. Assistance with the resolution of ownership claims and the release of property to those entitled is provided.
  8. Current minimum forfeiture thresholds are communicated appropriately to officers.
  9. This policy and any related policies are periodically reviewed and updated to reflect current federal and state statutes and case law.
- (h) Ensuring that a written plan is available that enables the Chief of Police to address any extended absence of the forfeiture reviewer, thereby ensuring that contact information for other law enforcement officers and attorneys who may assist in these matters is available.
- (i) Ensuring that the process of selling or adding forfeited property to the department's regular inventory is in accordance with all applicable laws and consistent with the department's use and disposition of similar property.
- (j) Upon completion of any forfeiture process, ensuring that no property is retained by the Fitchburg Police Department unless the Chief of Police authorizes in writing the retention of the property for official use.
- (k) If seized property is referred to a federal agency, create an itemized report of actual forfeiture expenses to submit to the Wisconsin Department of Administration as set forth in Wis. Stat. § 961.55 and Wis. Stat. § 973.075.
- (l) Confirm no proceeds are accepted without a conviction unless an exception applies under Wis. Stat. § 961.55 and Wis. Stat. §973.075.

Forfeiture proceeds should be maintained in a separate fund or account subject to appropriate accounting control, with regular reviews or audits of all deposits and expenditures.

Forfeiture reporting and expenditures should be completed in the manner prescribed by the law and City financial directives.

#### **602.7 DISPOSITION OF FORFEITED PROPERTY**

##### **Best Practice**

When property is forfeited by order of a court under the Uniform Controlled Substances Act, the Fitchburg Police Department shall act in accordance with Wis. Stat. § 961.55.

When property is forfeited by order of a court as derived from a crime under Wis. Stat. § 973.075 through Wis. Stat. § 973.077, the department shall act in accordance with Wis. Stat. § 973.075.

No member of this department may use property that has been seized for forfeiture until the forfeiture action has been completed and the Chief of Police has given written authorization

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### *Asset Forfeiture*

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to retain the property for official use. No department member involved in the decision to seize property should be involved in any decision regarding the disposition of the property.

# Eyewitness Identification

## 604.1 PURPOSE AND SCOPE

State

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques (Wis. Stat. § 175.50).

### 604.1.1 DEFINITIONS

Best Practice

Definitions related to the policy include:

**Eyewitness identification process** - Any field identification, live lineup or photographic identification.

**Field identification** - A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

**Live lineup** - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

**Photographic lineup** - Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

## 604.2 POLICY

Best Practice

This department will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

## 604.3 INTERPRETIVE SERVICES

Best Practice

Members should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating member should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

## 604.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

Best Practice MODIFIED

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### *Eyewitness Identification*

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The Support Services Section Commander shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process should include appropriate forms or reports that provide:

- (a) The date, time and location of the eyewitness identification procedure.
- (b) The name and identifying information of the witness.
- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all of the individuals present during the identification procedure.
- (e) An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
- (f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
- (g) If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.
- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (i) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
- (j) A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.

The process and related forms should be reviewed periodically and modified when necessary.

#### **604.5 EYEWITNESS IDENTIFICATION**

##### **State**

Members are cautioned not to, in any way influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case (Wis. Stat. § 175.50). Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified or failed to identify the individual as the suspect.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

Whenever feasible, the eyewitness identification procedure should be audio and/or video recorded and the recording should be retained according to current evidence procedures.

## *Eyewitness Identification*

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### 604.5.1 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS

**State**

When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person is viewed by the witness. Techniques to achieve this include randomly numbering photographs, shuffling folders or using a computer program to order the persons in the lineup.

Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup.

The member presenting the lineup to a witness should do so sequentially (i.e., show the witness one person at a time) and not simultaneously (Wis. Stat. § 175.50). The witness should view all persons in the lineup.

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating member should contact the appropriate prosecuting attorney before proceeding.

### 604.5.2 FIELD IDENTIFICATION CONSIDERATIONS

**Best Practice**

Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identifications. A field elimination or show-up identification should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the member should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
  - 1. The length of time the witness observed the suspect.
  - 2. The distance between the witness and the suspect.
  - 3. Whether the witness could view the suspect's face.
  - 4. The quality of the lighting when the suspect was observed by the witness.
  - 5. Whether there were distracting noises or activity during the observation.
  - 6. Any other circumstances affecting the witness's opportunity to observe the suspect.
  - 7. The length of time that has elapsed since the witness observed the suspect.

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## Policy Manual

### *Eyewitness Identification*

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- (c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
- (d) When feasible, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.
- (e) The person who is the subject of the show-up should not be shown to the same witness more than once.
- (f) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.
- (g) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.
- (h) If a witness positively identifies a subject of a show-up as the suspect, members should not conduct any further field identifications with other witnesses for that suspect. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.

#### **604.6 DOCUMENTATION**

##### **State**

A thorough description of the eyewitness process and the results of any eyewitness identification should be documented in the case report (Wis. Stat. § 175.50).

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

#### **604.7 POLICY REVIEW**

##### **State**

At a minimum, the Department will biennially review the Eyewitness Identification Policy. In developing and revising this policy, the Department will consider model policies and policies adopted by other jurisdictions (Wis. Stat. § 175.50).

# Unmanned Aerial System (UAS) Operations

## 606.1 PURPOSE AND SCOPE

### Best Practice

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS.

### 606.1.1 DEFINITIONS

#### State

Definitions related to this policy include:

**Unmanned aerial system (UAS)** - A powered, aerial vehicle that carries or is equipped with a device that, in analog, digital, or other form, gathers, records, or transmits a sound or image, that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, and can fly autonomously or be piloted remotely (Wis. Stat. § 175.55).

**Unmanned aerial vehicle (UAV)** - An aircraft that is capable of sustaining flight and that operates with no possible direct human intervention from, on or within the aircraft. The term does not include an unmanned aircraft that is flown within the line of sight of the operator and is strictly for hobby or recreational purposes.

## 606.2 POLICY

### Best Practice

Unmanned aerial systems may be utilized to enhance the department's mission of protecting lives and property when other means and resources are not available or are less effective. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations.

## 606.3 PRIVACY

#### State

Criminal investigations involving the use of the UAS potentially involve privacy considerations. Absent a warrant or exigent circumstances, no UAS shall intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure) (Wis. Stat. § 175.55). The operator of an unmanned aerial vehicle (UAV) may record or transmit images that are viewable with the camera/video equivalent of unassisted vision from a height of 400 feet or less.

## 606.4 PROGRAM COORDINATOR

### Best Practice

The Chief of Police will appoint a program coordinator who will be responsible for the management of the UAS program. The program coordinator will ensure that policies and procedures conform to current laws, regulations and best practices and will have the following additional responsibilities:

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### *Unmanned Aerial System (UAS) Operations*

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- Coordinating the Certificate of Waiver or Authorization (COA) application process and ensuring that the COA is current.
- Ensuring that all authorized operators and required observers, if any, have completed any required FAA and department-approved training in the operation and applicable laws, policies and procedures regarding use of the UAS.
- Developing uniform Department protocol for submission and evaluation of requests to deploy a UAV. Deployment of the UAV shall require written authorization of the Chief of Police or the authorized designee.
- Developing protocol for conducting criminal investigations involving the UAV including documentation of time spent monitoring a subject.
- Implementing a system for public notification of UAV deployment.
- Developing operational protocol governing the deployment and operation of a UAV including but not limited to use of visual observers, establishment of lost link procedures and secure communication with air traffic control facilities and fully documenting all missions.
- Developing UAV inspection, maintenance and record keeping protocol to ensure continuing airworthiness of a UAV up to and including its overhaul or life limits.
- Retaining images and data in accordance with the established records retention schedule.
- Developing protocols to ensure that all downloaded and retained media that are intended to be used as evidence are accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, digital masking of innocent or uninvolved individuals to preserve anonymity, authenticity certificates and date and time stamping shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.
- Facilitating law enforcement access to images and data captured by its UAS.
- Recommending program enhancements, particularly regarding safety and information security.
- Ensuring that established protocols are followed by monitoring and providing periodic reports on the program to the Chief of Police.

#### **606.5 USE OF UAS**

##### **State**

The UAS will be operated within the guidelines provided by the FAA. Only authorized operators who have completed the required department and FAA training shall be permitted to operate the UAS.

Use of vision enhancement technology (e.g., thermal and other imaging equipment not generally available to the public) is permissible in viewing areas where there is no protectable privacy interest or where a warrant has been obtained. In all other instances, legal counsel should be consulted.



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### *Unmanned Aerial System (UAS) Operations*

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The UAS, or images and data produced by the UAS, shall not be used to conduct personal business of any type.

UAS operations shall only be conducted during daylight hours and a UAV shall not be flown over populated areas without FAA approval.

A UAS may generally be used in the following circumstances (Wis. Stat. § 175.55):

- In a public place
- To assist in an active search and rescue operation
- To locate an escaped prisoner
- To surveil a place or location for the purpose of executing an arrest warrant
- When there is reasonable suspicion to believe that the use of the UAS is necessary to prevent imminent danger to an individual or to prevent the imminent destruction of evidence

#### **606.6 PROHIBITED USE**

##### **Federal**

The UAS video surveillance equipment shall not be used:

- To conduct random surveillance activities.
- To target a person based solely on actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability.
- To harass, intimidate, or discriminate against any individual or group.
- To conduct personal business of any type.

The UAS shall not be weaponized.

#### **606.7 RETENTION OF UAS DATA**

##### **Best Practice**

Data collected by the UAS shall be retained as provided in the records retention schedule.

#### **606.8 TRAINING**

##### **Best Practice**

All department members authorized to operate or access the UAS shall receive appropriate training.