

CHAPTER 5

Offenses by Juveniles

(repealed & recreated. 9/96, Ord. 1996-13)'

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SEC. 11-5-1 CURFEW.

- (a) **Curfew Established.** It shall be unlawful for any juvenile under age 16 to be on foot, bicycle or in any type of vehicle on any public street, avenue, highway, road, alley, park, school grounds, place of amusement and entertainment, cemetery, playground, public building or any other public place in the Village of Marshall between the hours of 10:00 p.m. and 6:00 a.m. the next day, unless accompanied by his or her parent or guardian, or person having lawful custody and control of his or her person, or unless there exists a reasonable necessity therefor. The fact that said juvenile, unaccompanied by parent, guardian or other person having legal custody is found upon any such public place during the aforementioned hours shall be prima facie evidence that said juvenile is there unlawfully and that no reasonable excuse exists therefor:
- (b) **Exceptions.**
- (1) This Section shall not apply to a juvenile:
 - a. Who is performing an errand as directed by his/her parent, guardian or person having lawful custody.
 - b. Who is on his/her own premises or in the areas immediately adjacent thereto.
 - c. Whose employment makes it necessary to be upon the streets, alleys or public places or in any motor vehicle during such hours.
 - d. Who is returning home from a supervised school, church or civic function, but not later than thirty (30) minutes after the ending of such function.
 - (2) These exceptions shall not, however, permit a juvenile to unnecessarily loiter about the streets, alleys or public places or be in a parked motor vehicle on the public streets.
- (c) **Parental Responsibility.** It shall be unlawful for any parent, guardian or other person having the lawful care, custody and control of any juvenile under age sixteen (16) to allow or permit such juvenile to violate the provisions of (a) or (b) above. The fact that prior to the present offense a parent, guardian or custodian was informed by any law enforcement officer of a separate violation of this Section occurring within thirty (30) days of the present offense shall be prima facie evidence that such parent, guardian or custodian allowed or permitted the

present violation. Any parent, guardian or custodian herein who shall have made a missing person notification to the police department shall not be considered to have allowed or permitted any juvenile under age sixteen (16) to violate this Section.

- (d) **Detaining a Juvenile.** Pursuant to Ch. 938, Wis. Stats., law enforcement officers are hereby authorized to detain any juvenile violating the above provisions and other provisions in this Chapter until such time as the parent, guardian or person having legal custody of the juvenile shall be immediately notified and the person so notified shall as soon as reasonably possible thereafter report to the Police Department for the purpose of taking the custody of the juvenile and shall sign a release for him or her, or such juvenile may be taken directly from the scene of his/her apprehension to his/her home. If such juvenile's parents or relative living nearby cannot be contacted to take custody of such juvenile and it is determined by the apprehending officer that the juvenile's physical or mental condition is such as would require immediate attention, the police officer may make such necessary arrangements as may be necessary under the circumstances for the juvenile's welfare.
- (e) **Warning and Penalty.**
- (1) Warning. The first time a parent, guardian, or person having legal custody of a juvenile who is taken into custody by a law enforcement officer as provided in Subsection (d) above, such parent, guardian, or person having such legal custody shall be advised as to the provisions of this Section and further advised that any violation of this Section occurring thereafter by this juvenile or any other juvenile under his or her care or custody shall result in a penalty being imposed as hereinafter provided.
- (2) Penalty. Any parent, guardian, or person having legal custody of a juvenile described in Subsection (a) above who has been warned in the manner provided in Subsection (e)(1) herein and who thereafter violates this Section shall be subject to a penalty as provided in Section 1-1-6 of this Code of Ordinances. After a second violation within a six (6) month period, if the defendant, in a prosecution under this Section, proves that he or she is unable to comply with this Section because of the disobedience of the juvenile, the action shall be dismissed and the juvenile shall be referred to the court assigned to exercise jurisdiction under Chs. 48 and 938, Wis. Stats. Any juvenile under age sixteen (16) who shall violate this Section shall, upon conviction thereof, forfeit not less than One Dollar (\$1.00) nor more than Twenty-five Dollars (\$25.00), together with the costs of prosecution.

SEC. 11-5-2 POSSESSION OF CONTROLLED SUBSTANCES BY JUVENILES.

(rev. 12/99' Ord. 1999-13) It shall be unlawful for any juvenile to possess a controlled substance contrary to the Uniform Controlled Substances Act, Ch. 961, Wis. Stats.

SEC. 11-5-3 PETTY THEFT BY JUVENILES.

It shall be unlawful for any juvenile with intent, to steal or take property from the person or presence of the owner without the owner's consent and with the intent to deprive the owner of the use thereof.

SEC. 11-5-4 RECEIVING STOLEN GOODS.

It shall be unlawful for a juvenile to intentionally receive or conceal property he knows to be stolen.

SEC. 11-5-5 VILLAGE JURISDICTION OVER JUVENILES.

- (a) **Adoption of State Statutes.** Secs. 938.02, and 938.17(2), Wis. Stats., are hereby adopted and by reference made a part of this Section as if fully set forth herein.
- (b) **Provisions of Ordinance Applicable to Juveniles.** Subject to the provisions and limitations of Sec. 938.17(2), Wis. Stats., complaints alleging a violation of any provision of this Code of Ordinances against juveniles may be brought on behalf of the Village of Marshall and may be prosecuted utilizing the same procedures in such cases as are applicable to adults charged with the same offense.
- (c) **No Incarceration as Penalty.** The Court shall not impose incarceration as a penalty for any person convicted of an offense prosecuted under this Section.
- (d) **Additional Prohibited Acts.** In addition to any other provision of the Village of Marshall Code of Ordinances, no juvenile shall own, possess, ingest, buy, sell, trade, use as a beverage, give away or otherwise control any intoxicating liquor or fermented malt beverage in violation of Chapter 125, Wis. Stats.
- (e) **Penalty for Violations of Subsection (d).** Any juvenile who shall violate the provisions of Subsection (d) shall be subject to the same penalties as are provided in Section 1-1-6 of these Ordinances exclusive of the provisions therein relative to commitment in the County Jail.

Cross-Reference: Section 11-4-7.

SEC. 11-5-6 POSSESSION, MANUFACTURE AND DELIVERY OF DRUG PARAPHERNALIA BY A MINOR PROHIBITED.

- (a) **Definition.** In this Section, "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, selling, distributing, delivering, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, infecting, ingesting, inhaling or otherwise introducing into the human body, a controlled substance, as defined in Ch. 961, Wis. Stats., in violation of this Section. It includes but is not limited to:
 - (1) Kits used, intended for use, or designed for use, in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
 - (2) Kits used, intended for use, or designed for use, in manufacturing, selling, distributing, delivering, compounding, converting, producing, processing, or preparing controlled substances.
 - (3) Isomerization devices used, intended for use, or designed for use, in increasing the potency of any species of plant which is a controlled substance.

- (4) Testing equipment used, intended for use, or designed for use, in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.
 - (5) Scales and balances used, intended for use, or designed for use, in weighing or measuring controlled substances.
 - (6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances.
 - (7) Separation gins and sifters used, intended for use, or designed for use, in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
 - (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use, in compounding controlled substances.
 - (9) Capsules, balloons, envelopes or other containers used, intended for use, or designed for use, in packaging small quantities of controlled substances.
 - (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
 - (11) Hypodermic syringes, needles, or other objects used, intended for use, or designed for use, in parenterally injecting controlled substances into the human body.
 - (12) Objects used, intended for use, or designed for use, in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil, into the human body, including but not limited to:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - b. Water pipes;
 - c. Carburetion tubes and devices;
 - d. Smoking and carburetion masks;
 - e. Objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - f. Miniature cocaine spoons and cocaine vials;
 - g. Chamber pipes;
 - h. Carburetor pipes;
 - i. Electric pipes;
 - j. Air-driven pipes;
 - k. Chillums;
 - l. Bongs;
 - m. Ice pipes or chillers.
- (b) **Determination of Drug Paraphernalia.** In determining whether an object is drug paraphernalia, the following shall be considered, without limitation, of such other considerations a court may deem relevant:
- (1) Statements by an owner or by anyone in control of the object concerning its use.
 - (2) Prior convictions, if any, of an owner or of anyone in control of the object, under any city, state or federal law relating to any controlled substance.
 - (3) The proximity of the object in time and space to a direct violation of this Section.
 - (4) The proximity of the object to controlled substances.
 - (5) The existence of any residue of controlled substance on the object.
 - (6) Direct or circumstantial evidence of the intent of the owner, or of anyone in control of the object, to deliver it to persons whom the person knows, or

should reasonably know, intend to use the object to facilitate a violation of this Section. The innocence of an owner, or of anyone in control of this object, as to a direct violation of this Section, shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

- (7) Oral or written instructions provided with the object concerning its use.
- (8) Descriptive materials accompanying the object which explain or depict its use.
- (9) National and local advertising concerning its use.
- (10) The manner in which the object is displayed for sale.
- (11) Direct or circumstantial evidence of the ratio of sales of the object to the total sale of the business enterprise.
- (12) The existence and scope of legitimate uses for the object in the community.
- (13) Expert testimony concerning its use.

(c) **Prohibited Uses.**

- (1) Possession of Drug Paraphernalia. No juvenile may use, or possess with the sole intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this Subsection.
- (2) Manufacture or Delivery of Drug Paraphernalia. No juvenile may deliver, or possess with intent to deliver, drug paraphernalia, knowing that it will be solely used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this Subsection.
- (3) Delivery of Drug Paraphernalia by a Juvenile to a Juvenile. Any juvenile who violates Subsection (2) above by delivering drug paraphernalia to a juvenile who is at least three (3) years younger than the violator, is guilty of a special offense.
- (4) Exemption. This Section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Chapter 161, Wis. Stats. This Section does not prohibit the possession, manufacture or use of hypodermics, in accordance with Ch. 961, Wis. Stats.

- (d) **Penalties.** Any person who violates Subsection (c)(1), (2) or (3), shall, upon conviction, be subject to disposition under Sec. 938.344, Wis. Stats.

SEC. 11-5-7 TRUANCY. (rev. 8/98' – Ord. 1998-8)

- (a) **Prohibition of Habitual Truancy.** A juvenile is prohibited from being a habitual truant.

- (b) **Definitions.** For purposes of this Section:

- (1) Habitual Truant shall mean a pupil who is absent from school without an acceptable excuse for part or all of five (5) or more days on which school is held during a semester.
- (2) Truant shall mean a pupil who is absent from school without an acceptable excuse for all or part of any day on which school is held during a school semester.

- (3) Dropout shall have the same meaning given in Sec. 118.153(1)(b), Wis. Stats.
 - (4) Operating Privilege shall have the same meaning given in Sec. 340.01(40), Wis. Stats.
 - (5) Acceptable Excuse shall mean an acceptable excuse as defined in Secs. 118.15 and 118.16(4), Wis. Stats.
- (c) **Penalty for Truant.** Upon a finding that a juvenile is a truant, the court shall enter an order making one or more of the following dispositions:
- (1) Order the juvenile to attend school.
 - (2) Impose a forfeiture of not more than Fifty Dollars (\$50.00) plus costs for a first violation, or a forfeiture of not more than One Hundred Dollars (\$100.00) plus costs for any second or subsequent violation committed within twelve (12) months of a previous violation, subject to Sec. 938.37, Wis. Stats., and subject to a maximum cumulative forfeiture amount of not more than Five Hundred Dollars (\$500.00) for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the juvenile, the parents or guardian of the juvenile, or both.
- (d) **Penalty for Habitual Truant.** Upon finding that a juvenile is a habitual truant, the court shall enter an order making one or more of the following dispositions:
- (1) Suspend the juvenile's operating privilege for not less than thirty (30) days nor more than one (1) year. The judge shall immediately take possession of the suspended license and forward it to the Wisconsin Department of Transportation of the State of Wisconsin, together with a notice stating the reason for and duration of the suspension.
 - (2) Order the juvenile to participate in counseling or a supervised work program or other community service work as described in Sec. 938.34(5g), Wis. Stats. The costs of any such counseling, supervised work program or other community service work may be assessed against the juvenile, the parents or guardian of the juvenile, or both.
 - (3) Order the juvenile to remain at home except during the hours in which the juvenile is attending religious worship or a school program or place of worship. The order may permit a juvenile to leave his or her home if the juvenile is accompanied by a parent or guardian.
 - (4) Order the juvenile to attend an education program as described in Sec. 938.34(7d), Wis. Stats.
 - (5) Order the Wisconsin Department of Commerce to revoke, under Sec. 103.72, Wis. Stats., a permit under Sec. 103.70, Wis. Stats., authorizing the employment of the person.
 - (6) Order the juvenile to be placed in a teen court program if all of the following conditions apply:
 - a. The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the judge determines that participation in the teen court program will likely benefit the juvenile and the community.
 - b. The juvenile admits or pleads no contest in open court, with the juvenile's parent, guardian or legal custodian present, to the allegations that the juvenile violated the municipal ordinance enacted under Sec. 118.163(2), Wis. Stats.
 - c. The juvenile has not successfully completed participation in a teen court program during the two (2) years before the date of the alleged municipal ordinance violation.
 - (7) Order the juvenile to attend school.

- (8) Impose a forfeiture of not more than Five Hundred Dollars (\$500.00) plus costs, subject to Sec. 938.37, Wis. Stats. All or part of the forfeiture plus costs may be assessed against the juvenile, the parents or guardian of the juvenile, or both.
 - (9) Order any other reasonable conditions consistent with this Subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.
 - (10) Order the juvenile under formal or informal supervision, as described in Sec. 938.34(2), Wis. Stats., for up to one (1) year.
 - (11) Order the juvenile's parent, guardian or legal custodian to participate in counseling at the parent's guardian's or legal custodian's own expense or to attend school with the juvenile, or both.
- (e) **Penalty for Dropout.** Upon a finding that a juvenile is a dropout, and if the juvenile is at least sixteen (16) years of age but less than eighteen (18) years of age, the court may enter an order making the following disposition:
- (1) Suspend the juvenile's operating privileges until the date the juvenile reaches eighteen (18) years of age. The judge shall immediately take possession of the suspended license and forward it to the Department of Transportation of the State of Wisconsin, together with a notice stating the reason for and duration of the suspension.
 - (2) The judge may order a school district to provide to the judge a list of all persons who are known to the school district to be dropouts and who reside within the county. Upon request, the Department of Transportation of the State of Wisconsin shall assist the judge to determine which dropouts have operating privileges.
- (f) **Parent or Guardian Liability for Truancy.**
- (1) Unless the juvenile is excepted or excused under Sec. 118.15, Wis. Stats., or has graduated from high school, any person having under control a juvenile who is between the ages of six (6) and eighteen (18) years shall cause the juvenile to attend school regularly during the full period of hours, religious holidays excepted, that the public or private school in which the juvenile should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the juvenile becomes eighteen (18) years of age.
 - (2)
 - a. Except as provided under paragraph d below, whoever violates Subsection (f)(1) above may be penalized as follows, if evidence has been provided by the school attendance office that the activities under Sec. 118.16(5), Wis. Stats., have been completed or were not required to be completed as provided in Sec. 118.16(5m), Wis. Stats.
 1. For the first offense, by a fine of not more than Five Hundred Dollars (\$500.00).
 2. For a second or subsequent offense, by a fine of not more than One Thousand Dollars (\$1,000.00).
 - b. The judge may require a person who is subject to Subsection (f)(2)a above to perform community service work for a public agency or a nonprofit charitable organization in lieu of the penalties under Subsection (d)(2)a.1.
 - c. The judge may require any person who is subject to Subsection (f)(2)a above to participate in counseling at the person's own expense or to attend school with his or her child, or both.
 - d. Subsection (f)(2)a does not apply to a person who has under his or her control a juvenile who has been sanctioned under Sec. 49.26(l)(h), Wis. Stats.

- e. In a prosecution under Subsection (f)(2) above, if the defendant proves that he or she is unable to comply with the law because of the disobedience of the child, the action shall be dismissed and the child shall be referred to the court assigned to exercise jurisdiction under Ch. 938, Wis. Stats.

SEC. 11-5-8 UNLAWFUL SHELTERING OF MINORS.

- (a) No person shall intentionally shelter or conceal a person under the age of eighteen (18) who:
 - (1) Is a "runaway minor", meaning a person under the age of eighteen (18) who has run away from his or her parent, guardian or legal or physical custodian; or
 - (2) Is a juvenile who may be taken into custody pursuant to Sec. 938.19, Wis. Stats.
- (b) Subsection (a) applies when the following conditions are present:
 - (1) The person knows or should have known that the juvenile is a person described in either Subsection (a)(1) or (a)(2); and
 - (2) The juvenile has been reported to a law enforcement agency as a missing person or as a juvenile described in Subsection (a)(1) or (a)(2).
- (c) Subsection (a) does not apply to any of the following:
 - (1) A person operating a runaway home in compliance with Section 48.227, Wis. Stats.; or
 - (2) A person who shelters or conceals a juvenile at the request or with the consent of the juvenile's parent, guardian or legal or physical custodian except if the sheltering or concealment violates Section 946.71 or 946.715, Wis. Stats.; or
 - (3) A person who immediately notifies a law enforcement agency, county department of public welfare or social services, or the intake worker of the court exercising jurisdiction under Chs. 48 or 938, Wis. Stats., that he or she is sheltering or concealing such juvenile and provides the person or agency notified with all information requested.

SEC. 11-5-9 PURCHASE OR POSSESSION OF NICOTINE OR TOBACCO PRODUCTS.

(Rev. 4/15' Ord. 2015-03)

- (a) **Definition of Tobacco Products.** For the purposes of this Section, "tobacco products" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.
- (b) **Definition of Nicotine Products.** For the purposes of this Section, "tobacco products" means any product that contains nicotine and is not a tobacco product, a cigarette, or a product that has been approved by the U.S. Food and Drug Administration for sale as a smoking cessation product or for another medicinal purpose and is being marketed and sold solely for such an approved purpose.
- (c) **Purchase by Minors Prohibited.** It shall be unlawful for any person under the age of eighteen (18) years to purchase tobacco or nicotine products, or to misrepresent their identity or age, or to use any false or altered identification for the purpose of purchasing tobacco products.
- (d) **Possession By Minors Prohibited.** It shall be unlawful for any person under the age of eighteen (18) years to possess tobacco or nicotine products; provided that the possession by a person under the age of eighteen (18) years under the direct

- supervision of the parent or legal guardian of such person in the privacy of the parent's or guardian's home shall not be prohibited.
- (e) **Statutes Adopted.** (rev. 12/00', Ord. 2000-11) The provisions of Sections 134.66, 254.92, 778.25(1)(a), and 938.983 Wis. Stats., are adopted by reference and incorporated herein.

SEC. 11-5-10 ENFORCEMENT AND PENALTIES.

- (a) **Citation Process.** For violations of Sections 11-5-2 through 11-5-9, juveniles may be cited by the citation process on a form approved by the Village Attorney and shall contain on the reverse side the penalties that the juvenile may receive simultaneously with issuing the citation to the juvenile. A carbon copy will be mailed to the parent or legal guardian.
- (b) **Penalties.** Violations of Sections 11-5-1 through 11-5-6 and 11-5-9 by a person under the age of seventeen (17) shall be punishable according to Secs. 938.17(2), 938.343, 938.344 and 938.345, Wis. Stats. Nothing in this section shall prevent the juvenile officer, in his/her discretion, from referring cases directly to the District Attorney's office.