

Chapter 5

Offenses by Juveniles

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Sec. 11-5-1 Curfew.

- (a) Curfew Established. It is unlawful for any person under eighteen (18) years of age to be or remain in or upon the streets, parks, school grounds, alleys, cemeteries, public buildings or public places in the City of Onalaska past the time of curfew established below 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 therefore. The fact that said child, unaccompanied by parent, guardian or other person having legal custody, is found upon such public place during the following hours shall be prima facie evidence that said child is there unlawfully and that no reasonable excuse exists therefor.
- (1) Curfew times shall be as follows:
- a. Persons age 11 and under : 10:00 p.m. each day all year
 - b. Persons age twelve (12) through fourteen (14):
School year (September 1-May 31): 10:00 p.m. on Sunday through Thursday; 11:00 p.m. on Friday or Saturday
Summer (June 1-August 31): 11:00 p.m. everyday
 - c. Persons age fifteen (15) through seventeen (17)
School Year (September 1-May 31: 11:00 p.m. on Sunday through Thursday; 12:30 a.m. on Friday and Saturday
Summer (June 1-August 31): 12:30 a.m. everyday
- (b) **Exceptions.**
- (1) This Section shall not apply to a child:
- a. Who is performing an errand as directed by his parent, guardian or person having lawful custody.
 - b. Who is on his own premises or in the areas immediately adjacent thereto.

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- 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.
 - e. Who, with the consent of the child's parent, guardian or custodian, is participating in, going to or coming from an expressive, religious or associational activity protected by either federal or state law, including but not limited to the free exercise of religion, freedom of speech, and the right of assembly.
- (2) These exceptions shall not, however, permit a child 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 person under eighteen (18) years of age to allow or permit such person 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 person under eighteen (18) years of age to violate this Section.
 - (d) **Responsibility of Places of Amusement.** It shall be unlawful for any person, firm or organization operating or in charge of any place of amusement, entertainment, refreshment or other place of business to permit any minor under eighteen (18) years of age to loiter, loaf or idle in such place during the hours prohibited by this Section. Whenever the owner or person in charge or in control of any place of amusement, entertainment, refreshment or other place of business during the hours prohibited by this Section shall find persons under eighteen (18) years of age loitering, loafing or idling in such place of business, he shall immediately order such person to leave and if such person refuses to leave said place of business, the operator shall immediately notify the Police Department and inform them of the violation.
 - (e) **Detaining a Minor.** Every law enforcement officer is hereby authorized to detain any minor violating the provisions of above until such time as the parent, guardian or person having legal custody of the minor 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 minor and shall sign a release for him or her. If no response is received, the Police shall take whatever action is deemed necessary in the best interest of the minor. Provided, however, that no detention of a minor shall occur unless the law enforcement officer has reason to believe that no defense or exception to the curfew applies.
 - (f) **First Offense Notice.** The first time a minor, parent, guardian or person having legal custody of a minor is detained by a law enforcement officer of the City, as provided in Subsection (e), such minor, parent, guardian or person having such legal custody shall be advised, personally, if known or by registered mail, as to the provisions of this Section, and further advised that any violation of this Section occurring thereafter by this minor or any other minor under his or her care or custody shall result in a penalty being imposed as hereinafter provided.

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(g) Penalty.

- (1) Any parent, guardian or person having legal custody of a child described in Subsections (a) through (e) who has been warned in the manner provided in Subsection (f) and who thereafter violates any of the provisions of this Section shall be subject to a penalty as provided in Sec. 1-1-7 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 1
- (2) Any minor person under eighteen (18) years of age 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 cost of prosecution.

Sec. 11-5-2 Possession of Controlled Substances by Juveniles.

It shall be unlawful for any person under the age of seventeen (17) to possess a controlled substance contrary to the Uniform Controlled Substances Act, Chapter 961, of the Wisconsin Statutes.

Sec. 11-5-3 Petty Theft by Juveniles.

It shall be unlawful for any person under the age of seventeen (17), 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 person under the age of seventeen (17) to intentionally receive or conceal property he/she knows to be stolen.

Sec. 11-5-5 City 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) **Definition of Adult and Juvenile.**
 - (1) "Adult" means a person who is eighteen (18) years of age or older, except that for purposes of prosecuting a person who is alleged to have violated any civil law or municipal ordinance, "adult" means a person who has attained seventeen (17) years of age.
 - (2) "Juvenile" means a person who is less than eighteen (18) years of age, except that for purposes of prosecuting a person who is alleged to have violated a civil law or municipal ordinance, "juvenile" does not include a person who has attained seventeen (17) years of age.

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- (c) **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 City of Onalaska and may be prosecuted utilizing the same procedures in such cases as are charged with the same offense.
- (d) **No Incarceration as Penalty.** The Court shall not impose incarceration as a penalty for any person convicted of an offense prosecuted under this Section.
- (e) **Additional Prohibited Acts.** In addition to any other provision of the City of Onalaska 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 Ch. 125, Wis. Stats.
- (f) **Penalty for Violations of Subsection (d).** Any juveniles who shall violate the provisions of Subsection (d) shall be subject to the same penalties as are provided in Section 1-1-7 of this Code of 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.

- (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, injecting, 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.

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- (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

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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 person 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 person 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 Minor to Minor.** Any person who is under eighteen (18) years of age, who violates Subsection (c)(3) by delivering drug paraphernalia to a person under eighteen (18) years of age 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 Habitual Truancy.

- (a) **Definitions.** For the purpose of this Section:
- (1) **Habitual Truant** shall mean a pupil who is absent from school without an acceptable excuse for the following:
 - a. Part of all of five (5) or more days during which school is held during a school semester.
 - (2) **Acceptable Excuse** shall mean an acceptable excuse as defined in Section 118.15, Wis. Stats. and 118.16(4).

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- (b) **Penalties.** Upon finding that a student is a habitual truant, the Court shall enter an order making one (1) or more of the following dispositions:
- (1) Suspension of the person's operating privilege for not less than 30 days nor more than one year. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with a notice stating the reason for and the duration of the suspension.
 - (2) An order for the person to participate in counseling or a supervised work program or other community service work as described in Sec. 938.34 5(g) Wis. Stat. The costs of any such counseling, supervised work program or other community service work may be assessed against the person, the parents or guardian of the person, or both. Any county department of human services or social services, community agency, public agency or nonprofit charitable organization administering a supervised work program or other community service to work to which a person is assigned pursuant to an order under this paragraph acting in good faith has immunity from any civil liability in excess of \$25,000 for any act or omission by or impacting on that person.
 - (3) An order for the person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his or her home if the person is accompanied by a parent or guardian.
 - (4) An order of the person to attend an educational program as described in Sec. 938.34(7d) Wis. Stats.
 - (5) An order for the department of workforce development to revoke, under Sec. 103.72 Wis. Stats. A permit under Sec. 103.70 Wis. Stats. Authorizing the employment of the person.
 - (6) An order for the person to be placed in a teen court program as described in Sec. 938.342 (1g)(f) Wis. Stats.
 - (7) An order for the person to attend school.
 - (8) A forfeiture of not more than \$500 plus costs, subject to Sec. 938.37 Wis. Stats. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardians of the person, or both.
 - (9) Any other reasonable conditions consistent with this sub-section, including a curfew, restrictions as to going to or remaining on specified premises and restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.
 - (10) An order placing the person under formal or informal supervision, as described in Sec. 938.34(2) Wis. Stats., for up to one year.
 - (11) An order for the person'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 person, or both.

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Sec. 11-5-8 Unlawful Sheltering of Minors

- (a) No person shall intentionally shelter or conceal a minor child who:
 - (1) Is a “runaway child”, meaning a child who has run away from his or her parent, legal guardian or legal or physical custodian; or
 - (2) Is a child who may be taken into custody pursuant to Sec. 48.19, WI Stats.
- (b) Subsection (a) applies when the following conditions are present:
 - (1) The person knows or should have known that the child is a child described in either Subsection (a)(1) or (a)(2); and
 - (2) The child has been reported to a law enforcement agency as a missing person or as a child 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 Sec. 48.227, WI Stats.; or
 - (2) A person who shelters or conceals a child at the request or with the consent of the child’s parent, legal guardian or legal or physical custodian except if the sheltering or concealment violates Sec. 946.71 or 946.715, WI 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 Ch. 48 or 938, WI Stats., that he or she is sheltering or concealing such child and provides the person or agency notified with all information requested.

Sec. 11-5-9 Purchase or Possession of Tobacco Products and Nicotine Products

(a) Definition of Tobacco Products.

- (1) For the purposes of this Section, "tobacco products" means any tobacco related device and any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco and shall include any nicotine product or electronic smoking device. that can be used to delivery nicotine or any other substances to the person inhaling from the device. The term “nicotine product” shall include a product that contains nicotine including, but not limited to gum, beverages or devices manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name. The term “electronic smoking device” shall mean any device that can be used to delivery nicotine or any other substances to the person inhaling from the device.
- (b) **Purchase by Minors Prohibited.** It shall be unlawful for any person under the age of eighteen (18) years to purchase tobacco products, or to misrepresent their identity or age, or to use any false or altered identification for the purpose of purchasing tobacco products or nicotine products.
- (c) **Possession by Minors Prohibited.** It shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco 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 legal guardian’s home shall not be prohibited.

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- (d) **Sale of Tobacco Products to Minors Prohibited.** No person may purchase cigarettes, tobacco products or nicotine product on behalf of or provide to any person who is under 18 years of age. A law enforcement officer shall seize any cigarettes, tobacco products or nicotine products.
- (d) **Statutes Adopted.** The provisions of Secs. 254.92, 134.66 and 778.25(1)(a), Wis. Stats., are adopted by reference and incorporated herein.
- (e) **Violations.** For purposes of determining previous violations, the thirty (30) month period shall be measured from the dates of violations that resulted in an imposition of a forfeiture or a conviction. For the purpose of determining whether or not a previous violation has occurred, if more than one (1) violation occurs at the same time, all those violations shall be counted as one (1) violation. A person who commits a violation of Subsections (b) or (c) above shall be liable to a penalty of not more than One Hundred Dollars (\$100.00). A person who commits a violation of Subsection (d) above may be:
 - (1) Required to forfeit not more than Five Hundred Dollars (\$500.00) if the person has not committed a previous violation within thirty (30) months of the violation; or
 - (2) Fined not more than Five Hundred Dollars (\$500.00) or imprisoned for not more than 30 days or both if the person has committed a previous violation within thirty (30) months of the violation.
 - (3) Fined not more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than 90 days or both if the person has committed two (2) previous violations within thirty (30) months of the violation.
 - (4) Fined not more than Ten Thousand Dollars (\$10,000.00) or imprisoned for not more than 9 months or both if the person has committed three (3) or more previous violations within thirty (30) months of the violation.
 - (5) In addition to the forfeitures provided in Subsections (e)(1)-(4) above, a court shall suspend any license issued under Chapter 3 of Title 7 of the City of Onalaska Code of Ordinances to a person violating this Subsection for:
 - a. Not more than three (3) days, if the court finds that the person committed a violation within twelve (12) months after committing one (1) previous violation;
 - b. Not less than three (3) days nor more than ten (10) days, if the court finds that the person committed a violation within twelve (12) months after committing two (2) other violations; or
 - c. Not less than fifteen (15) days nor more than thirty (30) days, if the court finds that the person committed the violation within twelve (12) months after committing three (3) other violations.

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Sec. 11-5-10 Criminal Gang Activity Prohibited.

- (a) **Authority.** This Section is adopted pursuant to the authority granted by Sec. 66.0107 and Chapter 948, Wis. Stats.
- (b) **Definitions.** For purposes of this Section, the following terms are defined:
 - (1) **"Criminal Gang"** means an ongoing organization, association or group of three (3) or more persons, whether formal or informal, that has as one of its primary activities, the commission of one (1) or more criminal or unlawful acts, or acts that would be criminal or unlawful if the actor were an adult, specified in Sec. 939.22(21)(a) to (s), Wis. Stats., or in any of the Municipal Code sections referred to in Subsection (b)(2) below; that has a common name or common identifying sign or symbol and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.
 - (2) **"Pattern of Criminal Gang Activity"** has the same meaning as the definition in Sec. 939.22(21), Wis. Stats., the list of offenses in Subsections (a) to (s) of that Section to Title 11 of this Code of Ordinances.
 - (3) **"Unlawful Act"** includes a violation of any of the Municipal Code sections referred to in Subsection (b)(2) above or any criminal act or act that would be criminal if the actor were an adult.
- (c) **Unlawful Activity.**
 - (1) It is unlawful for any person to engage in criminal gang activity.
 - (2) It is unlawful for any person to solicit or attempt to solicit a person who has not attained the age of eighteen (18) years, to commit or attempt to commit any violation of the provisions of this Section, or any one (1) or more of those sections of the Municipal Code referred to in Subsection (b)(2) above.
 - (3) It is unlawful for any person to solicit or attempt to solicit a person who has not attained the age of eighteen (18) years, to participate in criminal gang activity.
 - (4) It is unlawful for any person to solicit or attempt to solicit a person who has not attained the age of eighteen (18) years, to join a criminal gang.

Sec. 11-5-11 Enforcement and Penalties.

- (a) **Citation Process.** For violations of Sections 11-5-2 through 11-5-10, juveniles may be cited by the citation process on a form approved by the City Attorney and shall contain on the reverse side the penalties that the juvenile may receive simultaneously with issuing the
- (b) **Penalties.** Violations of Sections 11-5-2 through 11-5-10 by a person under the age of eighteen (18) shall be punishable according to Section 1-1-7 of this Code of Ordinances and Sections 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.