

# Title 11 ► Chapter 5

---

## Offenses by Juveniles

<b>11-5-1</b>	Curfew
<b>11-5-2</b>	Possession of Controlled Substances by Juveniles
<b>11-5-3</b>	Petty Theft by Juveniles
<b>11-5-4</b>	Receiving Stolen Goods
<b>11-5-5</b>	Village Jurisdiction Over Juveniles
<b>11-5-6</b>	Possession, Manufacture and Delivery of Drug Paraphernalia
<b>11-5-7</b>	Truancy
<b>11-5-8</b>	Unlawful Sheltering of Minors
<b>11-5-9</b>	Purchase or Possession of Tobacco, Nicotine Products or Vaping Paraphernalia by Minors
<b>11-5-10</b>	Criminal Gang Activity Prohibited
<b>11-5-11</b>	Parental Responsibility for Juvenile Misconduct
<b>11-5-12</b>	Use of Laser Pointing Devices; Possession by Juveniles
<b>11-5-13</b>	Sexting by Minors Prohibited
<b>11-5-14</b>	Enforcement and Penalties

### Sec. 11-5-1 Curfew.

- (a) **Fifteen (15) Year Old Curfew Established.** It shall be unlawful for any person fifteen (15) years of age or younger 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 Fall River between the hours of 9:00 p.m. and 6:00 a.m. the next day, unless accompanied by his or her parent or legal 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 a parent, legal 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 child is there unlawfully and that no reasonable excuse exists therefore.
- (b) **Seventeen (17) Year Old Curfew Established.** It shall be unlawful for any person under age eighteen (18) years of age to be on foot, bicycle or in any type of vehicle on any

**11-5-1**

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 Fall River between the hours of 11:00 p.m. and 6:00 a.m. the next day, unless accompanied by his or her parent, legal 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, legal 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 child is there unlawfully and that no reasonable excuse exists therefore.

(c) **Exceptions.**

(1) **Exceptions Defined.** This Section shall not apply to a juvenile:

- a. Who is performing an errand as directed by his/her parent, legal 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 sixty (60) minutes after the ending of such function.
- e. Who is at any time, in the event of an emergency which would justify the reasonableness of the person's presence.
- f. Who is engaged in interstate travel.
- g. Who is accompanied by his/her parent, guardian, or other adult person having legal custody of such minor;
- h. Who is participating in, going to, or returning from an activity involving the exercise of his/her rights protected under the First Amendment to the United States Constitution or any equivalent rights under the Wisconsin Constitution, including freedom of speech, the free exercise of religion, and the right of assembly.

(2) **Limitations on Exceptions.** 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.

(d) **Responsibility of Operators of Places of Amusement.** No person operating a place of amusement or entertainment within the Village, or any agent, servant or employee of any such person, shall permit a person under seventeen (17) years of age to enter to enter or loiter in such place of amusement or entertainment between 12:00 midnight and 5:00 a.m. the next day, unless such person under seventeen (17) years of age is accompanied by his/her parent, guardian or other adult person having legal custody of such person.

(e) **Responsibility of Hotels Motels and Rooming Houses.** No person operating a hotel, motel, lodging or rooming house within the Village or any agent, servant or employee of such person, shall permit any person under seventeen (17) years of age to visit, wander or

stroll in any portion of such hotel, motel, lodging or rooming house between 12:00 midnight and 5:00 a.m. the next day, unless such person under seventeen (17) years of age is accompanied by his/her parent, legal guardian or other adult person having legal custody of such person.

- (f) **Parental Responsibility.** It shall be unlawful for any parent, legal guardian or other person having the lawful care, custody and control of any person subject to curfew, by ineffective control to allow such person to violate the provisions of Subsections (a)(1) and (a)(2) or (b) above. The fact that prior to the present offense a parent, legal 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, legal guardian or custodian allowed or permitted the present violation. Any parent, legal 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 eighteen (18) to violate this Section.
- (g) **Detaining a Juvenile.** Pursuant to Chapter 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, legal 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 law enforcement authorities 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 law enforcement officer may make such necessary arrangements as may be necessary under the circumstances for the juvenile's welfare. In such situations, the parents or legal guardians are responsible for transportation, shelter and food costs.
- (h) **Warning and Penalty.**
- (1) **Explanation Opportunity Prior to Warning/Citation Issuance.** Unless flight by the child or other circumstances makes it impracticable, a law enforcement officer shall, prior to issuing a citation or warning for an offense under this Section, afford the child an opportunity to explain his/her reasons for being present in the public place. A law enforcement officer shall not issue a citation or warning for an offense under this Section unless the officer reasonably believes that an offense has occurred, and that none of the exceptions provided in this Section apply.
  - (2) **Warning.** The first time a parent, legal guardian, or person having legal custody of a juvenile who is taken into custody by a law enforcement officer as provided in Subsection (f) above, such parent, legal 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

**11-5-1**

under his or her care or custody shall result in a penalty being imposed as hereinafter provided.

(3) **Penalty.**

- a. Any parent, legal guardian, or person having legal custody of a juvenile described in Subsection (a) above who has been warned in the manner provided in Subsection (g)(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 Chapter 938, Wis. Stats.
- b. Any juvenile under sixteen (16) years of age who shall violate this Section shall, upon conviction thereof, forfeit not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00), together with the costs of prosecution. Any juvenile violating this Section shall be subject to disposition as provided in Sec. 938.343, Wis. Stats., or any subsequent amendment, modification, revision, renumbering, recodification or addition or deletion of said provision.

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

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 person under the age of seventeen (17) to intentionally receive or conceal property he/she 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) **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.
- (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 Village of Fall River and may be prosecuted utilizing the same procedures in such cases as are applicable to adults 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 Village of Fall River 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 Subsections (c) and (e).** Any juveniles who shall violate the provisions of Subsections (c) and (e) shall be subject to the same penalties as are provided in Section 1-1-6 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.

**11-5-6**

- (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 person may use, or possess with the primary 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 or controlled substance analog 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 primarily 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 or controlled substance analog 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)(2) 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.

**11-5-6**

- (4) **Exemption.** This Section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Ch. 961, 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(2e), Wis. Stats.

### **Sec. 11-5-7 Truancy and Dropouts.**

- (a) **Definitions.** For the purpose of this Section, the following definitions shall be applicable:
  - (1) **Acceptable Excuse.** Permission of the parent/guardian/legal custodian of the pupil, within limits of policies on truancy established by the school in which the pupil is enrolled. Except in emergencies or unforeseeable circumstances, such permission is expected to be communicated in writing from the parent/guardian/legal custodian to the school, prior to the absence. In emergencies or unforeseeable circumstances, such communication is expected to be as soon as practicable following the absence.
  - (2) **Dropout.** A child who has ceased to attend school, does not attend a public or private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school and does not have an acceptable excuse under Sec. 118.15(1)(b) to (d) or (3), Wis. Stats.
  - (3) **Habitual Truant.** A pupil who is absent from school without an acceptable excuse under Secs. 118.15 and 118.16(4), Wis. Stats., for part or all of five (5) or more days on which school is held during a school semester.
  - (4) **Truant.** A pupil who is absent from school without an acceptable excuse under Secs. 118.15 and 118.16(4), Wis. Stats, for part or all of any day on which school is held during a school semester.
- (b) **Truancy.** No person under eighteen (18) years of age shall be truant. Upon conviction thereof, the following dispositions are available to the court:
  - (1) An order for the person to attend school.
  - (2) 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 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 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 person, the parents or guardian of the person, or both.
- (c) **Habitual Truancy.**
  - (1) No person under eighteen (18) years of age shall be a habitual truant.
  - (2) If the court determines that a person is a habitual truant, the court may order one or more of the following dispositions:

- a. Suspension of the person's operating privilege for not less than thirty (30) days nor more than one (1) year. The court shall immediately take possession of any suspended license and forward it to the Wisconsin Department of Transportation together with a notice stating the reason for and the duration of the suspension.
  - b. 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(5g), Wis. Stats. 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.
  - c. 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/her home if the child is accompanied by a parent or guardian.
  - d. An order for the person to attend an educational program as described in Sec. 938.34(7d), Wis. Stats.
  - e. An order for the Wisconsin Department of Work Force Development to revoke, under Sec. 103.72, Wis. Stats, a permit under Sec. 103.70, Wis. Stats., authorizing the employment of the person.
  - f. An order for the person to be placed in a teen court program as described in Sec. 938.342(1g)(f), Wis. Stats.
  - g. An order for the person to attend school.
  - h. 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 person, the parents or guardian of the person, or both.
  - i. An order placing the person under formal or informal supervision, as described in Sec. 938.34(2), Wis. Stats., for up to one (1) year.
  - j. 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.
  - k. Any other reasonable conditions consistent with this Section, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other children or adults.
- (d) **Dropouts.**
- (1) No person who is at least sixteen (16) years of age but is less than eighteen (18) years of age may be a dropout.
  - (2) If the court determines that a person is at least sixteen (16) years of age but is less than eighteen (18) years of age and is a dropout, the court may suspend the person's operating privilege until the person reaches the age of eighteen (18). The court shall immediately take possession of any suspended license and forward it to the Wisconsin

Department of Transportation, together with a notice stating the reason for and the duration of the suspension.

- (e) **Dispositional Orders and Sanctions.** The court is hereby authorized to exercise each and every kind of authority granted to courts under Wisconsin law. Specifically, the court is hereby authorized to exercise the authority granted to it in Sec. 938.355, Wis. Stats., and is hereby authorized to exercise the authority granted it in Sec. 938.355(6m), Wis. Stats.
- (f) **Adopted Terms.** As used in this Section, the terms "truant", "habitual truant", "operating privilege", and "dropout" have the meanings provided in Sec. 118.163, Wis. Stats. Those definitions are hereby adopted and incorporated herein as if fully set forth. Any future amendment of any such definition is hereby adopted and is incorporated herein as if fully set forth as the effective date of such future amendment.
- (g) **Failure to Cause a Child to Attend School Regularly.**
  - (1) Unless the child is excepted or excused under Sec. 118.15, Wis. Stats., or has graduated from high school, any person having under his/her control a child who is between the ages of six (6) and eighteen (18) years shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes eighteen (18) years of age.
  - (2) This Section does not apply:
    - a. To a person who has under his/her control a child who has been sanctioned under Sec. 49.26(1)(h), Wis. Stats.
    - b. To a person who proves that he/she is unable to comply with the requirements of this Section because of the disobedience of the child, in which case the action shall be dismissed and the juvenile officer or law enforcement authority shall refer the case to the District Attorney's Office.
    - c. Unless 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.
- (h) **Contributing to Truancy.**
  - (1) Except as provided in Subsection (h)(2) below, any person eighteen (18) years of age or older, who, by an act or omission, knowingly encourages or contributes to the truancy, as defined in Subsection (h)(4), of a juvenile shall be subject to a forfeiture pursuant to Section 1-1-6.
  - (2) Subsection (1) above does not apply to a person who has under his or her control a juvenile who has been sanctioned under Sec. 49.26(1)(h), Wis. Stats.
  - (3) An act or omission contributes to the truancy of a child, whether or not the juvenile is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the juvenile to be a truant.
  - (4) "Truancy" means any absence of part or all of one (1) or more days from school during which the school attendance officer, principal or teacher has not been notified

of the legal cause of such absence by the parent or legal guardian of the absent pupil, and also means intermittent attendance carried on for the purpose of defeating the intent of Sec. 118.15, Wis. Stats.

(i) **Parent or Legal 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. A person found to have violated Subsection (i)(1) above, after evidence is provided by a school official that the activities under Sec. 118.16(5), Wis. Stats., have been completed, shall be subject to a forfeiture pursuant to Section 1-1-7.  
b. Subsection (i)(2)a above does not apply to a person who has under his or her control a juvenile who has been sanctioned under Sec. 49.26(1)(h), Wis. Stats., nor does it apply if the person proves that he or she is unable to comply with Subsection (i)(1) because of the disobedience of the juvenile.

## **Sec. 11-5-8 Unlawful Sheltering of Minors.**

- (a) **Sheltering or Concealment of Minor.** 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. 938.19, Wis. Stats.
- (b) **Applicable Factors.** 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) **Exceptions.** Subsection (a) does not apply to any of the following:
- (1) A person operating a runaway home in compliance with Sec. 938.227, Wis. 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, 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 Ch. 48 or 938, Wis. 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, Nicotine Products or Vaping Paraphernalia by Minors.**

**(a) Finding of Facts; Statement of Purpose.**

- (1) The purpose of this Section is to protect the public health, safety, and welfare of persons in the Village of Fall River under eighteen (18) years of age from possessing and/or using tobacco products or vapor products or devices, and prohibiting the sale of tobacco products and vapor products and devices to persons under eighteen (18) years of age.
- (2) Vaping devices and products provide an alternative smoking experience to tobacco products. The decline in cigarette smoking and the use of other tobacco products has resulted in an increase in the popularity of vaping devices and alternative nicotine delivery systems, particularly among minors.
- (3) Vaping devices and products often mimic conventional tobacco products in shape, color and size, with the user exhaling a smoke-like vapor similar in appearance to smoke exhaled when using tobacco products.
- (4) Persons under age eighteen (18) years of age are prohibited by law from purchasing or possessing cigarettes, cigars, and other tobacco products, and retailers are prohibited from selling them to minors. Tobacco-less vaping devices and products allow a user to simulate smoking; such products currently may be purchased by minors and are marketed, unlike tobacco products, without health warnings, disclosure of nicotine concentrations, content levels of toxic substances, or age restrictions, and often come in flavors that appeal to minors. Consumers have no way of knowing whether vapor devices and products are safe, what potentially harmful chemicals the products contain, and what level of nicotine the products deliver.
- (5) The production of e-cigarettes, vapor products and vaping devices is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration (FDA) has not completed full testing of these products. Preliminary studies, however, have determined that e-cigarettes, vapor products and vapor devices can contain chemicals and substances known to be harmful, which may expose users and bystanders to potential health risks. The contents of cartridges used in vaping devices and products varies but often contain nicotine, traces of nicotine, formaldehyde, carcinogens, antifreeze, and other toxic substances which may pose a health risk to users and bystanders.
- (6) Vapor devices and products have been found to emit nicotine, ultrafine particles, lead, acetaldehyde, nickel, chromium, volatile organic compounds and other toxins, which when inhaled can be dangerous to the user and public, especially pregnant women and children. Volatile organic compounds, such as benzene and formaldehyde, found in vaping liquids, as well as in tobacco products when smoked, are known carcinogens. Inhalation of vaporized nicotine in propylene glycol is not FDA-approved. Exposure

- to ultrafine particles may exacerbate respiratory illnesses, such as asthma. There have been incidents of electronic vapor devices exploding, causing serious harm to the user.
- (7) The nicotine and/or chemicals contained in the e-liquid used in vapor devices and products are undetectable unless the liquid is tested in a laboratory facility, making it difficult and impractical for law enforcement officers to ascertain the composition of the liquid used in a vaping device or product. Some cartridges used with vapor devices can be refilled with a liquid nicotine solution, creating the potential for exposure to dangerous nicotine concentrations.
  - (8) Increased nicotine addiction among minors is a likely outcome from use of vaping devices and products, and may lead to users transitioning to tobacco products. After years of declining levels of tobacco use by minors, recent data indicates that tobacco use by minors is again increasing.
  - (9) The use of vapor devices and products in smoke-free locations threatens to undermine compliance with state and local smoking regulations and conflicts with the progress which has been made in public understanding that smoking is not permitted in public places, schools and places of employment.
  - (10) It is the intent of this Section to protect the public health, safety and welfare by having consistent and uniform enforcement of smoke-free laws and ordinances by:
    - a. Reducing the potential for minors to associate the use of vaping products and devices with a normal or healthy lifestyle;
    - b. Reducing the potential for re-normalizing smoking of any type in public places and places of employment; and
    - c. Prohibiting the sale or distribution of vapor devices and products to minors.
  - (11) The Village Board of the Village of Fall River determines that prohibiting the sale, furnishing, or giving away of vapor devices and products to minors and prohibiting the possession, purchasing and use of such devices and products is in the public interest and will promote the public health, safety, and welfare.
- (b) **Definitions.** The following definitions are applicable in this Section:
- (1) **Cigarette.** Has the meaning given in Sec. 139.30(1), Wis. Stats.
  - (2) **Distributor.** A person specified under Secs. 139.30(3) or 139.75(4), Wis. Stats.
  - (3) **E-Liquid.** A liquid product, whether or not it contains nicotine, that is intended to be vaporized and inhaled using a vapor product or device.
  - (4) **Identification Card.** A license containing a photograph issued under Ch. 343, Wis. Stats., an identification card issued under Sec. 343.50, Wis. Stats., or an identification card issued under Sec. 125.08, Wis. Stats.
  - (5) **Jobber.** Has the meaning given in Sec. 139.30(6), Wis. Stats.
  - (6) **Law Enforcement Officer.** Has the meaning given in Sec. 30.50(4s), Wis. Stats.
  - (7) **Manufacturer.** Any person specified under Secs. 139.30(7) or 139.75(5), Wis. Stats.
  - (8) **Minor.** An individual who is less than eighteen (18) years of age.
  - (9) **Nicotine Product.** Has the meaning given in Sec. 134.66(1)(f), Wis. Stats.

- (10) **Person Who Sells Tobacco Products at Retail.** A person whose ordinary course of business consists, in whole or part, of the retail sale of tobacco products subject to the state sales tax.
- (11) **Person Who Sells Vapor Products or Devices at Retail.** A person whose ordinary course of business consists, in whole or part, of the retail sale of vapor products or devices.
- (12) **Possession of a Tobacco or Vaping Product or Device.** Means either actual physical control of the tobacco or vaping product or device without necessarily owning that product/device, or the right to control the tobacco or vaping product/device even though the item is in a different place or room than where the person is physically located.
- (13) **Retailer.** Any person licensed under Sec. 139.65(1), Wis. Stats., in regard to tobacco products, or, in the case of vaping, any person offering for sale vaping-related products or devices.
- (14) **School.** Has the meaning given in Sec. 118.257(1)(c), Wis. Stats.
- (15) **Subjobber.** Has the meaning given in Sec. 139.75(11), Wis. Stats.
- (16) **Tobacco Products.** Has the meaning given in Sec. 139.75(12), Wis. Stats., and further means, but is not limited to, any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.
- (17) **Use a Tobacco or Vapor Product.** To smoke, chew, suck, inhale, or otherwise consume a tobacco product or vapor product.
- (18) **Vapor or Vaping Product or Device.** Any product or device containing or delivering nicotine, lobella, or any other substance intended for human consumption that can be used by a person to simulate smoking through the delivery of nicotine or any other substance through inhalation of vapor from the product. Included are any devices, regardless of shape or size, which employs a mechanical heating element, battery, or electronic circuit and that can be used to heat or dispense a liquid solution as a vapor which is intended for human consumption through inhalation. The term includes, but is not limited to, any device marketed as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, vapes, tank systems, electronic nicotine delivery systems, electronic smoking device, or under any similar product name or description. Such devices may be similar in appearance to tobacco cigarettes, cigars or pipes, while others may resemble pens, USB sticks or flash drives, and other everyday items. Also includes any component part of such product or associated paraphernalia whether or not sold separately, such as, but not limited to, any vapor cartridge, solution, or other container, that may or may not contain nicotine, that is intended to be used with a vaping device. Not included is any product that has been approved by the FDA for sale as a tobacco cessation product or is being marketed and sold solely for such approved purposes.

- (19) **Vaping.** The use of an electronic or other device that creates an aerosol or vapor from a vapor product, in any manner or in any form or the use of any oral vapor or smoking device
- (20) **Vending Machine.** Has the meaning given in Sec. 139.30(14), Wis. Stats.
- (21) **Vending Machine Operator.** Has the meaning given in Sec. 139.30(15), Wis. Stats.
- (c) **Prohibition Against Sale of or Availability of Cigarettes, Tobacco Products, and Nicotine Products to Minors.** It shall be a violation of this Section for any retailer to sell or give away any cigarettes, tobacco products, or nicotine products to any person under the age of eighteen (18) except as provided in Sec. 254.92(2), Wis. Stats. A vending machine operator is not liable for the purchase of cigarettes, tobacco products, or nicotine products from his/her vending machine by a person under eighteen (18) years of age if the vending machine operator was unaware of the purchase.
- (d) **Prohibited Conduct.**
- (1) Consistent with Sec. 254.92, Wis. Stats., a minor shall not do any of the following:
    - a. Purchase or attempt to purchase a tobacco product, nicotine product, or vaping device or product.
    - b. Possess or attempt to possess a tobacco product, nicotine product, or vaping device or product.
    - c. Use a tobacco product, nicotine product or vaping device or product in a public place.
    - d. Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his/her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product, nicotine product, or vaping device or product.
  - (2) No individual, regardless of age, who is enrolled in a public school may use, possess or attempt to possess a tobacco product, nicotine product, or vaping device or product on school grounds and property.
- (e) **Exceptions.** Subsection (d) above does not apply to a minor participating in any of the following:
- (1) An undercover operation in which the minor purchases or receives a tobacco product, nicotine product or vapor product under the direction of a law enforcement agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product, nicotine product or vapor product or device by the minor was not under the direction of a law enforcement agency and was not part of the undercover operation.
  - (2) An undercover operation in which the minor purchases or receives a tobacco product, nicotine product, or vapor product or device under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored enforcement action.
  - (3) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access

requirements, if the compliance checks are conducted with the prior approval of a law enforcement agency.

- (4) A minor may possess or handle a tobacco product, nicotine product, or vapor device or product for the sole purpose of resale in the course of employment during his/her normal working hours if employed by a retailer licensed under Sec. 134.65(1), Wis. Stats.

(f) **Defense of Retailers.**

- (1) Proof of all the following facts by a retailer who sells tobacco products, nicotine products, or vapor devices or products to a minor is a defense to any prosecution for a violation of Subsection (d) above:

- a. That the purchaser falsely represented that he/she had attained the age of eighteen (18) and presented a fraudulent identification card.
- b. That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of eighteen (18).

- (2) A retailer or vending machine operator shall post a sign(s) in areas within his/her retail premises where tobacco products, nicotine products, or vapor products or devices are sold to consumers stating that the sale of any tobacco product, nicotine product, or vapor product or device to a person under the age of eighteen (18) is unlawful under this Section or comparable state laws.

(g) **Furnishing to Minors.** Consistent with the requirements of Sec. 134.66, Wis. Stats.:

- (1) No person shall sell, furnish or give any tobacco product, nicotine product, or vapor product or device to a minor, including, but not limited to, through a vending machine.
- (2) Before selling, offering for sale, giving, or furnishing a tobacco product, nicotine product, or vapor product or device to an individual, such person shall verify that the individual is at least eighteen (18) years of age by doing one of the following:
  - a. Examining a government-issued photographic identification that establishes that the individual is at least eighteen (18) years of age.
  - b. For sales made through the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification of the personal information entered by the individual during the ordering process that establishes that the individual is eighteen (18) years of age or older.
- (3) No manufacturer, distributor, jobber, sub-jobber, or retailer, or their employees or agents, may provide cigarettes, tobacco products, nicotine products, or vapor devices or products for nominal or no consideration to any person under the age of eighteen (18).

- (h) **Seizure of Products.** A law enforcement officer may seize any tobacco product, nicotine product, or vapor device or product involved in any violation of this Section committed in his/her presence.
- (i) **Penalties.** Any person who violates provisions of this Section shall be subject to the penalties set forth in Section 1-1-6 of this Code of Ordinances, except that where a minor is adjudged to have violated this Section, the court is also authorized to impose any of the dispositions in Secs. 938.343 and 938.344, Wis. Stats.

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

- (a) **Authority.** This Section is adopted pursuant to the authority granted by Sec. 66.0501 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 Code of Ordinances 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 Code of Ordinances 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 Code of Ordinances 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.

**State Law Reference:** Sec. 941.38, Wis. Stats.

## **Sec. 11-5-11 Parental Responsibility for Juvenile Misconduct.**

- (a) **Purpose.** This Section is intended to reduce the incidents of misconduct by juveniles or underage persons by requiring proper supervision on the part of custodial parents.
- (b) **Prohibited Conduct.** Every custodial parent has the duty to properly supervise his/her child. It shall be unlawful for any custodial parent to fail to properly supervise his/her child. Proof of a child's conviction of a Village of Fall River ordinance violation, a violation of a state statute that occurred in the Village of Fall River, or any combination thereof twice within a six (6) month period or three (3) or more times within a twelve (12) month period shall be prima facie evidence that the custodial parent is guilty of failing to properly supervise the child. A child's traffic offenses shall not be considered under this Section except for alcohol and drug related offenses, reckless driving, and traffic crimes. The six (6) and twelve (12) month periods shall be measured from the date of the first violation.
- (c) **Definitions.** For purposes of this Section:
  - (1) **Child.** A person under the age of eighteen (18) years.
  - (2) **Custodial Parent.** A parent of a minor child who has custody of the child, that is, the parent who has responsibility for caring for and supervising the child at the time the child's ordinance violations occurred.
  - (3) **Custody.** Either physical custody of a child under a court order under Secs. 767.23 or 767.24, Wis. Stats., custody of a child under a stipulation under 767.10, Wis. Stats, or actual physical custody of the child. "Custody" does not include legal custody, as defined under Sec. 48.01(12), Wis. Stats., by an agency or a person other than a child's birth or adoptive parent. In determining which parent has custody of a child for purposes of this Section, the court shall consider which parent had responsibility for caring for and supervising the child at the time that the child's ordinance violations occurred.
- (d) **Defenses.**
  - (1) The following shall be defenses to a violation of Subsection (b):
    - a. Where the parent can provide specific evidence of on-going participation in, or recent completion of, parenting classes, family therapy, group counseling or AODA counseling which includes the parent or child in question;
    - b. Where the parent reported the act(s) to the appropriate authorities;
    - c. Where the parent has made all reasonable and available efforts under the circumstances to prevent the juvenile misconduct;
    - d. Where the parent is not legally responsible for the supervision of the juvenile at the time the misconduct occurred; or
    - e. Where the parent has a physical or mental disability or incompetency rendering him/her incapable of supervising the juvenile at the time the misconduct occurred.
  - (2) It is not a defense when the parent assigns his/her parental responsibility to another, except pursuant to legal proceedings which result in a court order effectuating the

same. The parent has the burden of proving his/her defense by clear and satisfactory evidence.

## **Sec. 11-5-12 Use of Laser Pointing Devices; Possession by Juveniles.**

(a) **Definitions.** The following definitions shall be applicable in this Section:

- (1) **Laser.** Any laser pen, laser pointer, laser-style flashlight, or laser units of the following types: A helium neon (HeNe) laser which operates at wavelength of 832.8nm with a mandated power limit of 5mW. Said lasers are considered a Class 2 laser with the potential for eye injury, or a diode laser which typically operates at a wavelength of 670 nm (although other model specifications are possible) with a power source providing 5mW. Said lasers are considered Class 3a lasers, with the potential for eye injury.
- (2) **Direct Supervision.** Means that the parent or legal guardian must be in such a position as to be able to visually monitor and physically control the behavior of the minor in question.

(b) **Prohibited Conduct.**

- (1) **Prohibited Laser Use.** It shall be unlawful for any person, to focus, point or shine a laser beam directly or indirectly on another person or animal in such a manner as is intended to harass, intimidate, threaten or annoy said person or animal. Sworn law enforcement officers, while working in their legal capacity, are exempt from the provisions of this Section.
- (2) **Possession by Juveniles.**
  - a. It shall be unlawful for any person under the age of eighteen (18) years of age to do the following:
    1. Purchase or attempt to purchase any laser.
    2. Possess, except under the direct supervision of said minor's parent or legal guardian, any laser.
    3. Falsely represent his/her age for the purpose of receiving any laser.
  - b. No person shall sell, give or otherwise transfer a laser unit to any person under the age of eighteen (18) who is not under the direct supervision of their parent or guardian at the time of transfer.
  - c. A person shall not be in violation of this Subsection if his/her possession of a laser pointing device is necessary for his/her employment, trade or occupation, and it is necessary for the pointer to be carried on his/her person while engaged in such work.

## **Sec. 11-5-13 Sexting by Minors Prohibited.**

(a) **Definitions.** As used in this Section, the following terms shall have the meanings indicated:

**11-5-13**

- (1) **Harmful to Minors.** Any reproduction, imitation, depiction, description, characterization, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:
    - a. Predominantly appeals to a prurient, shameful or morbid interest;
    - b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
    - c. Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.
  - (2) **Minor.** Any person under the age of eighteen (18) years.
  - (3) **Nudity.** The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity", irrespective of whether or not the nipple is covered during or incidental to feeding.
- (b) **Offenses.** A minor commits the offense of sexting by knowingly doing any of the following acts:
- (1) **Prohibited Electronic Device Use.** A minor using a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors.
  - (2) **Possession of Prohibited Material.** A minor possessing a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors. A minor does not violate this Subsection if all of the following apply:
    - a. The minor did not solicit the photograph or video;
    - b. The minor took reasonable steps to report the photograph or video to a school or law enforcement official; and
    - c. The minor did not transmit or distribute the photograph or video to a third-party other than a school or law enforcement official.
  - (3) **Prohibited Electronic Message Transmission.** A minor using a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any text, correspondence, or message of a sexual nature when it:
    - a. Predominantly appeals to a prurient, shameful or morbid interest;
    - b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors;
    - c. Taken as a whole, is without serious literary, artistic, political, or scientific value for minors; and/or
    - d. Soliciting the transmission or distribution of any text, correspondence, message, photograph or video from another minor that would itself be prohibited by this Section.

---

**Sec. 11-5-14 Enforcement and Penalties.**

- (a) **Citation Process.** For violations of Sections 11-5-2 through 11-5-13, juveniles may be cited by the citation process on a form approved by the Village Attorney. The parents, legal guardian, or custodian of the juvenile will be notified within seven (7) days pursuant to Sec. 938.17(2)(c), Wis. Stats., and be provided with a copy of the citation.
- (b) **Penalties.** Violations of Sections 11-5-2 through 11-5-13 by persons under the age of eighteen (18) shall be punishable according to Section 1-1-6 of this Code of Ordinances and Ch. 938, Wis. Stats. Nothing in this Section shall prevent a law enforcement officer in his/her discretion from referring cases to the proper juvenile authorities.

