

Chapter 177

MINORS

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[HISTORY: Adopted by the Village Board of the Village of Albany as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Sale and use of cigarettes -- See Ch. 95, Art. II.

Fireworks -- See Ch. 140.

Loitering -- See Ch. 173.

ARTICLE I Offenses by Juveniles

[Adopted 5-11-1992 as Title 11, Ch. 5
of the 1992 Code]

§177-1. Curfew.

A. Curfew established. [Amended 11-11-1996 by Ord. No. 02-96]

(1) It shall be unlawful for any person under 14 years of age to be on foot, bicycle or in any type of vehicle on any public street, avenue, highway, road, alley, park, school grounds, swimming beach, cemetery, playground, public building or any other public place in the Village of Albany between the hours of 9:00 p.m. and 6:00 a.m. 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 child, unaccompanied by a 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 child is there unlawfully, and no reasonable excuse exists therefor.

(2) It shall be unlawful for any person 14 through 17 years of age to be on foot, bicycle or in any type of vehicle on any public streets, avenue, highway, road, alley, park, school grounds, swimming beach, cemetery, playground, public building or any other public place in the Village of Albany between the hours of 11:00 p.m. and 6:00 a.m. on each day of the week except Friday and Saturday, and between 12:00 midnight and 6:00 a.m. on Friday and Saturday unless accompanied by his or her parent or guardian or other person having lawful custody and control of his or her person, or unless there exists a reasonable necessity therefor. The fact that said child, unaccompanied by a 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 child is there unlawfully, and no reasonable excuse exists therefor.

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.

(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 30 minutes after the ending of such function.

(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 18 years of age to allow or permit such person to violate the provisions of Subsections A and 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 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 18 years of age to violate this section.

D. Taking a child into custody.

(1) Every law enforcement officer while on duty is hereby authorized to take into custody any child violating the provisions of Subsection A above. Children taken into custody shall be released from custody as soon as is reasonably possible. A person taking a child into custody shall make every effort immediately to release the child to the child's parent, guardian or legal custodian or, if the parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, may release the child to a responsible adult and verbally counsel or warn as may be appropriate or, in the case of a runaway child, may release the child to a home authorized under W.S.A. s. 48.227. The parent, guardian, legal custodian or other responsible adult to whom the child is released shall sign a release for the child.

(2) If the child is not released under this subsection, the officer shall deliver the child to the Green County Juvenile Court Intake Worker in a manner determined by the court and law enforcement agencies, stating, in writing, with supporting facts, the reasons why the child was taken into physical custody and giving any child 12 years of age or older a copy of the statement in addition to giving a copy to the Intake Worker. A juvenile violating these curfews regularly may be warned by an officer on duty in his discretion and sent home in lieu of taking the juvenile into custody.

(3) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the officer shall take such action as is required under W.S.A. s. 48.20(4). If the child is believed to be mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a substantial risk of physical harm to the child or to others, the officer shall take such action as is required under W.S.A. s. 48.20(5). If the child is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed or is incapacitated by alcohol, the officer shall take such action as is required under W.S.A. s. 48.20(6).

E. Warning and penalty.

(1) Warning. The first time a parent, guardian or person having legal custody of a child 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 child or any other child 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 child 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 Chapter 1, General Provisions, §1-19. After a second violation within a six-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 child, the action shall be dismissed and the child shall be referred to the court assigned to exercise jurisdiction under W.S.A. ch. 48. Any minor person under 16 years of age who shall violate this section shall, upon conviction thereof, forfeit not less than \$1 nor more than \$25, together with the costs of prosecution.

§177-2. Possession of controlled substances and tobacco products by juveniles.¹

It shall be unlawful for any person under the age of 18 to possess a controlled substance contrary to the Uniform Controlled Substances Act, W.S.A. ch. 961 or any cigarette or tobacco product pursuant to W.S.A. s. 938.983.

§177-3. Petty theft by juveniles.

It shall be unlawful for any person under the age of 18, with intent, to steal or take proper 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.

¹ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§177-4. Receiving stolen goods.

It shall be unlawful for a person under the age of 18 to intentionally receive or conceal property he knows to be stolen.

§177-5. Village jurisdiction over persons 14 through 17 years of age.

A. Adoption of state statute. W.S.A. s. 938.17(2) is hereby adopted and by reference made a part of this section as if fully set forth herein.²

B. Provisions applicable to persons 14 through 17 years of age. Subject to the provisions and limitations of W.S.A. s. 938.17(2), complaints alleging a violation of any provision of this Code against persons 14 through 17 years of age may be brought on behalf of the Village of Albany and may be prosecuted utilizing the same procedures in such cases as are applicable to adults charged with the same offense.³

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 provisions of this Code, no person age 14 through 17 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 W.S.A. ch. 125.

E. Penalty for violations of Subsection D. Any person 14 through 17 years of age who shall violate the provisions of Subsection D shall be subject to the same penalties as are provided in Chapter 1, General Provisions, §1-19, exclusive of the provisions therein relative to commitment in the county jail.⁴

§177-6. Possession, manufacture and delivery of drug paraphernalia.⁵

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

DRUG PARAPHERNALIA -- 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 W.S.A. ch. 961, 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.

²Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

³Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

⁴Editor's Note: See also Ch. 70, Alcoholic Beverages, §70-2.

⁵Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

(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 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 who is under 18 years of age 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 who is under 18 years of age 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 18 years of age who violates this Subsection C(3) by delivering drug paraphernalia to a person under 18 years of age who is at least three 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 W.S.A. ch. 961. This section does not prohibit the possession, manufacture or use of hypodermics in accordance with W.S.A. ch. 961.

D. Penalties. Any person who violates Subsection C(1), (2) or (3) shall, upon conviction, be subject to disposition under W.S.A. s. 938.344.

§177-7. Violations and penalties.

A. Citation process. For violations of ~§177-2 through 177-6, 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 ~§177-2 through 177-6 by a person under the age of 18 shall be punishable according to Secs. 938.17(2), 938.343, 938.344 and 48.345, Wis. Stats. Nothing in this section shall prevent the juvenile officer, in his discretion, from referring cases directly to the District Attorney's office.⁶

ARTICLE II

Truancy

[Adopted 5-11-1992 as Sec. 11-2-10
of the 1992 Code]

§177-8. Contributing to truancy.

A. Except as provided in Subsection B below, any person 18 years of age or older who, by an act or omission, knowingly encourages or contributes to the truancy, as defined in Subsection D, of a child shall be subject to a forfeiture pursuant to Chapter 1, General Provisions, §1-19.

⁶Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

B. Subsection A above does not apply to a person who has under his or her control a child who has been sanctioned under W.S.A. s. 49.26(1)(h).⁷

C. An act or omission contributes to the truancy of a child, whether or not the child 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 child to be a truant.

D. "Truancy" means any absence of part or all of one 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 guardian of the absent pupil, and also means intermittent attendance carried on for the purpose of defeating the intent of W.S.A. s. 118.15.

§177-9. Parent or guardian liability.

A. Unless the child is excepted or excused under Sec. 118.15, Wis. Stats., or has graduated from high school, any person having under control a child who is between the ages of six and 18 years shall cause the child to attend school regularly during the full period of 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 18 years of age.

B. Penalty; applicability.

(1) A person found to have violated Subsection A 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 Chapter 1, General Provisions, §1-19.

(2) Subsection B(1) above does not apply to a person who has under his or her control a child 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 B(1) because of the disobedience of the child.⁸

§177-10. Habitual truancy.

A. It shall be prohibited for any child to be a habitual truant. A "habitual truant" is defined as a child between the ages of six and 18 years who is absent from school without an acceptable excuse, as provided in W.S.A. ss. 118.15 and 118.16(4), for either of the following:

(1) Part or all of five or more days out of 10 consecutive days on which school is held during a school semester.

(2) Part or all of 10 or more days in which school is held during a school semester.

B. Upon a finding of habitual truancy, the court may order one or more of the following dispositions.

(1) Suspend the child's operating privilege, as defined in W.S.A. s. 340.01(40), for not less than 30 days nor more than 90 days. The Judge shall immediately take possession of

⁷Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

⁸Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

the 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) Order the child to participate in counseling, community service or a supervised work program under W.S.A. s.48.355.⁹

(3) Order the child to remain at home except during hours in which the child 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 child to leave his or her home if the child is accompanied by a parent or guardian.

(4) Order the child to attend an educational program under W.S.A. s. 48.345(12).¹⁰

§177-11. Violations and penalties.

A. Attempt.

(1) Whoever attempts to commit an act prohibited by this article may be required to forfeit amounts not to exceed 1/2 the maximum penalty for the completed act.

(2) An attempt to commit an act prohibited by this article requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of this article and that he does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that he formed that intent and would commit the violation except for the intervention of another person or some other extraneous factor.

B. Parties to acts prohibited.

(1) Whoever is concerned in the commission of an act prohibited by this article is a principle and may be charged with and convicted of the commission of said act although he did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other act prohibited by this article.

(2) A person is concerned in the commission of an act prohibited by this article if he:

(a) Directly commits the act;

(b) Intentionally aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other act which is committed in pursuance of the intended violation and which, under the circumstances, is the natural and probable consequence of the intended violation. This subsection does not apply to a person who voluntarily changes his mind and no longer desires that the act be committed and notifies the other parties concerned of his withdrawal within a reasonable time before the commission of the violation so as to allow the others also to withdraw.

⁹Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

¹⁰Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).