



POLICY & PROCEDURE

ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **LAW ENFORCEMENT AUTHORITY**

SCOPE: All Department Personnel
DISTRIBUTION: Policy & Procedure Manual

REFERENCE: WI State Statute: Chapter 941; **18 USC 926 B**

NUMBER: 1.09
ISSUED: 1/8/2021
EFFECTIVE: 1/8/2021
 RESCINDS
 AMENDS
WILEAG 4TH EDITION
STANDARDS: 1.7.1, 1.7.2

INDEX AS: Constitutional Requirements
Legal Authority
Informing the arrestee

PURPOSE: The purpose of this Policy & Procedure is to define the legal authority to carry and use weapons by Elkhart Lake Police Department personnel in the performance of their duties. The second purpose of this Policy & Procedure is to govern procedures for assuring compliance with all applicable constitutional requirements.

This Policy & Procedure consists of the following numbered sections:

- I. LEGAL AUTHORITY
 - II. CONSTITUTIONAL REQUIREMENTS
 - III. INFORMING THE ARRESTEE
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- I. LEGAL AUTHORITY

A. Elkhart Lake Police Officers are authorized to carry and use weapons under the authority and powers granted to them by Wisconsin State Statutes and exemptions granted under Wis. Stats. Chapter 941. **Officers may also carry a concealed weapon as authorized by 18 USC 926 B.**

- B. It is the policy of the Department to strictly regulate what firearms and ammunition officers are authorized to carry on-duty as primary firearms, back-up firearms, and as off-duty firearms. Only firearms and ammunition meeting Department-authorized specifications, as established by this written directive, may be used by officers in law enforcement responsibilities both on and off duty, also refer to Policy & Procedure 12.01: Weapons and Ammunition.
- C. Further, it is the Department's policy that any firearm intended for use by an officer in the performance of their law enforcement duty be reviewed, inspected, and approved by a qualified weapons instructor, as established by the Chief of Police.

A record will be maintained for all firearms approved by the Department for official use; also refer to Policy & Procedure 12.01: Weapons and Ammunition.

- D. Only officers demonstrating proficiency in the use of a Department authorized firearm, including handguns and shotguns, will be approved to carry such a firearm; also refer to Policy & Procedure 12.01: Weapons and Ammunition.
- E. Officers who will be authorized to carry any firearm will be issued copies of and instructed in the Department policies relating to the use of defensive action and firearms protocol before such authorization is given. The referenced issuance and instruction will be documented; also refer to Policy & Procedure 12.01: Weapons and Ammunition.
- F. An officer must have written, departmental authorization for any firearm carried on-duty and must have the same authorization for any firearm carried off-duty by virtue of his/her position as a police officer. To obtain authorization to carry a specific firearm, an officer must first meet Department qualification standards.
- G. No Civilian Employee of the Department is authorized to have in their possession, a firearm of any kind, while in any agency building or any Village of Elkhart Lake vehicle. This includes civilian employees who have been issued a license to carry a firearm.

II. CONSTITUTIONAL REQUIREMENTS

- A. Miranda Rights. A Department issued card describes these rights and a waiver to such rights. Rights are read to/by an arrestee when required, *particularly prior to any in-custody interrogations of a suspect/defendant*. Admissions or confessions given freely prior to receipt of Miranda are documented in detail. After voluntary admission, the officer will give him/her Miranda Rights. As stated in the Waiver, "...no promises or threats have been made...and no pressure or coercion...has been used."
- B. Right to Know. Every person has a right to know why s/he is arrested. If the charge is not evident to the person, the arresting officer will inform the arrestee why s/he is arrested within a reasonable time frame, and if the arrest is for a warrant, the officer will inform them of its contents.

C. Arraignment. Person jailed: county jail personnel with D.A. cooperation, routes prisoners through Intake Court on a daily basis

1. Officers may contact the D.A. on call for consultation and recommendations.

D. Pretrial Publicity.

1. The right to privacy/freedom of information is carefully balanced to negate publicity that may prejudice trials.

2. Release of information is controlled by Policy & Procedure 10.03: Open Records.

3. Information released will be minimal, limited to facts of the incident without opinion/anticipated conclusions. No information is released that may jeopardize an ongoing investigation, witnesses or statements, victims, or deceased parties without next of kin notification.

III. INFORMING THE ARRESTEE (WILEAG CORE 15-6.3.6)

Upon making an arrest, either on or off-duty, the arresting officer shall inform the arrestee as soon as practicable of the nature of the offense or warrant for which they are being arrested.

A. Arrestees shall be advised of their Miranda rights before an interrogation using the department issued form/card.

B. Arrestees must waive the Miranda rights before an interrogation can begin.

1. The waiver must be clearly stated to interrogating arrestees.

2. If the arrestee does not waive Miranda, no questioning shall be conducted beyond necessary booking procedures.

3. If the arrestee initially waives the Miranda right to counsel but later decides to reassert it, questioning must cease immediately regarding the crime for which the arrest was made, for any other crime, or by any other law enforcement agency unless:

a. An attorney representing the arrestee is present during questioning.

b. The arrestee voluntarily initiates a further interview, or

c. The arrestee has been subject to a break in custody of 14 days or more.

**THE BILL OF RIGHTS
UNITED STATES CONSTITUTION
FIRST TEN AMENDMENTS**

AMENDMENT ONE

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition Government for a redress of grievances.

AMENDMENT TWO

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT THREE

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT FOUR

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT FIVE

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT SIX

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

AMENDMENT SEVEN

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the

common law.

AMENDMENT EIGHT

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT NINE

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT TEN

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

MIRANDA RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can and will be used against you in court.

You have the right to talk to a lawyer before questioning and have the lawyer with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be appointed for you without charge prior to any questioning.

If you decide to start answering questions at this time, you can stop anytime during the questioning.

WAIVER OF RIGHTS

I have read, or have had read to me, this statement of my rights.

I understand what my rights are.

I am willing to answer questions at this time.

I do not want a lawyer at this time.

I understand and know what I am doing.

Michael Meeusen
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

Initial 06/01/2015