



# POLICY & PROCEDURES

## HOLMEN POLICE DEPARTMENT

SUBJECT: **ARMED CITIZEN ENCOUNTERS**

NUMBER: 1.18

SCOPE: ALL DEPARTMENT PERSONEL

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### **PURPOSE**

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The purpose of this policy is to establish procedures for (1) enforcing the concealed carry laws and (2) contacts with persons who are, or thought to be, armed.

### **POLICY**

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It is the policy of the Holmen Police Department to enforce all laws governing weapons possession and to abide by the privileges granted by the 2<sup>nd</sup> Amendment. However, officers are authorized to take reasonable action to protect themselves and others from potential threats. An officer who comes into contact with a person possessing a handgun should exercise caution and good judgment, while remembering that not everyone who carries a handgun is necessarily a threat or a criminal. Whether an officer's actions are reasonable can depend on the totality of the circumstances, such as the person's demeanor, the location, time of day or night, and other factors.

### **DEFINITIONS**

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"Illegal weapon" means any weapon that's possessed contrary to law.

"Open Carry" means a knife, handgun, rifle or shotgun in plain view while in a holster or sling. Carrying any weapon in the hand is considered "brandishing" and is not permissible. A concealed carry license is not required.

"Schools" in this Policy refers to within the School District of Holmen, and any future public, parochial or private school that provides educational programming for grades 1-12.<sup>1</sup>

"Weapon" means, for purposes of this Policy, any weapon that a Wisconsin license holder is authorized to carry concealed. These are a handgun, electric weapon, a knife (other than a switchblade), and a billy club.<sup>2</sup>

## **I. LEGAL REQUIREMENTS**

### **A. Open Carry- General Provisions**

1. Except for the limitations shown below, it is not illegal per se to go armed with a knife, handgun, shotgun or rifle in plain view and without a permit. Persons openly carrying should not be detained unless an officer has reasonable suspicion that the person has committed or is about to commit a crime.

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<sup>1</sup> 948.605(1)(b), 948.61(1)(b).

<sup>2</sup> 175.60(1)(j)

- a. An officer may engage the person in a voluntary conversation regarding the circumstances of the carry. The person is not obligated to answer questions, including providing identification, and must be allowed to leave.
2. An officer may detain and question a person if there's reasonable suspicion the person has committed or is about to commit a crime; known to be a convicted felon; known to be prohibited by law or Court Order from possessing the weapon; or engaged in threatening behavior or disorderly conduct, including openly carrying an illegal weapon or brandishing any weapon.
  - a. Open carry alone does not constitute Disorderly Conduct.
  - b. An electric weapon cannot be carried openly without a concealed carry license.
  - c. The totality of the circumstances is an important element of what is reasonable suspicion.
3. **In a vehicle**, keeping a loaded, uncased handgun is permitted if not concealed; loading a handgun in a vehicle is also permitted. Long weapons must be unloaded even if the person has a concealed carry license.<sup>3</sup> Electric weapons must be cased and out of reach.<sup>4</sup>
4. It is illegal to openly carry any weapon, with or without a concealed carry license, **in the Holmen Police Department**.<sup>5</sup>
5. **Schools:** see 'C'
6. **Taverns:** See 'D'
7. **Village Property:** See 'E'
8. **Private Property:** See 'F'

#### **B. Concealed Carry with License (General Provisions)**

1. A person carrying a concealed weapon must display the concealed carry license and driver's license or state ID upon the request of an officer acting in his or her official capacity. <sup>6</sup>
  - a. **A Wisconsin resident** must have a concealed carry license issued by this state; licenses from other states are not valid.
  - b. **An out-of-state resident** may use that state's license if approved by the Department of Justice.<sup>7</sup> The licensee must be at least 21 years of age regardless of the issuing state's policy.<sup>8</sup> Even if the out-of-state license includes a photo, the person must still produce a separate photo driver's license or state ID that is substantially similar to those issued by this state.<sup>9</sup>
    - i. **States approved by DOJ:** Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Tennessee, Texas, Utah, Washington, Wyoming, U.S. Virgin Islands, Puerto Rico
  - c. A driver's license or state ID card is valid as photo identification even if the person's motor vehicle operating privilege is revoked, suspended, or disqualified and the person is a resident of Wisconsin. A driver's license or ID card is not valid if expired, cancelled, denied, surrendered, or voided.

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<sup>3</sup> 167.32(2)(b) and (c).

<sup>4</sup> 941.295(2r)

<sup>5</sup> 175.60(16)(a)

<sup>6</sup> 175.60(2g)(c)

<sup>7</sup> 15.60((1)(f) and (2g)(a).

<sup>8</sup> 175.60(1)(g)

<sup>9</sup> 175.60(1)(h)

2. A person found carrying a concealed weapon without a license, or a license holder found carrying a weapon that's not authorized by law, is guilty of carrying a concealed weapon.
3. A concealed carry license does not relieve the licensee from obeying other existing laws governing the conduct of individuals and the use of weapons.
4. A concealed carry license does not confer new or additional rights to exercise self-defense or defense of others as provided for by law.
5. The concealed carry license does not have a requirement that it can only be used for lawful purposes. Consequently, a licensee who uses the weapon to commit a crime can't be charged with carrying a concealed weapon.
6. **A former law enforcement officer** may carry a concealed weapon if in possession of any of the following<sup>10</sup>:
  - a. A concealed carry license.
  - b. A photo ID issued by the former officer's agency and a certification card that shows:
    1. The type of firearm the former law enforcement officer is certified to carry.
    2. The former law enforcement officer has been found by a certified firearms instructor to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type established by the law enforcement agency from which the former law enforcement officer separated.
    3. The date on which the firearms training qualification was made and an expiration date that is 12 months later than that date.
    4. That, due to the firearms training, the former law enforcement officer is qualified to carry a concealed firearm. The officer is only entitled to carry that specific firearm, and may not carry an electric weapon, billy club, or knife, as is the case with a conventional concealed carry license.
  - c. A photo ID issued by the law enforcement agency from which the former officer separated from service that indicates that within the 12 months preceding the date the on which the former officer is carrying concealed, that he or she was tested or otherwise found by that law enforcement agency to meet the standards for qualification in firearms training that the agency sets for active duty officers to carry a firearm of the same type being carried by the former officer. The officer is only entitled to carry that specific firearm, and may not carry an electric weapon, billy club, or knife, as is the case with a conventional concealed carry license.

### C. Schools<sup>11</sup>

1. On School Grounds
  - a. It is illegal to carry a firearm or dangerous weapon on school grounds, with or without a concealed carry license, with the following exceptions:
    - (1) For use in a program approved by a school in the school zone.<sup>12</sup>
    - (2) In accordance with a contract entered into between the school and the individual or an employer of the individual.<sup>13</sup>
    - (3) By a law enforcement officer acting in his or her official capacity.<sup>14</sup>
    - (4) Off duty officer in good standing with their respected department.
    - (5) Former officer/out of state officer in good standing able to conceal carry.

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<sup>10</sup> 941.23(2)(c)

<sup>11</sup> Only exceptions applicable to schools in the Village of Holmen are listed.

<sup>12</sup> 948.605(2)(b)1m

<sup>13</sup> 948.605(2)(b)1m

<sup>14</sup> 948.605(2)(b)1m

Please refer to Wisconsin Act 23 senate bill 70 for complete guidelines.  
<https://docs.legis.wisconsin.gov/2015/related/acts/23>

- (6) The firearm is not loaded and is encased or in a locked firearms rack that is on a motor vehicle.<sup>15</sup>
  - (7) By a state-certified commission warden acting in his or her official capacity.<sup>16</sup>
2. Within 1000' Feet of School Grounds<sup>17</sup>
    - a. It is illegal to carry a firearm within 1000' of school grounds unless the person has a valid Wisconsin concealed carry license, an out-of-state license, or is subject to one of the exceptions (above) for carrying on school grounds.
    - b. It is lawful on private property that is not part of school grounds

#### **D. Taverns and Other Class B Establishments** <sup>18</sup>

1. No one may possess a handgun in a tavern or any other establishment with a license to sell alcohol beverages for consumption on-site unless they have a Wisconsin concealed carry license or valid out-of-state license; are a law enforcement officer; a correctional officer in the line of duty; a member of the US armed forces or national guard in the line of duty; a private security person meeting certain criteria; or the tavern licensee, owner or manager or their authorized employee or agent.
2. A person who is permitted to carry a weapon into a Class B establishment may not consume alcohol beverages on the premises.<sup>19</sup>
3. It's a crime for any person to possess a firearm while under the influence of intoxicants,<sup>20</sup> which has been defined as materially impairing the ability to handle a firearm [after] consuming "an amount of alcohol to cause the person to be less able to exercise clear judgment and steady hand..."<sup>21</sup>

#### **E. Village Property**

1. Unless posted, weapons are permitted in village parks and buildings, except for the Police Department.
2. The Village Board may promulgate rules for posting village buildings and other Village property as permitted by statute.

#### **F. Private Property**

1. A person may carry a weapon, including an electric weapon, whether open or concealed, in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies, with or without a concealed carry license. <sup>22</sup> The person may not violate other laws such as illegal discharge, reckless use, etc.
2. The owner of private property can prohibit weapons by giving verbal notice or by the posting of signs in accordance with statute. <sup>23</sup>

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<sup>15</sup> 948.605(2)(b)3a and b

<sup>16</sup> 948.605(2)(b)2m

<sup>17</sup> 968.605(2)(b)1,2,3m and 948.605(2)(b)1r

<sup>18</sup> 941.237(2) and (3)(a)-(cx).

<sup>19</sup> 941.237(3)(cx)

<sup>20</sup> 941.20(1)(b)

<sup>21</sup> WI Jury Instruction-CRIMINAL 1321

<sup>22</sup> 941.23(2)(e) and 941.295(2)(d)2.

<sup>23</sup> 943.13(1m)(c)

- a. A person who rents an apartment or condominium unit, or is visiting a condominium, can be cited for violating a notice by the apartment owner or condominium association regarding weapon possession in common areas.
- b. The owner of a condominium unit has an ownership interest in the common areas and cannot be cited for violating a posting; it's a civil matter between the person and the condo association.

## II. POLICE PROCEDURE

### A. Open Carry

1. Persons openly carrying a weapon should not be detained unless an officer has reasonable suspicion that the person has committed or is about to commit a crime.
  - a. Under the Community Caretaker Doctrine, an officer may detain and question someone whose behavior could cause a reasonable person to believe that the person is a danger to himself or others. However, this behavior cannot be the mere act of carrying a weapon.
2. Although an officer may ask such things as why the weapon is being carried, ask the person for identification, or ask to inspect the weapon, the person is not obligated to answer and may not be coerced into doing so.

### B. Concealed Carry

1. Officers can ask a citizen whether he/she is a CCW license holder. The officer may request a showing of the CCW license if the officer is acting in an official capacity and with lawful authority. The officer does not need reasonable suspicion, or probable cause, to ask a lawfully stopped or detained citizen about his CCW status.
2. If a person found in possession of a concealed weapon claims to have a concealed carry license but can't produce it, the officer may run a TIME inquiry to confirm that the person has a valid Wisconsin license.<sup>24</sup> Some states can provide this information via NLETS inquiry through Dispatch. The person should be cited for not carrying the permit, but the weapon should not be seized.
3. A person in possession of a concealed weapon who has not been issued a concealed carry license should be cited or arrested for carrying a concealed weapon, and the weapon should be seized. This includes when a person can't produce the license and a computer check is inconclusive.

### C. License Data Base and Confidentiality

1. The license data base may only be used to confirm that a license or certification card produced by an individual at the request of a law enforcement officer is valid; 2) if an individual claims to hold a valid license or law enforcement certification but does not have his or her license document or law enforcement certification card with him or her, to confirm that the individual holds a valid license or certification card; and 3) to investigate whether a person submitted an intentionally false statement in a license application or renewal.<sup>25</sup>
  - a. It's a crime for a law enforcement officer to access the data base for any other reason. For example, if someone reports that a person is carrying a concealed weapon, the officer must contact the person to determine if he or she has a license; the data base cannot be accessed for this purpose.
  - b. If a person is found carrying a concealed weapon after being arrested for an offense other than concealed carry and that person refuses to either provide a license or state if he or she has one, the person should

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<sup>24</sup> 175.60(12)(b)1b

<sup>25</sup> 175.60(12g)(a) and (19).

be cited or referred to the District Attorney for carrying a concealed weapon.

2. Information regarding licenses is not considered a public record and must be deleted from department reports prior to release. The department may not store or maintain information regarding an individual that was obtained from the state data base, based on the individual's status as a licensee or holder of a certificate card. The department may not sort or access information regarding vehicle stops, investigations, civil or criminal offenses, or other activities involving it based on the status as licensees or holders of certification cards of any individuals involved.<sup>26</sup>

#### **D. Weapons Seizure**

1. Officers are authorized to impound any weapon, regardless of the legality of the possession, if the officer reasonably believes that the person is not capable of adequately safeguarding it. This includes anytime a person is being transported by Holmen Police Department.
  - a. Weapons seized under these circumstances should be inventoried as soon as possible, and should be returned when the owner is capable of accepting custody of them.
2. For the safety of the officer and the weapon owner, no person other than a law enforcement officer shall be allowed inside a Holmen Police Department vehicle while in possession of a weapon.
  - a. The officer should explain why this is necessary and advise the person that the weapon will be returned as soon as the owner leaves the police vehicle or police station.
  - b. If the person refuses to voluntarily give up the weapon, the person shall not be allowed in a police vehicle.
  - c. The weapon should be placed in one of the plastic property bags that are supplied to each squad. The weapon can be locked in the owner's trunk, the squad trunk, or any place that allows for disarming the person while safeguarding the property and preventing it from being handled by any third party.
  - d. Due to the variety of weapons that might be encountered, the weapon should be handled as little as possible and the officer should not attempt to unload it.

#### **E. Tactical Responses**

1. General
  - a. "High risk contacts" will be handled accordingly regardless of whether the weapon was concealed or open, or the person has a concealed carry license.
2. Person is seen with a concealed weapon; no threatening behavior.
  - a. Two officers should be present.
  - b. Observe if disorderly or other lawful behavior is taking place, subject is displaying abnormal behavior, or subject is touching or handling the weapon. If none are observed, the officers do not have the authority to demand to see the person's concealed carry license. While a consensual contact can be made, the benefits of doing so, especially in a public place, must be weighed carefully, since the person doesn't have to cooperate.
3. Cooperative subject under arrest; is carrying a concealed weapon and has a license; is not touching the weapon.
  - a. Two officers should be present.

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<sup>26</sup> 175.60(12g)(b).

- b. If the officer is within an arm's length of the suspect, tactically handcuff the suspect and remove the weapon.
  - c. If outside of an arm's length of the suspect, verbally stabilize the suspect using the tactical handcuffing position before moving in to handcuff. Remove the weapon during the search.
  - d. Consider the severity of the offense, type of crime, physical positioning.
  - e. The preferred method is to have each officer stabilize each arm of the suspect to reduce the suspect's ability to access the weapon.
  - f. One officer may choose to index his/her sidearm while the other officer moves in to deliver a contact shot if justification for deadly force becomes necessary.
4. A detained subject; information still being gathered (example: OWI investigation); suspect is asked and admits to possessing a concealed weapon.
- a. Two officers should be present.
  - b. Make it clear to the subject that you wish to remove his/her weapon, and say, "You are not under arrest; this is for your safety and mine". Note this in your report.
  - c. If the officer is within arm's length of the suspect, tactically handcuff the suspect and remove the weapon.
  - d. If the officer is outside of arm's length of the suspect, verbally stabilize the suspect using the tactical handcuffing position before moving in to handcuff and remove the weapon.
  - e. For a frisk/pat-down of a subject to be warranted, the officer must reasonably suspect that he or she, or another person, is in danger of physical injury from the suspect. For this reason, an officer must articulate in his or her report the reason for the pat-down. Simply legally possessing the weapon alone is not enough on its own.
  - f. The preferred method is to have each officer stabilize each arm of the subject to significantly reduce the subject's ability to access the weapon.
  - g. The officer can return to processing the subject through field sobriety exercises, or continue the investigation, before determining if there is probable cause for an arrest.
5. An uncooperative suspect (with probable cause) or suspect who is believed to be a threat.
- a. At least two officers should be present.
  - b. Inform the person that they are under arrest.
  - c. Direct the subject to a prone position.
  - d. If the subject does not comply with verbal commands, the officer should increase the level of force as necessary to obtain compliance. This will include rising from the mode of dialog to: control alternatives, protective alternatives, or deadly force. An officer is not required to follow the order of force in intervention options. The level of force used should be objectively reasonable, but the minimal amount required gaining compliance.
  - e. Properly handcuff and search the individual.
  - f. Remove, unload, and secure the firearm.
  - g. Complete the contact and investigation as normal.

