

1999 DRAFTING REQUEST

Bill

Received: 0712211999

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Tom Sykora (608) 266-1194**

By/Representing: **Sarah Jermstead**

This file may be shown to any legislator: NO

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Transportation - miscellaneous**

Extra Copies: **RJM, TNF**

Pre Topic:

No specific pre topic given

Topic:

Fireworks arrest authority of state troopers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
I?	nilsepe 09/16/1999			_____			S&L
/1	isagerro 10/07/1999	csicilia 10/13/1999	jfrantze 10/13/1999	_____	lrb-docadmin 10/13/1999	lrb-docadmin 10/27/1999	

FE Sent For:

<END>

G 11-19-99

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I?	nilsepe	1 cjs 10/7/99	10/13	10/13			

FE Sent For:

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-LEGISLATIVE REFERENCE BUREAU

BILL REQUEST FORM

Legal Section, 5th Floor, 100 N. Hamilton St,
(608) 266-3561

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: 7/15/99	Legislator or agency requesting this draft: Rep. Tom Sykora
Name/phone number of person submitting request: Tom Sykora 266-1194	
Persons to contact for questions about this draft (names and phone numbers please): Sara Jermstad 266-1195	
Describe the problem, including any helpful examples. How do you want to solve the problem? Clarify the law to as the enforcement capabilities of law enforcement agents, in particular state troopers, when they encounter drivers w/ illegal fireworks. See attached email document for more info.	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy. see attached copy of statute	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO

If yes, anyone who asks? YES NO

Any legislator? YES NO ONLY the following persons:

Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?

YES NO If yes, please sign your name here:



. Jermstad, Sara

From: Tim Scobie [TScobie@co.chippewa.wi.us]
Sent: Friday, June 25, 1999 4:55 PM
To: Rep.Sykora
Subject: Fire works issues

I just talked to one of the Troopers from WPS-6. He had a great idea. State Patrol officers sometimes make contact with drivers carrying illegal fireworks. As sec 345 of the statutes reads now, they can only write UTCs for traffic violations and carrying an illegal firearm. Why only those two situations, I have no idea.

Why not change the wording of s. 345.1 1(1s) to:

The uniform traffic citation shall be used by a traffic officer employed under s. 110.07 for a violation of s. 167.31 (2)(b), (c) or (d) or **167.10(9)(a), (b), (c), or (g)** when committed on a highway.

This would allow the Troopers to write simple traffic tickets for the illegal possession of fireworks instead of requiring sending of a report to the DA and the DA then filing a civil complaint. The criminal provision would also be simplified in that there would be a ticket issued like any other criminal traffic matter.

Let me know what you think. I'll forward this email to District 6 of the State Patrol. Trooper Hotvedt thought of this.

CHAPTER 167

SAFEGUARDS OF PERSONS AND PROPERTY

- 167.07 Manufacture, storage and distribution of matches.
- 167.10 Regulation of fireworks.
- 167.11 Hazardous substances.
- 167.12 Safety appliances.
- 167.13 Operation.
- 167.14 Sale regulated.
- 167.151 Unlawful operation of corn shredders
- 167.18 Threshing machine joints to be covered.
- 167.19 Farm machinery storage.

- 167.20 Stairway guards.
- 167.22 Cigars not to be manufactured in basements.
- 167.25 Refrigerators and iceboxes.
- 167.26 Leaving unguarded ice holes.
- 167.27 Capping and tilling wells or similar structures.
- 167.30 UK of firearms, etc., near park, etc.
- 167.31 Safe use and transportation of firearms and bows
- 167.32 Safety at sporting events.

167.07 Manufacture, storage and distribution of matches. (1) No person may manufacture, store, offer for sale, sell, or otherwise dispose of or distribute, any of the following:

- (a) White phosphorus, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches".
- (b) White phosphorus, double-dipped, strike-anywhere matches, or other type of double-dipped matches, unless the bulb: or first dip of such match is composed of a so-called safety or inert composition, nonignitable on an abrasive surface..
- (c) Matches which, when packed in a carton of 500 approximate capacity and placed in an oven maintained at a constant temperature of 200 degrees Fahrenheit, will ignite in 8 hours.
- (d) Blazer, or so-called wind matches, whether of the so-called safety or strike-anywhere type.

(2) (a) No person may do any of the following:

- 1. Offer for sale, sell or otherwise dispose of or distribute any matches, unless the package or container in which such matches are packed bears plainly marked on the outside thereof the name of the manufacturer and the brand or trademark under which such matches are sold, disposed of or distributed.
- 2. Open more than one case of each brand of matches of any type or manufacture at any one time in a retail store where matches are sold or otherwise disposed of.
- 3. Keep loose boxes or paper-wrapped packages of matches on shelves or stored in a retail store at a height exceeding 5 feet from the floor.

(b) All matches stored in warehouses, except manufacturers' warehouses at the place of manufacture, that contain automatic sprinkler equipment shall be subject to each of the following conditions:

- 1. The matches shall be kept only in properly secured cases.
- 2. The matches shall not be piled to a height exceeding 10 feet from the floor.
- 3. The matches shall not be stored within a horizontal distance of 10 feet from any boiler, furnace, stove or other similar heating apparatus.
- 4. The matches shall not be within a horizontal distance of 25 feet from any explosive material kept or stored on the same floor.

(c) All matches shall be packed in boxes or suitable packages, containing not more than 700 matches in any one box or package. If more than 300 matches are packed in any one box or package, the matches shall be arranged in 2 nearly equal portions, with the heads of the matches in the 2 portions placed in opposite directions. All boxes containing 350 or more matches shall have placed over the matches a center holding or protecting strip, made of chipboard, not less than 1.25 inches wide and the strip shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it.

(3) All match boxes or packages shall be packed in strong shipping containers or cases; maximum number of match boxes

or packages contained in any one shipping container or case, shall not exceed the following number:

Number of Boxes	Nominal Number of Matches per Box
One-half gross	700
One gross	500
Two gross	400
Threegross	300
Fivegross	200
Twelve gross	100
Twenty gross	over fifty and under 100
Twenty-five gross	under 50

(4) No shipping container or case constructed of fiber board, corrugated fiber board, or wood, nailed or wirebound, shall exceed a weight, including its contents, of 75 pounds; and no lock-cornered wooden case containing matches shall have a weight, including its contents, exceeding 85 pounds; nor shall any other article or commodity be packed with matches in any such container or case; and all such containers and cases in which matches are packed shall have plainly marked on the outside of the container or case the words "Strike-Anywhere Matches" or "Strike-on-the-Box Matches".

(5) Any person, association or corporation violating this section shall be fined for the first offense not less than \$5 nor more than \$25, and for each subsequent violation not less than \$25.

History: 1997 a. 254.

167.10 Regulation of fireworks. (1) DEFINITION. In this section, "fireworks" means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:

- (a) Fuel or a lubricant.
- (b) A firearm cartridge or shotgun shell.
- (c) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
- (d) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
- (e) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
- (f) A toy snake which contains no mercury.
- (g) A model rocket engine.
- (h) Tobacco and a tobacco product.
- (i) A sparkler on a wire or wood stick not exceeding 36 inches in length that is designed to produce audible or visible effects or to produce audible and visible effects.

(j) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.

(k) A **fuseless** device that is designed to produce audible or visible effects or audible and visible effects, and that contains less than one-quarter gram of explosive mixture.

(L) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects, or audible and visible effects.

(m) A cylindrical fountain that consists of one or more tubes and that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

(n) A cone fountain that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

(2) **SALE** No person may sell or possess with intent to sell fireworks, except:

(a) To a person holding a permit under sub. (3) (c);

(b) To a city, village or town; or

(c) For a purpose specified under sub. (3) (b) 2. to 6.

(3) **USE.** (a) No person may possess or use fireworks without a user's permit from the mayor of the city, president of the village or chairperson of the town in which the possession or use is to occur or from an official or employe of that municipality designated by the mayor, president or chairperson. No person may use fireworks or a device listed under sub. (1) (e) to (g) or (i) to (n) while attending a fireworks display for which a **permit** has been issued to a person listed under par. (c) 1. to 5. or under par. (c) 6. if the display is open to the general public.

(b) Paragraph (a) does not apply to:

1. **The** city, village or town. but municipal fire and law enforcement **officials** shall be notified of the proposed use of fireworks at least 2 days in advance.

2. The possession or use of explosives in accordance with rules or general orders of **the department** of commerce.

3. The disposal of hazardous substances in accordance with rules adopted by the department of natural resources.

4. The possession or use of explosive or combustible materials in any manufacturing process.

5. The possession or use of explosive or combustible materials in connection with classes conducted by educational institutions.

6. A possessor or manufacturer of explosives in possession of a license or permit under 18 USC 841 to 848 if the possession of the fireworks is authorized under the license or permit.

7. Except as provided in par. (bm), the possession of fireworks in any city, town or village while transporting the fireworks, to a city, town or village where the possession of the fireworks is authorized by permit or ordinance.

(bm) Paragraph (a) applies to a person transporting fireworks under par. (b) 7. if, in the course of transporting the fireworks through a city, town or village, the person remains in that city, town or village for a period of at least 12 hours.

(c) A permit under this subsection may be issued only to the following:

1. A public authority.

2. A fair association.

3. An amusement park.

4. A park board.

5. A civic organization.

6. A group of resident or nonresident individuals.

7. An agricultural producer for the protection of crops from predatory birds or animals.

(d) A person issued a permit for crop protection shall erect appropriate warning signs disclosing the use of fireworks for crop protection.

(e) The person **issuing** a permit under this subsection may require an indemnity bond with good and sufficient sureties or policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit. The bond or policy, if required, shall be taken in the name of the city, village or town wherein the **fireworks** are to be used, and any person injured thereby may bring an action on the bond or policy in the person's own name to recover the damage the person has sustained, but the aggregate liability of the surety or insurer to all persons shall not exceed the amount of the bond or policy. The bond or policy, if required, together with a copy of the permit shall be filed in the office of the clerk of the city, village or town.

(f) A permit under this subsection shall specify all of the following:

1. The name and address of the permit holder.

2. The date on and after which fireworks may be purchased.

3. The kind and quantity of fireworks which may be purchased.

4. The date and location of permitted use.

5. Other special conditions prescribed by ordinance.

(g) A copy of a permit under this subsection shall be given to the municipal fire or law enforcement **official** at least 2 days before the date of authorized use.

(h) A permit under this subsection may not be issued to a minor.

(4) **OUT-OF-STATE AND IN-STATE SHIPPING.** This section does not prohibit a resident wholesaler or **jobber** from selling fireworks to a person outside of this state or to a person or group granted a permit under sub. (3) (c) 1. to 7. A resident wholesaler or jobber that ships the fireworks sold under this subsection shall package and ship the fireworks in accordance with applicable state and federal law by, as defined in s. 194.01 (1), (2) and (11). common motor carrier, contract motor carrier or private motor carrier.

(5) **LOCAL REGULATION.** (a) Subject to pars. (b) to (e), a city, village, town or county may enact an ordinance for any of the following:

1. Defining "fireworks" to include all items included under sub. (1) (intro.) and anything under sub. (1) (e), (f), (i), (j), (k), (L), (m) and (n).

2. Prohibiting the **sale**, possession or use, as defined by ordinance, of fireworks.

3. Regulating the sale, possession or use, as defined by ordinance, of fireworks.

(b) An ordinance under par. (a) may not be less restrictive in its coverage, prohibition or regulation than this section but may be more restrictive than this section.

(d) A county ordinance enacted under par. (a) does not apply and may not be enforced within any city, village or town that has enacted or enacts an ordinance under par. (a).

(e) Notwithstanding par. (a) or par. (b), no city, village, town or county may enact an ordinance that prohibits the possession of fireworks in that city, town, village or county while transporting the fireworks to a city, town, village or county where the possession of the fireworks is authorized by permit or ordinance.

(6) **STORAGE AND HANDLING.** (a) No wholesaler, dealer or jobber may store or handle fireworks in premises unless the premises are equipped with fire extinguishers approved by the fire **official** of the municipality where the premises are located.

(b) No person may smoke where fireworks are stored or handled.

otherwise operated on a special route for the purpose of transporting pupils to or from a public or private school as provided in s. 340.01 (56) (a) 1. may be used for that purpose unless the motor bus satisfies safety and operation standards specified by the department under par. (b).

(b) The department shall promulgate and enforce a rule requiring that a motor bus under par. (a) satisfy safety standards providing an equivalent level of safety as the safety standards specified by the department for a school bus having the same gross vehicle weight rating and operation standards specifying that thereadorn of a motor bus under par. (a) may not be used for the entry or exit of pupils, except in an emergency, except that the department may not promulgate a rule which is in conflict with federal law, which requires the motor bus to be painted in accordance with s. 347.44 (1) or which requires the motor bus to be equipped with flashing red warning lights as specified in s. 347.25 (2).

(2) Any person who violates this section or rules promulgated under this section may be required to forfeit not less than \$50 nor more than \$200.

History: 1987 8.235.

110.065 Traffic academy. The secretary may establish and operate an academy for the training of state, county and local traffic patrol officers and other related personnel and make rules and regulations for the conduct thereof. The secretary shall establish and periodically revise a reasonable scale of tuition charges. The tuition for personnel other than employees of the department shall be paid by their respective departments or governing bodies and shall be deposited in the appropriation account under s. 20.395 (5) (dh). The secretary shall consult appropriate state, county and local authorities concerning the establishment and operation of the academy and the determination of tuition charges. State agencies shall cooperate with the secretary in providing information and instructional services for the academy.

History: 1977 c. 29 s. 1654 (1), (7) (a), (c); 1997 a. 27.

110.07 Traffic officers; powers and duties. (1) (a) The secretary shall employ not to exceed 385 traffic officers. Such traffic officers, in addition to the person designated to head them whose position shall be in the classified service, shall constitute the state traffic patrol, and shall:

1. Enforce and assist in the administration of this chapter and chs. 166, 194, 218, 341 to 349 and 351, and ss. 23 33, 125.07 (4) (b), 125.085 (3) (b), ~~167.31 (2) (b) to (d)~~ and 287.81 and ch. 350 where applicable to highways or orders or rules issued pursuant thereto.

2. Have the powers of sheriff in enforcing the laws specified in subd. 1. and orders or rules issued pursuant thereto.

3. Have authority to enter any place where vehicles subject to this chapter, ss. 167.31 (2) (b) to (d) and 287.81 and chs. 194, 218 and 341 to 350 are stored or parked at any time to examine such vehicles, or to stop such vehicles while en route at any time upon the public highways to examine the same and make arrests for all violations thereof.

(b) All municipal judges, judges, district attorneys and law enforcement officers shall assist in enforcing this chapter, ss. 167.31 (2) (b) to (d) and 287.81 and chs. 194, 218 and 341 to 351, and orders or rules issued pursuant thereto and shall report to the department the disposition of every uniform traffic citation issued for cases involving those chapters.

(2) The traffic officers employed pursuant to this section shall constitute a state traffic patrol to assist local enforcement officers wherever possible in the regulation of traffic and the prevention of accidents upon the public highways.

(2m) In addition to the primary powers granted by subs. (1) and (2), any officer of the state traffic patrol shall have the powers of a peace officer under s. 59.28, except that the officer shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty. A state traffic officer shall at all times be avail-

able as a witness for the state but shall not conduct investigations for crimes under chs. 939 to 948. The primary duty of a state traffic officer shall be the enforcement of chs. 340 to 351 or of any other law relating to the use or operation of vehicles upon the highway. No state traffic officer shall be used in or take part in any dispute or controversy between employer or employee concerning wages, hours, labor or working conditions; nor shall any such officer be required to serve civil process. The department may assign state traffic officers to safeguard state officers or other persons.

(3) The secretary may employ inspectors who may not wear the uniform of the state patrol, whose duties shall be to enforce and assist in administering s. 346.63, this chapter and chs. 194, 218, 340 to 345 and 347 to 351, s. 23.33, the inspection requirements of s. 121.555 (2) (b) and the requirements under s. 346.45 (4) for vehicles being used to transport hazardous materials. Such inspectors, in the performance of these duties, shall have the powers and authority of state traffic officers. For the purpose of death, disability and retirement coverage, such inspectors shall be subject to ch. 40 as is the state traffic patrol. Subject to sub. (5), the secretary may clothe and equip inspectors as the interest of public safety and their duties require.

(4) In addition to the primary powers granted by sub. (3), any inspector shall have the powers of a peace officer under s. 59.28, except that the inspector shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty. An inspector shall at all times be available as a witness for the state but shall not conduct investigations for crimes under chs. 939 to 948. The primary duty of an inspector shall be the enforcement of the provisions specified in sub. (3). No inspector may be used in or take part in any dispute or controversy between employer or employee concerning wages, hours, labor or working conditions; nor may an inspector be required to serve civil process. The department may assign inspectors to safeguard state officers or other persons.

(5) (a) In this subsection, "bulletproof garment" has the meaning given in s. 939.64 (1).

(b) Upon request of an officer of the state traffic patrol under sub. (1) or inspector under sub. (3), the department shall make available to the traffic officer or inspector a bulletproof garment that may be used in the performance of his or her duties under this section. The department shall equip a traffic officer or inspector with a bulletproof garment as soon as practicable after receipt of the request from the traffic officer or inspector under this paragraph, provided that each traffic officer or inspector who has made a request before September 1, 1997, shall be equipped with a bulletproof garment by that date.

History: 1971 c. 40.125; 1973 c. 90.146; 1975 c. 297; 1977 c. 29 ss. 1048, 1654 (7) (a), (c), 1656 (43); 1977 c. 305 s. 64; 1977 c. 418; 1979 c. 221; 1979 c. 333 s. 5; 1979 c. 361 s. 113; 1981 c. 96 s. 67; 1981 c. 390; 1983a.27; 1983 a. 175 s. 33; 1983 a. 191 s. 6; 1985 a. 29.36.63.332; 1987 a. 332 s. 64; 1989 a. 31, 167, 170, 240, 335, 359; 1993 a. 2.5; 1995 a. 201.227.341.

110.075 Motor vehicle inspection. (1) No person shall drive or move, or cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is not in conformity with the requirements of this section.

(2) When directed by any traffic officer or motor vehicle inspector, the operator of any motor vehicle shall stop and submit such motor vehicle to an inspection and such tests as are necessary to determine whether it meets the requirements of this section, or that its equipment is not in proper adjustment or repair, or in violation of the equipment provisions of ss. 110.05, 110.06, 110.063 and 110.064, ch. 347, or rules issued pursuant thereto. Such inspection shall be made with respect to the brakes, lights, turn signals, steering, horns and warning devices, glass, mirrors, exhaust system, windshield wipers, tires, and other items of equipment designated by the secretary.

(3) Upon determining that a motor vehicle is in conformity with sub. (2), traffic officers or motor vehicle inspectors shall issue to the operator an official inspection sticker which shall be

2. A summons may be served anywhere in the state and it shall be served by delivering a copy to the defendant personally or by leaving a copy at the defendant's usual place of abode with a person of discretion residing therein or by mailing a copy to the defendant's last-known address. It shall be served by a law enforcement officer.

3. The summons shall be in substantially the following form:

a. When issued by a judge:

STATE OF WISCONSIN,

.... County

State of Wisconsin

vs.

.... (Defendant)

THE STATE OF WISCONSIN TO SAID DEFENDANT:

A complaint, copy of which is attached, having been filed with me accusing the defendant of committing the crime of contrary to sec. Stats., and I having found that probable cause exists that the crime was committed by the defendant.

You, are, therefore, summoned to appear before Branch of the court of County at the courthouse in the City of to answer said complaint, on (year) at o'clock in the noon, and in case of your failure to appear, a warrant for your arrest will be issued.

Dated (year)

.... (Signature)

.... (Title)

b. When issued by a district attorney:

STATE OF WISCONSIN,

.... County

State of Wisconsin

vs.

.... (Defendant)

THE STATE OF WISCONSIN TO SAID DEFENDANT:

A complaint, copy of which is attached, having been made before me accusing the defendant of committing the crime of contrary to sec. Stats.

You, are, therefore, summoned to appear before Branch of the court of County at the courthouse in the City of to answer said complaint, on (year), at o'clock in the noon, and in case of your failure to appear, a warrant for your arrest may be issued.

Dated (year)

.... (Signature)

.... District Attorney

4. The complaint and summons may be on the same form. The summons shall be beneath the complaint. If separate forms are used, a copy of the complaint shall be attached to the summons.

(4) SERVICE (a) The warrant shall be directed to all law enforcement officers of the state. A warrant may be served anywhere in the state.

(b) A warrant is served by arresting the defendant and informing the defendant as soon as practicable of the nature of the crime with which the defendant is charged.

(c) An arrest may be made by a law enforcement officer without a warrant in the law enforcement officer's possession when the law enforcement officer has knowledge that a warrant has been issued. In such case, the officer shall inform the defendant as soon as practicable of the nature of the crime with which the defendant is charged.

(d) The law enforcement officer arresting a defendant shall indorse upon the warrant the time and place of the arrest and the law enforcement officer's fees and mileage therefor.

History: 1973 c. 12; 1975 c. 39, 41, 199; 1977 c. 449 ss. 480, 497; 1983a.535; Sup. Ct. Order. 141 W (2d) XIII (1987); 1987 a. 151; 1993 a. 486; 1997 a. 250.

Judicial Council Note. 1988: Sub. (1)(d) permits an arrest warrant or summons to be issued upon the basis of sworn recorded testimony received by telephone on

request of the person seeking the warrant or summons unless good cause to the contrary appears. The telephone procedure permits faster processing of the application, while preserving a record of the basis for subsequent review. (Re Order effective Jan. 1, 1988)

See note to 968.01, citing State v. Williams. 47 W (2d) 242, 177 NW (2d) 611.

A w-t was properly issued upon sworn testimony of a sheriff that an accomplice had confessed and implicated defendant, since reliable hearsay is permitted and a confession is not inherently untrustworthy. Okrasinski v. State, 51 W (2d) 210, 186 NW (2d) 314.

Where complaint alleged that reliable info-t procured sample of drugs from defendant's apartment, inference that informant observed defendant's possession of controlled substance satisfied Aguilar test. Scott v. State, 73 W (2d) 504, 243 NW (2d) 215.

968.05 Corporations 'or limited liability companies: summons in criminal cases. (1) When a corporation or limited liability company is charged with the commission of a criminal offense, the judge or district attorney shall issue a summons setting forth the nature of the offense and commanding the corporation or limited liability company to appear before a court at a specific time and place.

(2) The summons for the appearance of a corporation or limited liability company may be served as provided for service of a summons upon a corporation or limited liability company in a civil action. The summons shall be returnable not less than 10 days after service.

History: 1993 a. 112.

Cross-reference: See s. 973.17 for provision for &fault judgment against a corporation

968.06 Indictment by grand jury. Upon indictment by a grand jury a complaint shall be issued, as provided by s. 968.02, upon the person named in the indictment and the person shall be entitled to a preliminary hearing under s. 970.03, and all proceedings thereafter shall be the same as if the person had been initially charged under s. 968.02 and had not been indicted by a grand jury.

History: 1979 c. 291.

968.07 Arrest by a law enforcement officer. (1) A law enforcement officer may arrest a person when:

(a) The law enforcement officer has a warrant commanding that such person be arrested; or

(b) The law enforcement officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or

(c) The law enforcement officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or

(d) There are reasonable grounds to believe that the person is committing or has committed a crime.

(2) A law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer.

(3) If the alleged violator under s. 948.55 (2) or 948.60 (2) (c) is or was the parent or guardian of a child who is injured or dies as a result of an accidental shooting, no law enforcement officer may arrest the alleged violator until at least 7 days after the date of the shooting.

History: 1991 a. 139; 1993 a. 486.

If police have probable cause for arrest without a warrant they may break down a door to effect the arrest after announcing their purpose in demanding admission. The remedy for excessive force is not dismissal of the criminal charge. Nadolinski v. State, 46 W (2d) 259, 174 NW (2d) 483.

An arrest based solely on evidence discovered after an illegal search is invalid. State ex rel. Furlong v. Waukesha County Court, 47 W (2d) 515, 177 NW (2d) 333.

While probable cause for an arrest without a warrant requires that an officer have more than a mere suspicion, he does not need the same quantum of evidence necessary for conviction, but only information which would lead a reasonable officer to believe that guilt is more than a possibility, which information can be based in part on hearsay. State v. DiMaggio, 49 W (2d) 565, 182 NW (2d) 466.

An officer need not have a warrant in his possession to make a valid arrest. Schill v. State, 50 W (2d) 473, 184 NW (2d) 858.

An arrest is valid where defendant, when approached by the officer, volunteered the statement that he assumed they would be looking for him because he had been the last person to see the victim alive. Schenk v. State, 51 W (2d) 600, 187 NW (2d) 853.

Police have grounds to arrest without a warrant where they have information from a reliable informer that a crime is to be committed, where they check the information

of suspension. *State ex ml. Klingler & Schilling v. Baird*, 56 W(2d) 460.202 NW (2d) 31.

The burden of establishing the lack of reasonable and diligent efforts by the suspended deputy sheriff to seek other employment and the availability of such employment is on the employer. *State ex rel. Schilling & Klingler v. Baird*, 65 W (2d) 394, 222 NW (2d) 666.

Under s. 59.21 [now s. 59.26] (8)(b) deputies have tenure beyond their initial term of appointment under s. 59.21 (4). Deputies have civil service protections under sub. (8) (b) and protections under collective bargaining agreements not in conflict with the statutes. *Heitkemper v. Wirsing*, 194 W (2d) 182.533 NW (2d) 770 (1995). See also *Brown County Sheriff Dept. v. Employees Ass'n*, 194 W (2d) 266.533 NW (2d) 766 (1995).

Where a county has a civil service plan for deputy sheriffs, transfers may result in promotion, and such vacancies should be filled by examination and certification of 3 eligibles to the sheriff for appointment. 61 Atty. Gen. 10.

In counties where deputy sheriffs are under civil service under s. 59.21 (8) [now 59.26 (8)], the county board may provide job classifications for deputy sheriff positions which would form the basis of selection of competent personnel who could, on appointment by the sheriff, be assigned to perform duties on a felony squad on countywide basis. By means of s. 59.24 (l) [now s. 59.28 (l)], or by means of a posse comitatus, the sheriff could on a case-by-basis assert leadership, direction and control over the investigation of a crime in an area which has a police department and it is the duty of local police to cooperate. 61 Atty. Gen. 79.

Whereas a deputy sheriff must be a resident of the county for which appointed, ss. 59.24 (2) [now s. 59.28 (2)], 66.30, 66.305 and 66.315 would allow the deputy to serve in an adjacent county upon a request for mutual assistance. 62 Atty. Gen. 250.

A deputy sheriff appointed under s. 59.21 [now s. 59.26] (2) and (8) (a) must be a resident of the state and must, before qualifying and serving, be a resident of the county and must continue to maintain residency therein. 66 Atty. Gen. 315.

Section 63.065 is incorporated by reference into s. 59.21 (8) (a). 68 Atty. Gen. 124. This section does not affect a sheriff's power to call posse comitatus. 68 Atty. Gen. 334.

In counties that have imposed no local residency requirement, only deputy sheriffs or undersheriffs appointed under ss. 59.21 [now s. 59.26] (1) are required to be county residents at the time of initial employment. 80 Atty. Gen. 119.

59.27 Sheriff; duties. The sheriff of a county shall do all of the following:

(1) Take the charge and custody of the jail maintained by the county and the persons in the jail, and keep the persons in the jail personally or by a deputy or jailer.

(2) Keep a true and exact register of all prisoners committed to any jail under the sheriff's charge, in a book for that purpose, which shall contain the names of all persons who are committed to any such jail, their residence, the time when committed and cause of commitment, and the authority by which they were committed; and if for a criminal offense, a description of the person; and when any prisoner is liberated, state the time when and the authority by which the prisoner was liberated; and if any person escapes, state the particulars of the time and manner of such escape.

(3) Attend upon the circuit court held in the sheriff's county during its session, and at the request of the court file with the clerk thereof a list of deputies for attendance on the court. The court may by special order authorize additional deputies to attend when the court is engaged in the trial of any person charged with a crime. Except as otherwise provided in this section, the board shall establish the rate of compensation and the level of services to be provided. The sheriff or one or more deputies shall attend the court of appeals when it is in session in the sheriff's county. The state shall reimburse the county from the appropriation under s. 20.660 (1) for the actual salary paid to the sheriff or deputies for the service provided for the court of appeals.

(4) Personally, or by the undersheriff or deputies, serve or execute all processes, writs, precepts and orders issued or made by lawful authority and delivered to the sheriff.

(5) Deliver on demand to the sheriff's successor in office, when the sheriff's successor has qualified according to law, the jail and other property of the county and all prisoners in the jail, and all books, records, writs, processes, orders and other papers belonging to the sheriff's office and in the possession of the sheriff, undersheriff, jailer or deputies, except as provided in s. 59.33, and upon the delivery of these items the successor in office shall execute a receipt to the sheriff therefor.

(6) In counties having a population of 300,000 or more, assign one deputy, to be mutually agreed upon by the sheriff and the district attorney, to the office of the district attorney.

(7) Perform all other duties required of the sheriff by law.

(8) The sheriff is authorized to destroy all sheriff's dockets, daily jail records and cash books dated prior to 1901. It shall be the duty of the sheriff to retain and safely keep all such records for a period of 8 years, or a shorter period authorized by the public records board under s. 16.61 (3) (b), after which the records may be destroyed.

(9) When the sheriff is required to serve or execute a summons, order or judgment, or to do any other act, the sheriff shall be bound to do so in like manner as upon process issued to the sheriff, and shall be equally liable in all respects for neglect of duty; and if the sheriff is a party the coroner shall perform the service and all statutes relating to sheriffs shall apply to coroners where the sheriff is a party.

(10) To enforce in the county all general orders of the department of commerce relating to the sale, transportation and storage of explosives.

(11) Conduct operations within the county and, when the board so provides, in waters of which the county has jurisdiction under s. 2.04 for the rescue of human beings and for the recovery of human bodies.

(12) Before conducting a sale of foreclosed property, contact the clerk of the federal bankruptcy court to determine whether the court has granted a stay of relief on that property.

History: 1973 c. 157; 1977 c. 203, 418, 449; 1989 a. 248; 1991 a. 316; 1995 a. 27 ss. 3288, 3289, 9116 (5); 1995 a. 201 ss. 276 to 281; Stat. s. 1995 s. 59.27; 1995 a. 225 s. 156; 1997 a. 27.35.

Sheriff's powers and duties discussed. *Professional Police Ass'n v. Dane County*, 106 W (2d) 303.316 NW (2d) 656 (1982).

A sheriff's assignment of deputy to undercover drug investigation falls within constitutionally protected powers of the sheriff and could not be limited by a collective bargaining agreement. *Manitowoc Co. v. Local 986B*, 168 W (2d) 819.484 NW (2d) 534 (1992). See also *Washington County v. Deputy Sheriff's Association*, 192 W (2d) 728, 531 NW (2d) 468 (Ct. App. 1995).

Asheriff has authority to aid in a rescue on ice offshore in Lake Michigan. 60 Atty. Gen. 62.

Neither a sheriff nor his deputy can solicit or receive compensation not provided by law for official duties but a deputy, while off duty, can be employed as a private security officer. 61 Atty. Gen. 256.

Neither the sheriff nor the county board may "privatize" the jailer function under sub. (l). 77 Any. Gen. 94.

59.28 Peace maintenance; powers and duties of peace officers, cooperation. (1) Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties and quiet and suppress all affrays, routs, riots, unlawful assemblies and insurrections; for which purpose, and for the service of processes in civil or criminal cases and in the apprehending or securing any person for felony or breach of the peace they and every coroner and constable may call to their aid such persons or power of their county as they consider necessary.

(2) County law enforcement agencies may request the assistance of law enforcement personnel or may assist other law enforcement agencies as provided in ss. 66.305 and 66.315.

History: 1995 a. 201 s. 282; Stats. 1995 s. 59.28.

Suppression of evidence is not required when a law enforcement officer obtains evidence outside his or her jurisdiction. Any jurisdictional transgression violates the appropriate jurisdiction's authority not the defendant's rights. *State v. Mieritz*, 193 W (2d) 371.534 NW (2d) 632 (Ct. App. 1995).

Section 165.85(4) (b) governs the terms of employment of a probationary sheriff's deputy so that the discipline procedures under s. 59.21 (8) (b) (now s. 59.28 (8) (b)) do not apply and an applicable collective bargaining agreement controls. *Hussey v. Outagamie County*, 201 W (2d) 14,548 NW (2d) 848 (Ct. App. 1996).

A state traffic patrol officer should not, except in extreme emergencies, be impressed for service as past of a posse comitatus under sub. (1), where the officer is entitled to worker's compensation, if injured, from the county or municipality but would not be entitled to regular pay from the state and probably would not be entitled to worker's compensation from the state. 62 Atty. Gen. 38.

The statutes do not permit the creation of a separate regional law enforcement agency and neither the sheriff nor the county board has power to delegate supervisory or law enforcement powers to such an agency. 63 Atty. Gen. 5%.

A sheriff may not unilaterally withdraw investigative services to one town within the county which maintains its own police department. 81 Atty. Gen. 24.

59.29 Transportation, apprehension of criminals.

(1) TRANSPORTATION OF CRIMINALS THROUGH OTHER COUNTIES; REWARDS FOR THEIR APPREHENSION. (a) Any sheriff or other officer who has legally arrested any person in any county may pass across and through such parts of any other county or counties as are in the ordinary route of travel from the place where such person was



1999 BILL

insert

per

Note

ver 07/02/99
possesses
without a permit

1 AN ACT ...; relating to: enforcement by the state traffic patrol of restrictions on
2 the possession and use of fireworks.

Conditions

Analysis by the Legislative Reference Bureau

these restrictions on
the possession and use
of fireworks

Current law prohibits a person from possessing or using fireworks without a permit unless certain exceptions apply. A person who violates this provision is subject to a fine of not more than \$1000.

This bill expands the powers and duties of state traffic patrol officers to include the enforcement of the restrictions placed on the possession and use of fireworks where the restrictions are applicable to highways. In exercising this new power and duty, state traffic patrol officers may issue uniform traffic citations for violations of the restrictions. This bill also prohibits a court from forwarding a record of conviction for violations of the restrictions to the department of transportation (DOT) and prohibits DOT from assessing a person demerit points for the conviction.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 110.07 (1) (a) 1. of the statutes is amended to read:

110.07 (1) (a) 1. Enforce and assist in the administration of this chapter and chs. 166, 194, 218, 341 to 349 and 351, and ss. 23.33, 125.07 (4) (b), 125.085 (3) (b),

Insert A

Permit requirement 110.07

when applicable to

BILL**SECTION 1**

1 167.10 (3) (a), 167.31 (2) (b) to (d) and 287.81 and ch. 350 where applicable to
 2 highways, or orders or rules issued pursuant thereto.

History: 1971 c. 40,125; 1973 c. 90,146; 1975 c. 297; 1977 c. 29 ss. 1048, 1654 (7) (a), (c), 1656 (43); 1977 c. 305 s. 64; 1977 c. 418; 1979 c. 221; 1979 c. 333 s. 5; 1979 c. 361 s. 113; 1981 c. 96 s. 67; 1981 c. 390, 1983 a. 27; 1983 a. 175 s. 33; 1983 a. 191 s. 6; 1985 a. 29, 36, 63, 332; 1987 a. 332 s. 64; 1989 a. 31, 167, 170, 240, 335, 359; 1993 a. 25; 1995 a. 201, 227, 341.

3 **SECTION 2.** 110.07 (1) (a) 3. of the statutes is amended to read:

4 110.07 (1) (a) 3. Have authority to enter any place where vehicles subject to this
 5 chapter, ss. 167.10 (3) (a), 167.31 (2) (b) to (d) and 287.81 and chs. 194,218 and 341
 6 to 350 are stored or parked at any time to examine such vehicles, or to stop such
 7 vehicles while en route at any time upon the public highways to examine the same
 8 and make arrests for all violations thereof.

History: 1971 c. 40,125; 1973 c. 90, 146; 1975 c. 297; 1977 c. 29 ss. 1048,1654 (7) (a), (c), 1656 (43); 1977 c. 305 s. 64; 1977 c. 418; 1979 c. 221; 1979 c. 333 s. 5; 1979 c. 361 s. 113; 1981 c. 96 s. 67; 1981 c. 390, 1983 a. 27; 1983 a. 175 s. 33; 1983 a. 191 s. 6; 1985 a. 29, 36, 63, 332; 1987 a. 332 s. 64; 1989 a. 31, 167, 170, 240, 335, 359; 1993 a. 25; 1995 a. 201, 227, 341.

9 **SECTION 3.** 110.07 (1) (b) of the statutes is amended to read:

10 110.07 (1) (b) All municipal judges, judges, district attorneys and law
 11 enforcement officers shall assist in enforcing this chapter, ss. 167.10 (3) (a), 167.31
 12 (2) (b) to (d) and 287.81 and chs. 194,218 and 341 to 351, and orders or rules issued
 13 pursuant thereto and shall report to the department the disposition of every uniform
 14 traffic citation issued for cases involving those chapters.

History: 1971 c. 40,125; 1973 c. 90, 146; 1975 c. 297; 1977 c. 29 ss. 1048,1654 (7) (a), (c), 1656 (43); 1977 c. 305 s. 64; 1977 c. 418; 1979 c. 221; 1979 c. 333 s. 5; 1979 c. 361 s. 113; 1981 c. 96 s. 67; 1981 c. 390; 1983 a. 27; 1983 a. 175 s. 33; 1983 a. 191 s. 6; 1985 a. 29, 36, 63, 332; 1987 a. 332 s. 64; 1989 a. 31, 167, 170, 240, 335, 359; 1993 a. 25; 1995 a. 201, 227, 341.

15 **SECTION 4.** 345.11 (1t) of the statutes is created to read:

16 345.11 (1t) The uniform traffic citation may be used by a traffic officer
 17 employed under s. 110.07 for a violation of s. 167.10 (3) (a) when committed on a
 18 highway.

19 **SECTION 5.** 345.20 (2) (h) of the statutes is created to read:

20 345.20 (2) (h) Sections 23.50 to 23.85 apply to actions in circuit court to recover
 21 forfeitures for violations of s. 167.10 (3) (a). No ^{demerit} points may be assessed under s. 343.

BILL

1 32 (2) for a conviction of a violation of s. 167.10 (3) (a). No report of conviction of a
2 violation of s. 167.10 (3) (a) may be forwarded to the department.

3

(END)

Insert A

~~Current~~ Current law grants state traffic patrol officers ^{specific} powers and duties, including the enforcement of ~~enforcement of~~ ~~state traffic laws,~~ ~~the~~ ~~enforcement~~ of the conditions placed on the possession and transport of a firearm, bow or crossbow and ^{the enforcement of} ~~the~~ the prohibitions ^{against} ~~the~~ littering on a highway.

Introduction

1. The first part of the paper discusses the importance of the study.

2. The second part of the paper discusses the methodology.

3. The third part of the paper discusses the results.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3321/1dn

ISR: f.....

cjs

October 7, 1999

Representative Sykora:

This bill prohibits DOT from assessing demerit points for a conviction of a violation of the restrictions placed on the possession or use of fireworks. OK?

Please review this bill carefully to make sure it achieves your intent. If you have any questions or comments, please feel free to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 2614455
E-mail: Ivy.Sager-Rosenthal@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3321/1dn
1SR:cjs:jf

October 13, 1999

Representative Sykora:

This bill prohibits DOT from assessing demerit points for a conviction of a violation of the restrictions placed on the possession or use of fireworks. OK?

Please review this bill carefully to make sure it achieves your intent. If you have any questions or comments, please feel free to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: IvySager-Rosenthal@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 10/13/1999

To: Representative Sykora

Relating to LRB drafting number: LRB-3321

Topic

Fireworks arrest authority of state troopers

Subject(s)

Transportation - miscellaneous

1. **JACKET** the draft for introduction



in the Senate or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions relating to the attached draft, please feel free to call me.

Paul E. Nilsen, Legislative Attorney
Telephone: (608) 261-6926