



# POLICY & PROCEDURE

## MCFARLAND POLICE DEPARTMENT

SUBJECT: **USE OF DISCRETION**

SCOPE: All Sworn Personnel  
DISTRIBUTION: Policy & Procedure Manual

REFERENCE: WI State Statutes 968.07, 968.085,  
968.10

NUMBER: 1.12  
ISSUED: 09/07/2022  
EFFECTIVE: 09/21/2022  
 RESCINDS  
AMENDS  
WILEAG 6<sup>th</sup> EDITION  
STANDARDS: 1.7.6

INDEX AS: Discretion  
Use of Discretion

PURPOSE: The purpose of this Policy & Procedure is to govern the use of discretion by sworn officers of the McFarland Police Department.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. PROCEDURE

### I. POLICY

- A. It is the policy of the McFarland Police Department to define the limits of discretion and provide guidelines for exercising discretion within those limits.
- B. Police Officers, of necessity, exercise professional discretion in deciding whether or not to arrest citizens for violations of the law. Other specific laws, department policies, or orders of a supervisor may further limit officer's discretion and direct an officer to affect an arrest.

### II. PROCEDURE

- A. Wisconsin State Statutes 968.07, 968.085, and 968.10 authorize law enforcement officers to make arrests, issues citations, and conduct searches and seizures.
- B. With each situation, reasonable and appropriate police action varies. Different facts or circumstances may justify an investigation, a detention, a search, an arrest or no action at all.

To eliminate discriminatory enforcement of the law and to protect officers of the McFarland Police Department, sworn officers will exercise discretionary judgment in a reasonable manner within the confines directed by:

1. The Oath of Office.
2. The confines of authority as described by law.
3. The decisions and interpretations established by the courts of law.
4. The written directives of the McFarland Police Department and the Village of McFarland.
5. Written or verbal direction of a supervisory or command officer.
6. In general, police officers, using sound professional judgment, may take the following factors into consideration when deciding whether or not to arrest a citizen:
  - a) The seriousness and nature of the offense (generally, the more serious the offense, the more likely arrest is the preferred course of action);
  - b) The potential that arrest will effectively resolve a conflict;
  - c) The availability of legal alternatives to arrest that would adequately resolve the conflict or problem;
  - d) The likelihood that the citizen will be deterred from future violations by warning and education;
  - e) The officer's belief that the citizen made an honest mistake in violation of the law;
  - f) The victim'-witness interest in prosecution;
  - g) The potential that arrest will create more serious breaches of the peace or the other problems (e.g., inciting riot);
7. The following factors are among those that are improper for a police officer to consider in deciding whether or not to make an arrest:
  - a) The citizen's economic status, race, ethnicity, gender or other status for which the law prohibits discrimination;
  - b) The revenue likely to be generated by fines or penalties imposed upon conviction;
  - c) The personal or professional relationship that the citizen has to the police officer or to other influential citizens;

- d) The personal advantage to the officer for processing or avoiding processing of the arrest (e.g., overtime compensation, desire to finish tour of duty, avoidance of paperwork, etc)

Aaron P. Chapin  
Chief of Police

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

Initial 09/07/2022 JJ