

**Law Enforcement's Role in
Maintaining Order at Polling
Places**

November 6, 2012 General
Election
October 24, 2012

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Government Accountability Board

Election Day Partners

- Municipal clerks and election inspectors.
- Government Accountability Board
- Wisconsin Department of Justice
- U.S. Department of Justice
- District Attorneys
- Municipal Attorneys
- Local law enforcement

**Unique Characteristics of
Election Day Issues**

- Time sensitive
- Politically charged
- Heightened public interest and expectations

Webinar Focus

- Order at the Polls – Inside and Outside
- Observers and Voter Advocacy Groups
- Immediate Response to Voter Impersonation Allegation
- Concealed Carry at the Polls
- Election Contingency Planning

Statutory Authority of Election Officials

- Wis. Stat. Section 7.37(2):

“The municipal clerks and election inspectors shall prevent interference with and distraction of electors at polling places.”

Statutory Authority of Election Officials

- Wis. Stat. Section 7.37(2):

“The inspectors shall possess full authority to maintain order and to enforce obedience to their lawful commands during the election and the canvass of the votes.”

Statutory Authority of Election Officials

- Wis. Stat. Section 7.37(2):

Inspectors shall enforce 5.35(5) and prevent electioneering and distribution of election-related material from taking place in violation of ss. 12.03 and 12.035.

Statutory Authority of Election Officials

- Wis. Stat. Section 7.37(2):

Inspectors may order any law enforcement officer to remove person from voting area or take the person into custody if the person. . .

Statutory Authority of Election Officials

- Wis. Stat. Section 7.37(2):

- Refuses to obey inspector's lawful commands,
- Is disorderly in the presence or hearing of inspectors, or
- Interrupts or disturbs the proceedings.

**Statutory Authority of Law
Enforcement - Electioneering**

- Wis. Stat. Section 12.03(4):

Electioneering means any activity which is intended to influence voting at an election.

Includes speaking, distributing or posting material, political attire or buttons.

**Statutory Authority of Law
Enforcement - Electioneering**

- Wis. Stat. Section 12.03(1):

Electioneering is prohibited by election officials on election day, and by municipal clerks and their employees in the clerk's office or at an alternate absentee voting site during in-person absentee voting (Oct. 22nd to Nov. 2nd).

**Statutory Authority of Law
Enforcement - Electioneering**

- Wis. Stat. Section 12.03(2)(b):

Electioneering is prohibited on election day at polling places and during in-person absentee voting where it takes place.

Also during polling hours on any public property within 100 feet of an entrance to the polling place.

Statutory Authority of Law Enforcement – Electioneering

- Wis. Stat. Section 12.03(2)(d) and (3):
Bumper stickers on vehicles within 100-foot zone are not electioneering.

Campaign signs on vehicles are electioneering. Recommendation is to allow such vehicles to pick up and drop off voters but not remain within prohibited zone while waiting for voters to cast their ballots.

Statutory Authority of Law Enforcement - Electioneering

- Wis. Stat. Section 12.03(3):

Seek compliance, but clerk, inspector, or law enforcement may remove electioneering posters or advertising violating s. 12.03.

Maximum \$1,000 fine and 6 months imprisonment. Wis. Stat. sec. 12.60(1)(b).

Statutory Authority of Law Enforcement Re. Election-Related Material

- Wis. Stat. Section 12.035(1):

Election-related material means any written matter which describes or purports to describe the rights or responsibilities of voters at a polling place on election day or during in-person absentee voting.

**Statutory Authority of Law Enforcement
Re. Election-Related Material**

- Wis. Stat. Section 12.035(3):

No person may post or distribute election-related materials during polling hours at a polling place or on public property within 100 feet of an entrance to a polling location on election day or during in-person absentee voting.

**Statutory Authority of Law Enforcement
Re. Election-Related Material**

- Wis. Stat. Section 12.035(4):

Prohibition does not apply to clerks or election officials or to bumper stickers.

Clerk, inspectors, or law enforcement may remove and confiscate offending material.

Violations subject to \$100 forfeiture. Wis. Stat. Sec. 12.60(1)(d).

**Statutory Authority of Law Enforcement
Re. Disorderly Conduct at Polls**

- Wis. Stat. Section 12.13(3)(x):

"No person may refuse to obey a lawful order of an inspector made for the purpose of enforcing the election laws; engage in disorderly behavior at or near a polling place; or interrupt or disturb the voting or canvassing proceedings."

Maximum penalty \$1,000 fine and 6 months imprisonment. Wis. Stat. sec. 12.60(1)(b)

Election Observers

- Wis. Stat. Section 7.41(1):

Any member of the public, except a candidate on the ballot, may be present where voting takes place to “readily observe all public aspects of the voting process.”
Promotes transparency and election integrity.

Election Observers

- Clerk or chief inspector should designate observer area.
- Generally, the observation area is between 6 -12 feet from the table at which voters are announcing their name and address and being issued a voter number.
- May be additional areas near registration table.

Election Observers

- Rules governing observer conduct:
 - Must announce themselves to chief inspector and sign in on a list.
 - Must identify the organization or candidate they represent.
 - No loud talking
 - No cell phone conversation, but texts allowed.

Election Observers

- Observers may observe. They may not:
 - Interfere with the election
 - Discuss candidates or causes
 - Wear political clothing or buttons
 - Be overtly loud
 - Handle election materials

Election Observers

- Clerk or chief inspector may order the removal of an observer who commits an overt act which:
 - Disrupts the operation of the polling location
 - Violates prohibition on electioneering or posting or distributing election-related materials.

Wis. Stat. Sec. 7.41(3)

Common Polling Place Issues

Political Attire

- Political Attire showing support for a candidate in the polling place
 - Shirts
 - Buttons
 - Other garments
- Technically, this IS electioneering

Political Attire

- G.A.B. recommends that a brief appearance in the polling place with political attire should be excused.
- This does NOT apply to observers or others lingering in the polling place

Political Attire

- If there are long lines at the polling place, G.A.B. recommends asking individual to remove or cover buttons or the garment, or to remove the garment, if possible.
- If that is refused or not possible, chief inspector may order the individual to leave.

Aggressive Observers

- Observers are not entitled to view registration forms or proof of residence documents.
- Observers shall not harass or intimidate voters or interact with voters unless voter requests assistance with voting.

Aggressive Observers

See G.A.B. memo of August 10, 2012 at <http://gab.wi.gov/node/2450>

Voter Advocacy Groups

- Organizations seeking to help voters confirm whether they are at the correct polling place, ensure voters have necessary information needed to register, and direct to correct polling location or line.

Voter Advocacy Groups

- Risk of providing incorrect information or distracting voters and disrupting election, and distributing election-related material.
- Not permitted within 100 feet of polling place.

Voter Advocacy Groups

- Outside of the 100-foot area, individuals may interact with voters if that activity does not interfere with or distract voters, or interrupt or disturb the voting process.
- Avoid gauntlet effect for voter.

Voter Advocacy Groups

- Disruptive behavior may not occur even if it is outside 100-foot area. Inspectors shall order such activity to immediately cease.
- If the activity continues, the inspector may request law enforcement assistance and order the removal or taking into custody of the offending person.

Potential Stolen Vote

- Voter appears at polling place and is told that someone has voted in his/her name.
- Common explanations
 - Voter with common name has voted at the wrong polling place
 - Voter has signed on the wrong line

Potential Stolen Vote

- Inspector should check to see if there was a mistake by an election official, by verifying and cross-referencing the poll lists. If an error is discovered, it should be corrected, and noted on the Inspector's Statement, and the voter should be allowed to cast a regular ballot.

Potential Stolen Vote

- If the poll books match and no error is immediately discovered, the second person is allowed to vote a challenged ballot. The Chief Inspector should contact law enforcement for a timely and more comprehensive investigation.

Potential Stolen Vote

- Investigative Approaches

Secure surveillance footage.

Interview second voter as soon as possible so election officials may be able to assist with a description or other information regarding the first voter.

Potential Stolen Vote

- Investigative Approaches

Check information sources for persons who may not be registered but who now live in the area. For example, do a DMV search or Lexis/Nexis search for the person.

Potential Stolen Vote

- Investigative Approaches

Conduct a +5/- 5 analysis. That is, examine the voter information for the five people who voted before and after the "stolen vote" voter and conduct interviews.

Do as much as possible on Election Day.

Concealed Carry at Polls

- Wis. Stat. Section 943.13(1m)(c)2. permits local government to prohibit concealed weapons on property the government owns, occupies or controls.
- Election laws regarding maintaining order and preventing interference with and distracting election officials and voters support authority to restrict concealed weapons at polling places.

Concealed Carry at Polls

- G.A.B. has opined that municipalities may restrict the right to carry concealed weapons within polling places during elections.
- G.A.B. recommends that municipal governing body makes determinations regarding CCW policy at polls.

Contingency Planning

- Law enforcement as first responders when weather, natural disaster, or security threat affects election operations.
- Consult and coordinate with municipal clerk regarding contingency plans for relocating each polling place and protecting the clerk's elections operations, including securing ballots.

Contingency Planning

- Court may extend voting hours pursuant to Wis. Stat. 6.96.
- G.A.B. resources for contingency planning are available to clerks.

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