

WISCONSIN SCHOOLS & FIREARMS LAW

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WHAT THIS PRESENTATION TODAY IS **AND WHAT IT IS NOT**

Nothing that you will see or hear today creates or is intended to create attorney client privilege. Nothing discussed, whether your questions or any answers along with anything else, constitutes forming client confidential information.

Laws change with place and time. These are the laws as of today, April 25, 2024. They may not be the same when you are looking back on this presentation.

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With the fun part out of the way...

NEVER FORGET

A group of diverse people, including men and women of various ethnicities, are seated in a courtroom. They are all looking forward with serious expressions, suggesting they are part of a jury or are observing a trial. The setting is a formal courtroom with wood-paneled walls.

“When you go into court you are putting your fate into the hands of twelve people who weren’t smart enough to get out of jury duty.”

- Norm Crosby

WHERE ARE WE GOING TOGETHER: **GENERAL LIST**

Wisconsin Possession Law

Wisconsin Transport vs. Carry Law

Wisconsin Conceal Carry Law

Wisconsin School Zone Law

Wisconsin School Grounds Law

Wisconsin How to Carry a Gun in Wisconsin Schools

Wisconsin Church Carry with Attached School

Wisconsin Practical Considerations that You Will *NOT* Find Written Anywhere

THAT'S A TON TO COVER IN ONE PRESENTATION

So Let's Get Into It.

POSSESSION

1. **Ownership** is generally **immaterial** in most criminal law scenarios
2. **“Knowing Possession”** is what the law is after. Jury Instruction 920.
 - a. "Possession" means that the defendant knowingly had actual physical control of the item.
 - b. It is not required that a person own an item in order to possess it. What is required is that the person exercise control over the item.

What if someone just drops it or it is in in the center console or backseat? IE, not in their hands?

POSSESSION

1. Constructive Possession

- a. An item is (also) in a person's possession if it is in an area over which the person has control and the person intends to exercise control over the item.
- b. Possession may be shared with another person. If a person exercises control over an item, that item is in his possession, even though another person may also have similar control.

2. Knowledge

- a. "You cannot look into a person's mind to determine knowledge or belief. Knowledge or belief must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge and belief." Jury Instruction 2178A.

TRANSPORT vs. CARRY

Transport, the firearm is:

1. Encased

- a. "Encased" means enclosed in a case that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed. Wis. Stat. 167.31(1)(b)

2. Unloaded

- a. Unless a handgun, having no shell or cartridge in the chamber of a firearm or in the magazine attached to a firearm. Wis. Stat. 167.31(1)(g)

3. Inaccessible

- a. Best practice but not a statutory requirement, unless concealed carry laws apply

TRANSPORT vs. CARRY

Carry, basically if you are NOT transporting and you are “going armed”

1. Carry means “to go armed with.” Wis. Stat. 175.60(1)(ag)
2. “To go armed with” means to carry. Wis. Stat. 941.23, and 175.60(1)(ag)
3. Jury Instruction 1335:
 - a. “The phrase “went armed” means that the weapon must have been either on the defendant's person or that the weapon must have been within the defendant's reach.”

CARRY PENALTIES

Private Property vs. Sensitive locations

Forfeiture (ticket) vs. Crime

Crime could be felony or misdemeanor

Private property: proper posting + refusal to leave = ticket

Incorrect posting can leave open a defense

Sensitive location: mere presence + knowledge = crime

Posting likely does not matter

SENSITIVE LOCATIONS in WISCONSIN

Schools + School Grounds (1,000 feet of a school). Wis Stat 948.605

Post office 18 USC 930; including the grounds 39 Code of Federal Regulations section 232.1 (applies to employees too)

Any portion of a building that is a **police station, sheriff's office, state patrol station**, or the office of a division of criminal investigation special agent of the department. Wis Stat 175.60(16)(a)1

Any portion of a building that is a **prison, jail, house of correction, or secured correctional facility**. Wis Stat 175.60(16)(a)2

Various **secure mental health facilities**. Wis Stat 175.60(16)(a)3-5

Any portion of a building that is a **county, state, or federal courthouse**. Wis Stat 175.60(16)(a)6

Any portion of a building that is a **municipal courtroom if court is in session**. Wis Stat 175.60(16)(a)7

A place **beyond a security checkpoint in an airport**. Wis Stat 175.60(16)(a)8

You Know what the definitions of:

Carry

Transport

Encased

Loaded/Unloaded

Possession

Knowledge

Let's *actually* go to School

...Or more specifically Wis. Stat. 948.605

SCHOOLS and GUNS

1. What is a **School**?

- a. UrbanDictionary.com definition of “school”
 - i. “The last remaining institution child labor laws do not cover.”
- b. My 15 year old freshman daughter, when asked for her definition of “school”
 - i. “It sucks the life out of you, absolutely demoralizing experience every day. It is overwhelming and tiring but you learn things.”

SCHOOLS and GUNS

1. Actual Definition from Wisconsin Firearm Statutes

- a. "School" means a public school, parochial or private school, or tribal school, as defined in s. 115.001 (15m), which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school, or high school. Wis. Stat 948.61(1)(b).
- b. More information of what is a school at Wis. Stat. 115.001

Any curriculum for any grade between 1-12: good chance that these laws apply

SCHOOLS and GUNS

1. What is a **firearm** for purposes of THIS statute

- a. **"Firearm"** does not include any beebee or pellet-firing gun that expels a projectile through the force of air pressure or any starter pistol. Wis. Stat. 948.605(1)(ac)
- b. Otherwise, the term **"firearm"** means a weapon that acts by the force of gunpowder. Jury Instruction 2178A.

SCHOOLS and GUNS

1. “Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is within 1,000 feet of the grounds of a school is subject to a Class B forfeiture.” Wis. Stat. 948.605(2)(a).
 - a. Class B forfeiture is a couple hundred dollar ticket: not a crime
 - b. Does not apply to folks with a concealed carry license or out of state license. Wis. Stat. 175.60(1)(d), 175.60(1)(g).

SCHOOLS and GUNS

1. “Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is in or on the grounds of a school is guilty of a Class I felony.” Wis. Stat. 948.605(2)(a).
 - a. Does not apply when, per Wis. Stat. 948.605(1)(b):
 - 1m. A person who possesses the firearm in accordance with 18 USC 922 (q) (2) (B) (i), (iv), (v), (vi), or (vii).
 - 2d. A person who is employed in this state by a public agency as a law enforcement officer and to whom s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies.
 - 2f. A qualified out-of-state law enforcement officer to whom s. 941.23 (2) (b) 1. to 3. applies.
 - 2h. A former officer to whom s. 941.23 (2) (c) 1. to 7. applies.
 - 2m. A state-certified commission warden acting in his or her official capacity.
 - 3m. A person who is legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest under s. 120.13 (38).

SCHOOLS and GUNS Wis. Stat. 948.605(2)(b)

A person who possesses the firearm in accordance with 18 USC 922 (q) (2) (B) (i), (iv), (v), (vi), or (vii).

(i) private property not part of school grounds

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

SCHOOLS and GUNS Wis. Stat. 948.605(2)(b)2d

A person who is employed in this state by a public agency as a law enforcement officer and to whom s. 941.23(1)(g)2. to 5. and (2)(b)1. to 3. applies.

Wis. Stat. 941.23(1)(g)2-5

2. The agency has authorized the person to carry a firearm.
3. The person is not the subject of any disciplinary action by the agency that could result in the suspension or loss of the person's law enforcement authority.
4. The person meets all standards established by the agency to qualify the person on a regular basis to use a firearm.
5. The person is not prohibited under federal law from possessing a firearm.

Wis. Stat. 941.23(2)(b)1-3

1. The weapon is a firearm but is not a machine gun or a destructive device.
2. The officer is not carrying a firearm silencer.
3. The officer is not under the influence of an intoxicant.

SCHOOLS and GUNS Wis. Stat. 948.605(2)(b)2f

A qualified out-of-state law enforcement officer to whom s. 941.23(2)(b) 1. to 3. applies.

Wis. Stat. 941.23(2)(b)1-3

1. The weapon is a firearm but is not a machine gun or a destructive device.
2. The officer is not carrying a firearm silencer.
3. The officer is not under the influence of an intoxicant.

SCHOOLS and GUNS Wis. Stat. 948.605(2)(b)2h

A former officer to whom s. 941.23(2)(c) 1. to 7. applies. (Law Enforcement Officer Safety Act or LEOSA)

A former officer. This paragraph applies only if **all** of the following apply:

1. The former officer has been issued a **photographic identification document** described in sub. (3) (b) 1. or both of the following:
 - a. A photographic identification document described in sub. (3) (b) 2.
 - b. An identification card described in sub. (3) (b) 2. a., if the former officer resides in this state, or a certification described in sub. (3) (b) 2. b., if the former officer resides in another state.
2. **The weapon is a firearm that is of the type described in a photographic identification document** described in subd. 1. or a card or certification described in subd. 1. b.
3. **Within the preceding 12 months**, the former officer met the standards of the state in which he or she resides for training and qualification for active law enforcement officers to carry firearms.
4. The weapon is not a machine gun or a destructive device.
5. The former officer is not carrying a firearm silencer.
6. The former officer is not under the influence of an intoxicant.
7. The former officer is not prohibited under federal law from possessing a firearm.

LEOSA Applies or it Doesn't

SCHOOLS and GUNS Wis. Stat. 948.605(2)(b)2m

A state-certified commission warden acting in his or her official capacity.

SCHOOLS and GUNS Wis. Stat. 948.605(2)(b)3m

A person who is legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest under s. 120.13 (38).

SCHOOLS and GUNS

1. **Parking Lot Exception**

- a. Wisconsin Statute 948.605(2)(b)3
 - i. A person possessing a gun that is **not loaded** and is any of the following:
 - a. Encased.
 - b. In a locked firearms rack that is on a motor vehicle.

2. In English, firearms need to be

- a. Unloaded and either of the following:
 - i. Encased; or
 - ii. in a locked firearms rack that is on a motor vehicle

SCHOOLS and Dangerous Weapons (not Guns)

1. Dangerous weapons *other* than firearms are also regulated. Wis. Stat. 948.61

- a. "Dangerous weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in s. 941.295 (1c) (a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. Wis. Stat. 939.22(10)
- b. "Dangerous weapon" has the meaning specified in s. 939.22 (10), except "dangerous weapon" does not include any firearm and does include any beebee or pellet-firing gun that expels a projectile through the force of air pressure or any starter pistol.
- c. School Premises
 - i. "School premises" means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration. Wis. Stat. 948.61(1)(c).
- d. Any person who knowingly possesses or goes armed with a dangerous weapon on school premises is guilty of:
 - (a) A **Class A misdemeanor**. (up to 9 months jail and/or \$10,000 fine)
 - (b) A **Class I felony**, if the violation is the person's 2nd or subsequent violation of this section within a 5-year period, as measured from the dates the violations occurred. (up to 3.5 years prison and/or \$10,000 fine)

EMPLOYER RESTRICTIONS

175.60(15m) EMPLOYER RESTRICTIONS.

- (a) Except as provided in par. (b), an employer may prohibit a licensee or an out-of-state licensee that it employs from carrying a concealed weapon or a particular type of concealed weapon in the course of the licensee's or out-of-state licensee's employment or during any part of the licensee's or out-of-state licensee's course of employment.
- (b) An employer may not prohibit a licensee or an out-of-state licensee, as a condition of employment, from carrying a concealed weapon, a particular type of concealed weapon, or ammunition or from storing a weapon, a particular type of weapon, or ammunition in the licensee's or out-of-state licensee's own motor vehicle, regardless of whether the motor vehicle is used in the course of employment or whether the motor vehicle is driven or parked on property used by the employer.

BUSINESS LIABILITY

175.60(21) IMMUNITY

- (b) A person that does not prohibit an individual from carrying a concealed weapon on property that the person owns or occupies is immune from any liability arising from its decision.
- (c) An employer that does not prohibit one or more employees from carrying a concealed weapon under sub. (15m) is immune from any liability arising from its decision.

Q. So if a school posts their property, are they opening themselves up to liability because they discard the Wisconsin immunity shield? (A. almost certainly not)

CHURCH CARRY

1. **Are there clear, legal distinctions between the Church and School (zoning, parcels, etc) *and* the structural layout recognizes these?**
2. **Are there clear and obvious physical divisions? E.g., school doors are locked during classes to bar entry to school area/hallways, clear signage, etc**
3. **Time Variable of when things are Church vs. School**
 - a. Written policies, posted signs
4. **Risk mitigation strategy**
 - a. Rule of Lenity
 - b. Enforcement variability

ENFORCEMENT OF WISCONSIN GUN LAWS

Not News to All of You

Cops, Prosecutors, Judges and Juries will all vary radically from place to place

**Different attitudes and outcomes for same fact patterns depending on where you
are in Wisconsin**

**Clear written policies and procedures are often the best way to communicate
with both employees and families* about expected conduct**

***and juries**

ENFORCEMENT OF WISCONSIN GUN LAWS

Bottom Line

People can read the law and reach different conclusions. Carrying or possessing a firearm in a Church attached to a school is a risk. That risk is significantly heightened if you want to talk about carrying a firearm in a school under a “program” or “contract” requirement.

Competent counsel needs to be sought to ensure that people understand those risks. It may further be a great idea to proactively engage with the local district attorney and law enforcement about what you are thinking about doing. Remember: they can always change their mind and prosecute someone anyways.

THAT'S A TON
COVERED
BUT WAIT, HERE'S MORE
FOR FURTHER REFERENCE



WORD ABOUT SUPREME COURT AND CURRENT LAW

Holy Trinity of 2nd Amendment Cases

- District of Columbia v. **Heller**, (2008) (Individual right to own firearms, not rooted in exclusive militia use)
- **McDonald** v. City of Chicago, (2010) (2nd amendment applies to the states)
- New York State Rifle & Pistol Association, Inc. v. **Bruen** (2022) (right to carry firearms outside the home; new legal test to protect 2nd Amendment in court)
 1. Adult citizens
 2. Ordinary weapons, to specifically include handguns
 3. Non-sensitive locations
 4. Non-prohibited possessors

Others:

- United States v. **Cruikshank** (1876) (undoing the 14th amendment, overruled in 2010 by McDonald)
- **Presser** v. Illinois (1886) (upholding Cruikshank, allows states to suppress private armies, overruled by McDonald)
- United States v. **Miller** (1939) (upheld the National Firearms Act of 1934, The Second Amendment protects only the ownership of military-type weapons appropriate for use in an organized militia.)
- **Caetano** v. Massachusetts (2016) ("the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding")

WORD ABOUT SUPREME COURT AND CURRENT LAW

United States vs. Rahimi (2024)

Issue: Who are “the people” in “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”; prohibited possessor status

NRA v. Vullo (2024)

Issue: Whether the First Amendment allows a government regulator to threaten regulated entities with adverse regulatory actions if they do business with a controversial speaker, as a consequence of (a) the government’s own hostility to the speaker’s viewpoint or a perceived “general backlash” against the speaker’s advocacy.

Garland v. Cargill (2024)

Issue: Whether a bump stock device is a “machine gun” as defined by statute; ATF rule making, *Chevron* doctrine

Garland v. VanDerStok (2024)

Issue: When is a firearm, a firearm. 2022 ATF frame+receiver rule; ATF rule making, *Chevron* doctrine

WISCONSIN USE OF FORCE SUMMARY

Summary of Wisconsin Force Law

1. Must be in reasonable fear of imminent death or great bodily harm
2. A jury may consider if you had the opportunity to retreat as an alternative to the use of force (WI JI 810)
3. If you did provoke the attack, you have a duty to retreat (WI JI 815, WIS STAT 939.48(2))
4. Defense of Third Person Is OK, but you are liable to know all of the above
5. No duty to retreat if castle doctrine applies 939.48(1m)
6. Castle doctrine protects people in their dwelling, business, or motor vehicle if someone is or has broken into it 939.48(1m)

HOW GOVERNMENT TEACHES FORCE LAW FOR LAW ENFORCEMENT

1. **Ability** – exists when a person has the means or capability to cause grave injury, serious bodily harm or death to an officer or another. Ability may include, but is not limited to the following: the [persons] physical ability, size, age, strength, combative skill, level of aggression and any weapons in their immediate control.
2. **Opportunity** – exists when a person is in a position to effectively use force or violence upon another. Examples which may affect opportunity include: relative distance and physical barriers.
3. **Imminent Jeopardy** – based upon all the facts and circumstances confronting the [defender], the [defender] reasonably believes the [person] poses an imminent threat to the life of the [defender](s), or other third parties and the [defender] must act immediately to prevent death or serious bodily injury.
4. **Preclusion** – lesser alternatives have been reasonably considered and exhausted before the use of deadly force, to include disengagement. Deadly force in response to the subject's actions must remain reasonable while based up on the totality of the circumstances known to the [defender] at the time force was applied.

OTHER ODDS AND ENDS

True threat speech:

Supreme Court in 2023 in *Counterman v. Colorado* adopted the rule that speech is not protected if the speaker “consciously disregarded a substantial risk that his communications would be viewed as threatening violence.”

One of 5 categories of speech not protected

HOW TO STAY PROTECTED

Arm Yourself with Knowledge



The laws are constantly changing.

Enforcement is constantly changing.

youtube.com/@attyTomGrieve