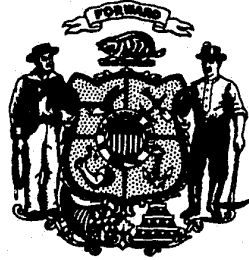


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WISCONSIN LAWS REGULATING FIREARMS

Information Memorandum 92-1

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U.S. Department of Justice
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May 8, 1992

*Information Memorandum 92-1**

WISCONSIN LAWS REGULATING FIREARMS

INTRODUCTION

This Information Memorandum describes the general regulation of firearms under Wisconsin law. The current Wisconsin system of firearm regulation: (1) restricts the possession of certain types of firearms; (2) restricts the possession of firearms by certain persons; and (3) prohibits the improper or unsafe possession or use of firearms.

This memorandum does not describe in detail the various firearm regulations related to hunting in this state. The Department of Natural Resources (DNR) should be consulted for that information: Larry Johnson, Administrator, Hunter's Education Program, (608) 266-1317.

References in this Information Memorandum to the Wisconsin Statutes include changes made to the 1989-90 Wisconsin Statutes by 1991 Wisconsin acts. 1991 Wisconsin acts reflected in this Information Memorandum include: 1991 Wisconsin Act 11, relating to mandatory criminal history checks; 1991 Wisconsin Act 17, relating to gun-free school zones; 1991 Wisconsin Act 18, relating to possession of firearms by a person under 18 years of age; that portion of 1991 Wisconsin Act 39 (Budget Act), relating to the prohibition against the sale, delivery or possession of silencers for firearms; 1991 Wisconsin Act 77, relating to firearms used in connection with hunting and fishing permits for disabled persons; 1991 Wisconsin Act 137, relating to conversion of a weapon to provide full-automatic fire and defining "machine gun"; 1991 Wisconsin Act 139, relating to the safe storage of firearms; and 1991 Wisconsin Act 155, relating to selling or distributing imitation firearms.

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I. RESTRICTIONS ON THE POSSESSION OF CERTAIN TYPES OF FIREARMS

A. Automatic and Short-Barreled Firearms

The sale, possession, use or transportation of machine guns or other fully automatic firearms and of short-barreled shotguns or short-barreled rifles is generally prohibited under ss. 941.26 to 941.28, Stats. A violation is a Class E felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both). In addition, the conversion of a firearm to an automatic firearm is generally prohibited; a violation is a Class C felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 10 years, or both).

There are exceptions to the prohibitions on automatic firearms and short-barreled firearms. The exceptions to the prohibition on automatic firearms are:

1. The sale, possession, use, modification or transportation of automatic firearms to or by any U.S. Armed Forces or National Guard personnel in the line of duty, any civil enforcement officer of the state or of any city or county, or any person duly authorized by the chief of police of any city or the sheriff of any county to sell, possess, use or transport such firearms [s. 941.26 (3), Stats.]. The restriction on the transportation of weapons does not apply to common carriers.
2. The restoration of any firearm by a person licensed by the U.S. Department of the Treasury to collect firearms as curios or relics [s. 941.26 (3), Stats.].
3. The manufacture or sale of machine guns to the military or peace officers of the United States or any political subdivision thereof or the transportation required for that purpose.
4. The possession of a machine gun for scientific purposes.

5. The possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament or keepsake.

6. The possession of a machine gun other than one adapted to use pistol cartridges for a purpose manifestly not aggressive or offensive [s. 941.27 (2), Stats.].

The exceptions to the prohibition on short-barreled firearms are:

1. The sale, purchase, possession, use or transportation of a short-barreled shotgun or short-barreled rifle to or by any U.S. Armed Forces or National Guard personnel in the line of duty, any peace officer of the United States or of any political subdivision of the United States or any person who has complied with the licensing and registration requirements under federal law. The restriction on transportation of firearms does not apply to common carriers.

2. The manufacture of short-barreled shotguns or short-barreled rifles for any person or group authorized to possess these weapons.

3. Firearms that may be lawfully possessed under federal law or any firearm that could have been lawfully registered at the time of the enactment of the National Firearms Act of 1968 [s. 941.28 (4), Stats.].

B. Silencers

The sale, delivery and possession of firearm silencers is generally prohibited [s. 941.298, Stats.]. "Firearm silencer" means "any device for silencing, muffling or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating such a device, and any part intended only for use in that assembly or fabrication." Whoever sells, delivers or possesses a firearm silencer is guilty of a Class E felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both).

The firearm silencer prohibitions do not apply to the sale or delivery of firearm silencers to:

1. A peace officer acting in compliance with the written policies of the officer's department or agency. The exception expressly does not apply to any officer whose department or agency does not have such a policy.

2. Any U.S. Armed Forces or National Guard personnel, while in the line of duty.

3. Any person who has complied with the licensing and registration requirements under the National Firearms Act of 1968 [26 U.S.C. s. 5801, et seq.] [Section 941.298 (3), Stats.]

II. RESTRICTIONS ON POSSESSION OF FIREARMS BY CERTAIN PERSONS

A. Possession by Convicted Felons

1. General Prohibition

It is a Class E felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both) for a person to be in possession of a firearm if the person has been convicted of a felony in Wisconsin or another state or has been found not guilty of a felony by reason of mental illness in Wisconsin or another state [s. 941.29, Stats.].

The above prohibition on the possession of a firearm does not apply to the following:

a. Any person who has received a pardon with respect to the felony conviction and has been expressly authorized to possess a firearm.

b. Any person who has obtained "relief from disabilities" under 18 U.S.C. s. 925 (c). "Relief from disabilities" refers to the restoration of a convicted felon's civil rights, including the right to receive or possess any firearm under the law where the conviction occurred. The relief from disabilities exception generally makes legal, under federal firearms law, the transportation, shipment receipt, possession or importation of any firearm imported, sold or shipped to the United States or any U.S. department or agency or any state or political subdivision.

c. Any correctional officer (employed before May 1, 1982) required to possess a firearm as a condition of employment.

d. Any person who has been found not guilty or not responsible by reason of insanity or mental disease, defect or illness if a court subsequently determines both of the following:

(1) The person is no longer insane or no longer has a mental disease, defect or illness.

(2) The person is not likely to act in a manner dangerous to public safety [s. 941.29 (5), Stats.].

2. Criminal History Background Check for Handgun Purchases

In an effort to prevent the sale of handguns to persons ineligible to possess a firearm because of a prior felony conviction, Wisconsin law prohibits a federally-licensed firearms dealer (federal law generally requires a dealer involved in interstate firearms sales to obtain a federal license) from transferring possession of a handgun until all of the following have occurred:

a. The purchaser has provided identification containing a photograph of the transferee, as required by rule adopted by the Department of Justice (DOJ), to the firearms dealer for inspection.

b. The purchaser has completed the notification form, prescribed in rules adopted by the DOJ, which requires the purchaser to disclose his or her name, date of birth, gender, race and Social Security number and any other identification needed to permit an accurate criminal history record search pertaining to the purchaser.

c. The firearms dealer has conveyed the information from the completed notification form to the DOJ, using the toll-free "hotline" telephone number and following procedures set under DOJ rule, and has requested a criminal history record search pertaining to the purchaser.

d. Forty-eight hours (subject to extension, if needed, to conduct the criminal record search) have elapsed from the time that the firearms dealer has received a confirmation number regarding the criminal history record search from the DOJ and the firearms dealer has not been notified that the transfer would be in violation of s. 941.29, Stats. (possession by convicted felons) [s. 175.35 (2), Stats.].

The DOJ is required to notify the dealer of the results of the criminal history search, either during the initial telephone call in which the firearms dealer conveys the information from the completed notification form and requests the criminal history record search, or as soon thereafter as practicable. The DOJ is specifically required to:

a. Provide the firearms dealer with a unique nonapproval number if the search indicates that the purchaser is prohibited from possessing a firearm under s. 941.29, Stats.

b. Provide the firearms dealer with a unique approval number if the search indicates that the purchaser is not prohibited from possessing a firearm under s. 941.29, Stats.

c. Notify the firearms dealer that the 48-hour waiting period is extended to the end of the third complete working day (defined to exclude Saturday, Sunday or a legal holiday) commencing after the day on which the DOJ makes a finding that the search indicates a felony charge without a recorded disposition. During the extended period, the DOJ is required to make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable [s. 175.35 (2g) (c) 4, Stats.].

Section 175.35 (2i), Stats., further authorizes the DOJ to charge a firearms dealer a \$5 fee for each criminal history record search that the firearms dealer requests. The firearms dealer may collect the fee from the purchaser. The DOJ may refuse to conduct criminal history record searches for any firearms dealer who fails to pay a required fee within 30 days after billing by the DOJ.

An intentional violation of the requirements imposed on firearms dealers or handgun purchasers under the background check provisions is subject to a fine of not less than \$500 nor more than \$10,000 and a term of imprisonment of not more than nine months.

The mandatory criminal history record check law does not apply to any of the following:

- a. Transfers of any handgun classified as an antique by regulations of the U.S. Department of the Treasury.
- b. Transfers of any handgun between firearms dealers or between wholesalers and dealers.
- c. Transfers of any handgun to law enforcement or armed services agencies [s. 175.35 (2t), Stats.].

B. Possession by Children (and Furnishing to Children)

1. General Prohibitions

Possession of or going armed with dangerous weapons by children is generally prohibited under Wisconsin law. "Dangerous weapon" means, among other things, "any firearm, loaded or unloaded" [s. 948.60 (1), Stats.]. A child who violates the prohibition against possession is subject to the provisions of ch. 48, Stats. (the Children's Code), unless jurisdiction is waived under s. 48.18, Stats.

Exceptions to the general prohibition against a child's use of a firearm are:

- a. A child who possesses or is armed with a firearm when the firearm is being used in target practice under the supervision of an adult or in a course of instruction in the traditional and proper use of the firearm under the supervision of an adult.
- b. A child who is a member of the U.S. Armed Forces or National Guard and who possesses or is armed with a firearm in the line of duty.
- c. A child who possesses or is armed with a firearm having a barrel 12 inches in length or longer and who is in compliance with ss. 29.226 and 29.227, Stats. [s. 948.60 (3), Stats.]. The latter statutory references refer to the Hunter Education and Firearm Safety Program established by the DNR. Under DNR hunting regulations, any person born on or after January 1, 1973 is required to obtain a certificate of accomplishment from the DNR before obtaining any approval authorizing hunting.

A person who intentionally sells, loans or gives a firearm to a child (under circumstances not related to the above exceptions) is guilty of a Class A misdemeanor (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both) [s. 948.60 (2), Stats.].

2. Safe Storage of Firearms

Any person who recklessly stores or leaves a loaded firearm within the reach or easy access of a child (any person under the age of 14 years) is guilty of a Class A misdemeanor (punishable

by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both) if: (a) a child obtains the firearm without the lawful permission of his or her parent or guardian; and (b) the child discharges the firearm and the discharge causes bodily harm or death to the child or another [s. 948.55 (2), Stats.].

Any person who recklessly stores or leaves a loaded firearm within the reach or easy access of a child under the age of 14 years is guilty of a Class C misdemeanor (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 10 years, or both) if: (a) a child obtains the firearm without the lawful permission of his or her parent or guardian; and (b) the child possesses or exhibits the firearm in a public place or in violation of s. 941.20, Stats. (endangering safety by dangerous use of a weapon) [s. 948.55 (3), Stats.].

The above penalties do not apply under any of the following circumstances:

a. The firearm is stored or left in a securely locked box or container or in a location that a reasonable person would believe to be secure.

b. The firearm is securely locked with a trigger lock.

c. The firearm is left on the person's body or in such proximity to the person's body that he or she could retrieve it as easily and quickly as if carried on his or her body.

d. The person is a peace officer or a member of the U.S. Armed Forces or National Guard and the child obtains the firearm during or incidental to the performance of the person's duties.

e. The child obtains the firearm as a result of an illegal entry by any person.

f. The child gains access to a loaded firearm and uses it in the lawful exercise of a privilege under s. 939.48, Stats. (self-defense and defense of others).

g. The person who stores or leaves a loaded firearm reasonably believes that a child is not likely to be present where the firearm is stored or left.

h. The firearm is rendered inoperable by the removal of an essential component of the firing mechanism such as the bolt in a breech-loading firearm [s. 948.55 (4), Stats.].

Also, the above Class A misdemeanor does not apply if the bodily harm or death resulted from an accident that occurs in which the child is using the firearm in accordance with state law relating to hunting and use of firearms by children under 16 years, s. 29.277, Stats., or to possession by children of firearms with a barrel of less than 12 inches, s. 948.60, Stats. [s. 948.55 (5), Stats.].

3. Sale and Distribution of Imitation Firearms

The sale or distribution of "look-alike" firearms is generally prohibited under state law, beginning November 1, 1992 [s. 941.297, Stats.]. A violation is a Class A forfeiture (punishable by a forfeiture not to exceed \$10,000). The state prohibition is based on current federal law.

"Look-alike firearm" is defined as:

[A]ny imitation of any original firearm that was manufactured, designed and produced after December 31, 1897, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. "Look-alike firearm" does not include any imitation, nonfiring, collector replica of an antique firearm developed prior to 1898, or any traditional beebee, paint-ball or pellet-firing air gun that expels a projectile through the force of air pressure.

The prohibition on the sale and distribution of look-alike firearms does not apply to a look-alike firearm that complies with the marking (generally, a blaze-orange plug inserted in the barrel or other authorized marking) or waiver requirements of federal law.

III. IMPROPER OR UNSAFE USE OF FIREARMS

A. Endangering Safety by Use of a Firearm

The following are prohibited under Wisconsin law:

1. Endangering another's safety by the negligent operation or handling of a firearm;
2. Operating or going armed with a firearm while under the influence of an intoxicant;
3. Intentionally pointing a firearm at or toward another; or
4. While on the lands of another, discharging a firearm within 100 yards of any building (including a house trailer or mobile home) devoted to human occupancy that is situated on and attached to lands of another without the express permission of the owner or occupant of the building [s. 941.20 (1), Stats.].

A violation of any of the above is a Class A misdemeanor (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both).

The following conduct is also prohibited and is subject to a stricter penalty than the above:

1. Intentionally discharging a firearm into a vehicle or building under circumstances in which the person should realize there might be a human being present in the vehicle or building; or

2. Setting a spring gun (presumably, a trap involving the use of a dangerous weapon, including a firearm) [s. 941.20 (2), Stats.].

A violation of any of the above is a Class E felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both).

B. Penalties Enhanced by Use of a Firearm

Current law authorizes the maximum term of imprisonment prescribed by law for a particular misdemeanor or felony to be increased (i.e., enhanced) by a specified time period if the person commits the crime while possessing, using or threatening to use a firearm or other dangerous weapon [s. 939.63 (1), Stats.]. Also, a person who commits a felony while possessing, using or threatening to use a firearm or other dangerous weapon must be sentenced to a statutorily prescribed minimum term of years in prison, unless the sentencing court otherwise provides [s. 939.63 (2), Stats.].

C. Carrying a Concealed Firearm

Any person, except a peace officer, who goes armed with a concealed firearm is guilty of a Class A misdemeanor (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both) [s. 941.23, Stats.].

D. Carrying a Firearm in a Public Building

With certain exceptions relating to peace officers and military personnel, any person who goes armed with a firearm in any building owned or leased by the state or any political subdivision of the state is guilty of a Class B misdemeanor (punishable by a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both) [s. 941.235, Stats.].

E. Possession or Discharge of a Firearm in a School Zone

1. Possession

An individual may not knowingly possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone [s. 948.605 (2), Stats.]. "School zone" means in or on the grounds of a school or within 1,000 feet from the grounds of a school.

The prohibition on the possession of a firearm in a school zone does not apply to the possession of a firearm:

- a. On private property not part of school grounds.
- b. If the individual possessing the firearm is licensed to do so by a political subdivision in which the school zone is located and the law of the political subdivision requires that, before an individual may obtain such a license, the law enforcement authorities of the political subdivision must verify that the individual is qualified under law to receive the license.
- c. That is not loaded and is:
 - (1) Encased; or
 - (2) In a locked firearms rack that is on a motor vehicle.
- d. By an individual for use in a program approved by a school in the school zone.
- e. 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.
- f. By a law enforcement officer acting in his or her official capacity.
- g. That is unloaded and is possessed by an individual while traversing school grounds for the purpose of gaining access to public or private lands open to hunting, if the entry on school grounds is authorized by school authorities [s. 948.605 (2), Stats.].

A violation of the above is a Class A misdemeanor (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both).

2. Discharge

An individual may not knowingly, or with reckless disregard for the safety of another, discharge or attempt to discharge a firearm at a place the individual knows is a school zone [s. 948.605 (3), Stats.].

The prohibition on the discharge of, or the attempt to discharge, a firearm in a school zone does not apply to the discharge of a firearm:

- a. On private property not part of school grounds;
- b. As part of a program approved by a school in the school zone, by an individual who is participating in the program;

c. 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; or

d. By a law enforcement officer acting in his or her official capacity [s. 948.603, Stats.].

A violation of the above is a Class D felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both). Note that a court is required to impose any sentence for a violation of the gun-free school zone law consecutively to (i.e., in addition to) any other sentence.

F. Safe Use and Transportation of Firearms in Connection with Motor Vehicles, Motorboats and Aircraft and in the Vicinity of Roadways

The transport, possession or placement of any firearm in a motor vehicle, motorboat or aircraft is generally prohibited, unless the firearm is unloaded and encased [s. 167.31, Stats.]. The loading or discharging of a firearm in or from a vehicle or aircraft and the discharging of a firearm from or across a highway or within 50 feet of the center of a roadway are also prohibited. Violators on land and water are subject to a forfeiture not exceeding \$100 and aircraft violators may be fined up to \$1,000 or imprisoned up to 90 days, or both. In addition, all violators must pay a weapons assessment equal to 75% of the fine or forfeiture imposed.

The above prohibitions do not apply to any of the following who in the line of duty place, possess, transport, load or discharge a firearm in, on or from a vehicle, motorboat or aircraft or discharge a firearm from or across a highway or within 50 feet of the center of a roadway:

1. A peace officer.
2. A member of the U.S. Armed Forces.
3. A member of the National Guard.

Also excepted from the above prohibitions are:

1. Holders of a scientific collector permit using a net gun or tranquilizer gun in an activity related to the purpose for which the permit was issued.
2. Holders of a hunting permit for persons with certain disabilities who are hunting from a stationary vehicle, subject to specified conditions [s. 167.31 (4), Stats.].

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