

# Basic Primer on Wisconsin's “Carrying a Concealed Weapon” Law



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## **Introduction**

With the passage of 2011 Wis. Act 35, Wisconsin became the 49<sup>th</sup> state to allow some form of carrying a concealed weapon, leaving Illinois as the only state to ban the carrying of concealed weapons (hereafter “CCW”). This short booklet is designed to provide a simple, *basic* resource on the law regarding the carrying of concealed weapons. The booklet seeks to provide information about the process and requirements to obtain a CCW license, the limitations on where weapons can be brought, the status of “Open Carry,” as well as the “Castle Doctrine.”

While the law is often associated with carrying a handgun, the law covers carrying a concealed weapon and defines “weapon” to include “a handgun, an electric weapon, as defined in s. [941.295 \(1c\) \(a\)](#), a knife other than a switchblade knife under s. [941.24](#), or a billy club.” As such the law is broader than some might think and allows a person with a license to carry more than just a handgun.

This booklet does not cover law enforcement personnel, on or off duty, and in some cases the rules are different than set forth herein.

Links to helpful websites are also included.

## **License Process**

The process to obtain a CCW license is relatively straightforward. The application form can be located online at the [DOJ’s website](#). Once the application and training have been completed, the application, proof of training and an application fee of \$50 (made payable to the Wisconsin Department of Justice, Attention: Firearms Unit, PO Box 7130, Madison, WI 53707-5130) are then mailed to the DOJ who will have 21 days to conduct a background check and either grant or deny the application.

Background checks are performed by the DOJ to ensure that a person is not legally disqualified from carrying a firearm. [Wis. Stat. § 175.60\(9g\)](#). The statute does not require fingerprinting.

In the event the DOJ denies a permit, it will inform the applicant in writing of the reasons and the applicant may seek an administrative review if he or she feels the denial was in error or proceed directly to the circuit court for review. [Wis. Stat. § 175.60\(9\), \(14g\)](#) and [\(14m\)](#).

### **License Requirements and Who can get a CCW Permit**

The requirements for a Wisconsin resident to obtain a CCW permit are generally found in *Wis. Stat. § 175.60(3)*. This section provides that the Wisconsin Department of Justice “shall issue a license” unless any of the following exist:

- (a) The individual is less than 21 years of age.
- (b) The individual is prohibited under federal law from possessing a firearm that has been transported in interstate or foreign commerce.
- (c) The individual is prohibited from possessing a firearm under s. [941.29](#).
- (d) The court has prohibited the individual from possessing a dangerous weapon under s. [969.02\(3\)\(c\)](#) or [969.03\(1\)\(c\)](#).
- (e) The individual is on release under s. [969.01](#) and the individual may not possess a dangerous weapon as a condition of the release.
- (f) The individual is not a Wisconsin resident.
- (g) The individual has not provided proof of training...

[Wis. Stat. § 175.60\(3\)](#)

Put in the affirmative, the applicant must: 1) be 21 or over, 2) not be otherwise prohibited from possessing a firearm under state or federal law, 3) not be prohibited from possessing a weapon based on a pending condition of bond, 4) be a Wisconsin resident and 5) have provided proof of training.

#### *Prohibitions to Possess*

Both Wisconsin and federal law restrict the right of a person to possess a firearm and anyone under such a prohibition may not obtain a CCW license in Wisconsin.

Wisconsin State prohibitions include, but are not limited to:

- 1) The person has been convicted of a felony in Wisconsin, unless the person has been pardoned or relieved of the disability under [18 USC 925\(c\)](#). [Wis. Stat. § 941.29\(1\)\(a\)](#).
- 2) The person was convicted of a crime elsewhere that would be a felony if convicted in Wisconsin, unless the person has been pardoned or relieved of the disability under [18 USC 925\(c\)](#). [Wis. Stat. § 941.29\(1\)\(b\)](#).
- 3) The person was adjudicated delinquent of an act committed on or after April 21, 1994, that if committed by an adult would be a felony, unless a court has determined that the person is not likely to act in a manner dangerous to the public. [Wis. Stat. § 941.29\(1\)\(bm\)](#) and [§ 941.29\(8\)](#).

- 4) The person was found “not guilty by reason of mental disease or defect” of a felony in Wisconsin, unless the person is no longer suffering from the mental health issue and the person is not likely to act in a manner dangerous to the public. [Wis. Stat. § 941.29\(1\)\(c\)](#) and [Wis. Stat. § 941.29\(7\)](#).
- 5) The person has been committed to treatment under [Wis. Stat. § 51.20\(13\)\(a\)](#) or any other mental health commitment and ordered not to possess a firearm, unless the prohibition has been cancelled. [Wis. Stat. § 941.29\(1\)\(e\)](#) and *(em)*.
- 6) The person is enjoined under a harassment or domestic abuse injunction issued under [Wis. Stat. § 813.12](#) or [813.122](#). [Wis. Stat. § 941.29\(10\)](#).

See generally: [Wisconsin’s New Carrying a Concealed Weapon Law Questions and Answers](#), October 20, 2011, p. 2-3.

Federal prohibitions include, but are not limited to:

- 1) A person convicted of a crime in any court punishable by imprisonment for a term exceeding one (1) year.
- 2) A fugitive from justice.
- 3) A person who is addicted to a controlled substance as defined in 21 USC 802.
- 4) A person who has been adjudicated a “mental defective” or who has been committed to a mental institution.
- 5) An illegal alien.
- 6) A person dishonorably discharged from the armed forces.
- 7) A person who renounced his or her American citizenship.
- 8) A person convicted of a “misdemeanor crime of domestic violence.”

See generally: [Wisconsin’s New Carrying a Concealed Weapon Law Questions and Answers](#), October 20, 2011, p. 3-4. and 18 USC Ch. 44 § (g).

#### *Misdemeanor Crimes of Domestic Violence*

Most are likely aware that convicted felons may not possess a firearm, however many do not know that federal law prohibits people with certain misdemeanors from possessing a firearm. Any person convicted of a “misdemeanor crime of domestic violence” is prohibited from possessing a firearm. In 1996 the Lautenberg Amendment to the Gun Control Act of 1968 came into effect. This act made it illegal for a person convicted of “misdemeanor crimes of domestic

violence” to possess a firearm. The Act defines “misdemeanor crime of domestic violence” as a misdemeanor under federal or state law that has “as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” [18 U.S.C. § 921\(a\)\(33\)](#). Possession of a firearm by a person convicted of a misdemeanor crime of domestic violence is a 10 year federal felony. This law is retroactive, so convictions occurring prior to 1996 do bar firearm possession.

Applicants should be aware that in some cases, even a “disorderly conduct” conviction can meet the requirements and bar possession. Even if the criminal complaint does not use the words “domestic violence” or the domestic violence surcharge imposed by Wisconsin courts was “dismissed” or “waived” the person may not possess a firearm. Federal authorities will look to the “probable cause” section of the complaint, the plea colloquy, the transcript and other related information to make this determination. For more information see [“When a Prior Conviction Qualifies as a ‘Misdemeanor Crime of Domestic Violence’”](#), May 17, 2007, C. Kevin Marshall, Deputy Assistant Attorney General. <http://www.justice.gov/olc/2007/atfmcdiv-opinion.pdf>

### *Training*

The training requirement is not particularly onerous. A person’s application must include proof of having completed an accepted training program.

#### **(4) TRAINING REQUIREMENTS.**

**(a)** The proof of training requirement under sub. [\(7\) \(e\)](#) may be met by any of the following:

**1.** A copy of a document, or an affidavit from an instructor or organization that conducted the course or program, that indicates the individual completed any of the following:

**a.** The hunter education program established under s. [29.591](#) or a substantially similar program that is established by another state, country, or province and that is recognized by the department of natural resources.

**b.** A firearms safety or training course that is conducted by a national or state organization that certifies firearms instructors.

**c.** A firearms safety or training course that is available to the public and is offered by a law enforcement agency or, if the course is taught by an instructor who is certified by a national or state organization that certifies firearms instructors or by the

department, by a technical college, a college or a university, a private or public institution or organization, or a firearms training school.

**d.** A firearms safety or training course that is offered to law enforcement officers or to owners and employees of licensed private detective and security agencies.

**e.** A firearms safety or training course that is conducted by a firearms instructor who is certified by a national or state organization that certifies firearms instructors or who is certified by the department.

[175.60\(4\)\(a\)2.](#) **2.** Documentation that the individual completed military, law enforcement, or security training that gave the individual experience with firearms that is substantially equivalent to a course or program under subd. [1.](#)

**3.** A current or expired license, or a photocopy of a current or expired license, that the individual holds or has held that indicates that the individual is licensed or has been licensed to carry a firearm in this state or in another state or in a county or municipality of this state or of another state unless the license has been revoked for cause.

**4.** Documentation of completion of small arms training while serving in the U.S. armed forces, reserves, or national guard as demonstrated by an honorable discharge or general discharge under honorable conditions or a certificate of completion of basic training with a service record of successful completion of small arms training and certification.

[Wis. Stat. § 175.60\(4\)](#)

At this time there is no minimum amount of time that a course must last to satisfy this requirement, however it appears that four (4) hour courses are common. Online classes will not qualify to meet this requirement.

**Licenses**

The license itself will be good for five (5) years. [Wis. Stat. § 175.60\(15\)\(a\)](#). Any changes of address must be reported to the DOJ within 30 days. In the event one becomes ineligible to possess a firearm, for example because of a felony conviction, the possession of a CCW license will not provide a defense to subsequent possession, even if that permit has not yet been revoked. See generally: [Wisconsin's New Carrying a Concealed Weapon Law Questions and Answers](#), October 20, 2011, p. 24.

In some limited cases a person may qualify for an “emergency license.” [Wis. Stat. § 175.60\(9r\)](#).

If one goes armed with a concealed weapon, the holder must also carry with him or her their CCW license and a photo identification card. [Wis. Stat. § 175.60\(2g\)\(b\)](#). This requirement does not apply when one possesses the weapon on his or her own property or place of business. A drivers license will suffice so long as it is “current and valid.” A drivers license is “current and valid” even if the holder’s operating privileges are revoked or suspended. If the drivers license is expired or cancelled then it is not “current and valid.” *See generally: [Wisconsin’s New Carrying a Concealed Weapon Law Questions and Answers](#), October 20, 2011, p. 26.*

If requested by law enforcement, a person must display his or her CCW license and photo ID. Failure to do so can result in a non-criminal forfeiture of up to \$25. [Wis. Stat. § 175.60\(17\)\(a\)](#). Producing the CCW license and a current and valid photo ID to the law enforcement agency that employs the officer within 48 hours exempts a person from the penalty.

Ninty days prior to the expiration of the license the DOJ will mail notice to the holder with a form to renew the license. Assuming the form is returned with the renewal fee and the applicant passes another background check the DOJ shall renew the license within 21 days. [Wis. Stat. § 175.60\(15\)\(d\)](#).

#### *Revocations and Suspensions*

A license can be suspended or revoked by the DOJ. If a person is not legally eligible to possesses a firearm the license will be revoked. Alternatively if a person is prohibited from possessing a license as a condition of bail, the DOJ will suspend the license. [Wis. Stat. § 175.60\(14\)\(am\)](#). Once the bail conditions are removed the DOJ will restore the status within five (5) business days.

Once the DOJ revokes or suspends a license, the DOJ is required to send written notice to the licensee within one (1) day after the revocation or suspension. The revocation or suspension takes effect when the holder receives notice. [Wis. Stat. § 175.60\(14\)\(b\)3](#).

Once a person receives notice of a suspension or revocation that person must, within seven (7) days, either “deliver the license document personally or by certified mail to the department” or “mail a signed statement to the department stating that he or she no longer has possession of his or her license document and stating the reasons why he or she no longer has possession.” [Wis. Stat. § 175.60\(14\)\(b\)3](#).

### **Out of State Licenses, Reciprocity with Other States and Federal Property**

Wisconsin residents who possess a CCW license from another state may not use that permit in Wisconsin. Allowable non-Wisconsin CCW licenses are only good for “out of state licensee[s]” which is a phrase that is defined to include only people who are not residents of Wisconsin. [Wis. Stat. § 175.60\(1\)\(g\)](#). A current list of out of state permits allowed in Wisconsin can be located on the DOJ’s website.

<http://www.doj.state.wi.us/dles/cib/ConcealedCarry/reciprocity.asp>

Reciprocity with other states may exist. A person wishing to use his or her Wisconsin CCW license in another state should first contact that state. Whether a person can use a Wisconsin CCW license in another state will be governed by the laws of that state. The DOJ is authorized to enter into reciprocity agreements with other states. Always check with the local authorities.

With respect to federal buildings and property, federal law governs the possession of firearms and weapons on federal land and in federal buildings. A state permit does not “trump” this. Check with federal authorities before bringing a firearm onto federal land.

### **Weapons and Handguns**

The new CCW law applies to “weapons” and is not limited to “firearms” or “handguns.” “Weapon” is a defined term under the law. While handguns are weapons, the law specifically defines both terms and allows specifically defined “weapons” to be carried. The term “weapons” includes: “handguns, an electric weapon, as defined in s. [941.295 \(1c\) \(a\)](#), a knife other than a switchblade knife under s. [941.24](#), or a billy club.” [Wis. Stat. § 175.60\(1\)\(j\)](#). By definition, “handguns” do not include machine guns, short barreled rifles and short barreled shotguns. [Wis. Stat. § 175.60\(1\)\(bm\)](#). This does present a change in the law with respect to electronic weapons (stun guns/tasers). Previously it had been a felony to possess one.

In Wisconsin, “pepper spray” which contains only “a combination of oleoresin of capsicum and inert ingredients but does not contain any other gas or substance that will cause bodily discomfort” is allowed, provided it meets certain limitations. [Wis. Stat. § 941.26\(4\)\(a\)](#). Spray that includes mace or “tear gas” remains illegal to possess.

### **Restrictions on Where one Can Carry a Concealed Weapon**

Possession of a CCW permit does not allow one to carry a concealed weapon anywhere in the state. The general rule is that once one has a CCW permit, he or she may carry anywhere

“except where prohibited.” [Wis. Stat. § 175.60\(2g\)\(a\)](#). A person may also carry a concealed weapon, without a permit in his or her home, business or land. [Wis. Stat. § 941.23\(2\)\(e\)](#).

Just as the person with the weapon has rights, landowners also have rights to restrict possession on their property. In addition, there are limits to possession on certain government sites as well. A property or business owner also has the right to restrict weapons from his or her property or business. The law provides for the requirements of posting signs to alert people that weapons are not allowed. [Wis. Stat. § 943.13](#).

**Residences:** The person in lawful possession (the owner or tenant) may restrict weapons in a residence. It is against the law to remain on the property once notified. [Wis. Stat. § 943.13\(1m\)\(c\)1](#).

**Condos/Apartments:** It is unlawful to possess a weapon or remain in the common area if one does not own or occupy any part of the residence and has been notified not to remain while carrying a weapon. [Wis. Stat. § 943.13\(1m\)\(c\)1m](#).

**Land:** It is unlawful to possess a weapon or remain on any part of land that the person does not own or occupy and has been notified not to remain while carrying a weapon. [Wis. Stat. § 943.13\(1m\)\(c\)2](#).

**Special Events:** It is unlawful to enter or remain at a “special event” if the organizers have notified the person not to remain while carrying a weapon. [Wis. Stat. § 943.13\(1m\)\(c\)3](#).

**Universities:** It is unlawful to enter or remain in any privately or publicly owned building on the grounds if the university has notified the person not to enter or remain while carrying a weapon. [Wis. Stat. § 943.13\(1m\)\(c\)5](#).

**Bars/Taverns:** The general rule is that handguns may not be possessed in a tavern unless the person is law enforcement or has a CCW permit. A person may possess a handgun in a bar/tavern, but may NOT consume alcohol if carrying a weapon. [Wis. Stat. § 941.237\(3\)\(cx\)](#).

**Schools:** It is a felony to possess a firearm on the grounds of a school. [Wis. Stat. § 948.605\(2\)\(a\)](#). It is a forfeiture to possess a firearm within 1,000 feet of a school. [Wis. Stat. § 948.605\(2\)\(a\)](#). There are some limited exceptions. A person with a valid CCW permit may carry a firearm within 1,000 feet of a school, but not on school grounds. Schools include public and private schools. School grounds includes the football stadium and all ball fields.

See generally: [Wisconsin's New Carrying a Concealed Weapon Law Questions and Answers](#), October 20, 2011, p. 29, 32-34, 36-37.

### **Restrictions by Employers**

An employer, like any other property owner, has a right to generally limit or restrict the possession of weapons on his or her property. The law allows an employer to prohibit an employee from carrying a concealed weapon in the course of employment and may restrict the right of employees to bring weapons to work. [Wis. Stat. § 175.60\(15m\)\(a\)](#). The law however specifically allows an employee with a CCW permit to keep that weapon in his or her vehicle, regardless of whether the vehicle is used in the course of employment, or even parked in a lot owned by the employer. Thus, an employer may not restrict an employee from keeping a weapon in his or her vehicle, even if that vehicle is parked in the company lot on company property. See generally: [Wisconsin's New Carrying a Concealed Weapon Law Questions and Answers](#), October 20, 2011, p. 31-32.

### **Restrictions in Government Buildings**

Weapons may be allowed in some governmental buildings per the discretion of the local governmental unit, but in other cases weapons are automatically prohibited in those buildings. State and local governmental units have the right to restrict the carrying of a concealed weapon in any part of a building that is owned occupied or controlled by it, so long as the state or local governmental unit has notified the person not to enter or remain on the premises. [Wis. Stat. § 943.13\(1m\)\(c\)4](#).

In addition, in some buildings weapons are automatically excluded. Weapons are prohibited in: any portion of a building that is a 1) police station, sheriff's station, state patrol office, 2) jail, house of correction or secured detention facility, 3) secured mental health facilities, 4) any portion of a building that is a county, state or federal courthouse, 5) any portion of a building that is a municipal courthouse if court is in session, 6) a place beyond a security check point at an airport. [Wis. Stat. § 175.60 \(16\)](#). In buildings and places that weapons are *per se* banned, no signs are required to provide notice, though they may be posted.

Local governmental units cannot prohibit possession of a weapon by a CCW permit holder in parks or public lands. [Wis. Stat. § 943.13\(1m\)\(c\)2](#) and [§ 943.13\(1e\)\(c\)](#). However, federal land remains controlled by federal law and a CCW permit from Wisconsin may not apply there.

### **Notices – Signs**

Notice by the owner prohibiting weapons can be made in several ways. For governmental buildings like schools and courthouses, notice is statutory and no signs are required. In other cases, notice can be either oral or in writing.

For “land” (as opposed to buildings) the law provides that a person has notice if signs are posted in two (2) conspicuous places for every 40 acres. [Wis. Stat. § 943.13\(2\)](#). The signs for land must be “11 inches square.”

For most buildings, the owner must simply place a sign that is 5” by 7” near all “probable access” points to provide sufficient notice to people carrying a weapon. [Wis. Stat. § 943.13\(2\)\(bm\)](#).

The sign need only give notice as to what is prohibited and there is no special or exclusive language that must be used. With respect to postings for “land” the sign must include the prohibitions and the name of the person giving notice (followed by “owner” or “occupant”) that is denying permission. [Wis. Stat. § 943.13\(2\)\(am\)1](#).

### **Open Carry**

Wisconsin’s CCW law does not change the law regarding “open carry” in any way. “Unless expressly provided in this section, this section does not limit an individual’s right to carry a firearm that is not concealed.” [Wis. Stat. § 175.60\(2\)\(c\)](#). As such, if it was legal to “open carry” a firearm before, one may still do so without the need of a permit.

On April 20, 2009 Attorney General J.B. Van Hollen issued an “[Advisory Memorandum](#)” concluding that the mere openly carrying a firearm by a person, absent more facts should not result in charges for disorderly conduct. An “Advisory Memorandum” does not carry with it the same formality as an official “Opinion of the Attorney General.” According to the attorney general, “The state constitutional right to bear arms extends to openly carrying a handgun for lawful purposes.” <http://www.doj.state.wi.us/news/files/FinalOpenCarryMemo.pdf>

### **CCW and Hunting, Trapping and Using DNR Lands**

Act 35 made some changes for hunters and users of DNR controlled land to be aware of. The law now allows holders of CCW permits to carry concealed weapons that are loaded and uncased in state forests and other DNR controlled lands. The changes do not automatically allow a person to discharge the weapon or hunt with it. Users of state forests and other lands may carry

concealed weapons, for example a hunter may now, in addition to a rifle, carry a concealed handgun. This represents a change in the law.

Generally, the Friday before the traditional nine (9) day deer hunting season it has been illegal to possess a “weapon” in the field. The change in the law now allows a person to possess a loaded, uncased “weapon” on that Friday. It should be remembered that “weapon” is a defined term and is not equivalent to “firearm.” Similarly, hunters may carry loaded uncased handguns in their cars. However, it remains illegal to load a “long gun” in a car.

For more information on this the DNR has published a webpage to provide basic information: [http://dnr.wi.gov/org/es/enforcement/concealed\\_carry\\_q&a.htm](http://dnr.wi.gov/org/es/enforcement/concealed_carry_q&a.htm)

### **Transportation of Weapons and Firearms**

For persons possessing a CCW license, the laws regarding how a person may transport a weapon in a vehicle have changed. It remains important to keep in mind the distinctions between the defined word “weapon” and understand it does not include all firearms (such as “long guns”).

The general rule is that when transporting firearms in a vehicle they must be encased, unloaded, not hidden or concealed and or within reach. [Wis. Stat. § 167.31](#) sets forth the general requirements for the transportation of a firearm. If a person possesses a CCW license one may transport a weapon that is concealed and loaded in a vehicle. If a person does not possess a CCW license, the handgun must be unloaded and in a case. [Wis. Stat. § 167.31\(2\)\(b\)](#). The law now allows a person to load a handgun in a vehicle. [Wis. Stat. § 167.31\(2\)\(c\)](#).

A person without a CCW license may not carry a concealed weapon in a vehicle. “Concealed” means “hidden and within reach.” Weapons includes more than just handguns.

With respect to the transportation of electronic weapons, a CCW licensee is free to carry them concealed. The law remains that a person without a permit may only transport an electronic weapon if it is enclosed in a case. [Wis. Stat. § 941.295\(2r\)](#). See generally: [Wisconsin’s New Carrying a Concealed Weapon Law Questions and Answers](#), October 20, 2011, p. 44-46.

### **Public Access to CCW Information**

There is no public access to the list of people who hold CCW permits. Information regarding CCW permits is not considered a public record and the DOJ and DOT may not make the information available to the public except in the context of a prosecution for an offense in which the defendant’s status is relevant. [Wis. Stat. § 175.60\(12\)\(c\)](#).

### **Law Enforcement and Use of CCW Permit Information**

Information regarding CCW status is only available to local law enforcement in limited circumstances. Typically, law enforcement officials may only request information to confirm that a permit produced is valid or that a person who cannot produce a permit on his person does in fact hold a valid permit or to investigate if a person provided false information to get a permit. [Wis. Stat. § 175.60\(12\)\(a\)](#) and [Wis. Stat. § 175.60\(12g\)\(b\)](#).

Law enforcement officers may not store or maintain information regarding an individual based on that person's status as a permit holder nor may they sort or access information regarding vehicle stops, investigations or other activities based on permit status. [Wis. Stat. § 175.60\(12g\)](#).

Further, an officer who uses "excessive force" based solely on a person's status as a permit holder may be imprisoned up to 30 days and fined up to \$500. [Wis. Stat. § 175.60\(17\)\(ar\)](#).

### **Immunities**

Act 35 provides that "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." Similarly, Act 35 provides that an employer who does not prohibit his or her employees from carrying a concealed weapon is also immune from liability based on that decision. [Wis. Stat. § 175.60\(21\)](#). Interestingly, the law does not provide any immunity for owners and employers who choose to prohibit weapons from their property.

### **Self Defense and the Castle Doctrine**

#### *Self Defense*

The CCW law does not give the carrier any greater rights to use force than a person without a license. The general rule is that a person is privileged to use force to defend oneself, or another and that a person may only use such force as is necessary to prevent or terminate the interference. Force likely or intended to cause great bodily harm or death can only be used to prevent imminent death or great bodily harm to himself or herself and cannot be used in defense of property.

A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is

necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

[Wis. Stat. § 939.48\(1\)](#)

Essentially, there are three (3) elements that must be shown for a person to establish the privilege of self defense: 1) the person believed there was an actual or imminent unlawful interference his or her person, 2) the person (subjectively) believed the amount of force used was reasonable and 3) the person's beliefs were (objectively) reasonable. The defendant may only use force intended or likely to cause death or great bodily harm if the force is necessary to prevent imminent death or great bodily harm to himself or herself. WI CRIM JI 805. Revisions to this instruction are contemplated and to incorporate the Castle Doctrine, drafting on a revised jury instruction, proposed WI CRIM JI 805A is being done.

Similarly, a person has the privilege to defend a third party from a real or apparent unlawful interference by the same means he or she could act, provided the person reasonably believes that the third person would also be privileged to act in self defense and the intervention is necessary.

A person is privileged to defend a 3rd person from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend himself or herself from real or apparent unlawful interference, provided that the person reasonably believes that the facts are such that the 3rd person would be privileged to act in self-defense and that the person's intervention is necessary for the protection of the 3rd person.

[Wis. Stat. § 939.48\(4\)](#)

The use of force with respect to the defense of property is different. A person may use force to defend his or her property, but the use of “force intended or likely to cause death or great bodily harm for the sole purpose of defense of one’s property” is never reasonable and may not be used. [Wis. Stat. § 939.49\(1\)](#).

The privilege of self defense is not available to a person who provokes the attack. “A person who engages in unlawful conduct of the type likely to provoke others to attack, and who

does provoke an attack, is not allowed to use or threaten force in self defense against that attack.” WI CRIM JI 815.

Wisconsin law does not require a person to “retreat,” however, a jury may consider, “in determining whether the defendant reasonably believed the amount of force was necessary to prevent or terminate the interference...whether the defendant had the opportunity to retreat with safety...” WI CRIM JI 810.

#### *Castle Doctrine*

Wisconsin has also adopted what has come to be called the “Castle Doctrine.” The Castle Doctrine, found at [§ 895.62](#) creates a presumption, in limited circumstances, that the use of force was “reasonable.” The Castle Doctrine also provides civil immunity for the use of that force in limited circumstances.

(2) Except as provided in sub. (4), an actor is immune from civil liability arising out of his or her use of force that is intended or likely to cause death or great bodily harm if the actor reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person and either of the following applies:

(a) The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business, the actor was on his or her property or present in the dwelling, motor vehicle, or place of business, and the actor knew or had reason to believe that an unlawful and forcible entry was occurring.

(b) The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or had reason to believe that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.

#### [Wis. Stat. § 895.62\(2\)](#)

In cases where a person reasonably believes force is necessary to prevent great bodily harm or death, an actor may use lethal force to stop a person from entering a dwelling, motor vehicle or place of business, among others or to expel that person from such a location the actor is entitled to civil immunity from suit. The law also provides that the court “shall” award “reasonable attorney fees, costs, compensation for loss of income, and other costs of the litigation reasonably incurred by the person” if the court finds the actor was immune. [Wis. Stat. § 895.62 \(5\)](#).

While the general rule is that a person in Wisconsin is not required to retreat in cases of death or great bodily harm, but that a jury “may consider” that issue, but the Castle Doctrine eliminates that consideration in some cases. “If sub. [\(2\) \(a\)](#) or [\(b\)](#) applies, the finder of fact may not consider whether the actor had an opportunity to flee or retreat before he or she used force and the actor is presumed to have reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person.” [Wis. Stat. § 895.62 \(3\)](#). The ability or availability of “retreating” is no longer a consideration for a jury when one is defending one’s home, business or vehicle.

The Castle Doctrine does not apply when force is used against a person the actor should have known was a law enforcement officer or if the actor was him or herself involved in criminal behavior. [Wis. Stat. § 895.62\(4\)](#).

### **Selected Crimes, Forfeitures and Penalties**

Carrying a Concealed Weapon Without a Permit:

[Wis. Stat. § 941.23](#)

9 months jail and or \$10,000 fine.

Fail to Carry the Permit & Photo ID:

[Wis. Stat. § 175.60 \(2g\)\(b\) & \(c\) and \(17\)\(a\)](#)

\$25 forfeiture

Fail to Update Information:

[Wis. Stat. § 175.60 \(11\)\(b\)2 and \(17\)\(ac\)](#)

\$50 forfeiture

DOJ/Law Enforcement Improper Use of Data:

[Wis. Stat. § 175.60 \(2m\)\(e\), \(12\) or \(12g\) and \(17\)\(ag\)](#)

30 days jail and or \$500

Excessive Force by Officer:

[Wis. Stat. § 175.60 \(17\)\(ar\)](#)

30 days jail and or \$500

Bring a Concealed Weapon into Prohibited Places (Has Permit):

[Wis. Stat. § 175.60 \(16\) and \(17\)\(b\)](#)

30 days jail and or \$500

Possess Firearm in Public Building (No Permit)

[Wis. Stat. § 941.235](#)

9 months and or \$10,000 fine

Possess a Firearm in a School Building

[Wis. Stat. § 948.605\(2\)\(a\)](#)

5 years prison (3years 6 months initial confinement) and or \$10,000 fine

Posses a Firearm within 1,000 Feet of a School (No Permit)

[Wis. Stat. § 948.605\(2\)\(a\)](#)

\$1,000 forfeiture

Goes Armed in a Class B Tavern (No Permit)

[Wis. Stat. § 941.237](#)

9 months and or \$10,000 fine

Enters/Refuses to Leave: Residence, Common Areas of Building, Certain Portions of Governmental Buildings, Open Land

[Wis. Stat. § 943.13 \(1m\)](#)

\$1,000 forfeiture

Felon in Possession of a Firearm:

[Wis. Stat. § 941.29 \(2\)](#)

10 years and or \$25,000 fine

Numerous types of conduct are prohibited by anyone who possesses a firearm. For a more complete list see: [Wisconsin's New Carrying a Concealed Weapon Law Questions and Answers](#), October 20, 2011, p. 43-44.

## Websites of Interest

- DOJ FAQ (10-20-11):  
<http://www.doj.state.wi.us/dles/cib/ConcealedCarry/ccw-faq-20111020.pdf>
- DOJ CCW Homepage:  
<http://www.doj.state.wi.us/dles/cib/ConcealedCarry/ConcealedCarry.asp>
- Printable No Weapons Sign:  
<http://www.co.kenosha.wi.us/sheriff/documents/noweapons2.pdf>  
<http://www.co.kenosha.wi.us/sheriff/documents/noweapons2.pdf>
- Printable Weapons Allowed Sign  
<https://payments.auctionpay.com/ver3/?id=w015868>
- DNR Hunter FAQ on CCW:  
[http://dnr.wi.gov/org/es/enforcement/concealed\\_carry\\_q&a.htm](http://dnr.wi.gov/org/es/enforcement/concealed_carry_q&a.htm)
- Application for Permit:  
<http://www.doj.state.wi.us/dles/cib/ConcealedCarry/concealed-carry-application-11-11.pdf>

If you have any questions regarding this matter, please feel free to contact me at the below address.

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**The opinions set forth in this booklet represent that of the author alone.**

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Patrick J. Anderson is an Assistant District Attorney in Kenosha County. He graduated *cum laude* from Marquette University Law School with a *Juris Doctor* in 1991 and has a B.A. in Economics from Marquette University. As a prosecutor he has tried numerous jury trials, including homicide.

Prior to becoming an prosecutor he did primarily insurance defense and appellate work. His work in the court of appeals resulted in numerous published decisions from the court of appeals including: *Allstate Ins. Co. v. Brunswick*, 2007 WI App 221, 305 Wis. 2d 400, 740 N.W.2d 888, *American National Property and Casualty Co. v. Nersesian*, 2004 WI App 215, 277 Wis. 2d 430, 689 N.W.2d 922, *Baldwin et al. v. Badger Mining Corporation, et al.*, 2003 WI App. 95, 633 N.W.2d 382; *In re the Paternity of Carlin L.S.*, 226 Wis. 2d 79, 593 N.W.2d 486 (Ct. App. 1999) and *Gurney v. Heritage Mutual Insurance Company*, 188 Wis. 2d 68, 523 N.W.2d 193 (Ct. App. 1994).

Mr. Anderson is acted as an editor for selected chapters in Wisconsin Legal Forms, Lawyers Cooperative Publishing, 1994. In addition to being a prosecutor, he is an adjunct instructor at Cardinal Stritch University and has served on a variety of boards and committees, including: The “Bench and Bar Committee” of the State Bar of Wisconsin, President of the Kenosha Bar Assoc. (2011-present), President Elect of the Kenosha County Bar Assoc. (2011), Chair of the OLR District 1 Investigative Committee (term expires 2013), OLR District 1 Investigative Committee (term expires 2014), Secretary of the Kenosha Bar Assoc. (2010-2011), St. Vincent de Paul Fund Raising Committee (2002-2005), Board of Directors for the Washington County Red Cross (2002-2005), Board of Directors of Legal Action of Wisconsin, Inc. (1997-2003), Board of Directors of the Wisconsin State Jaycees (1997-1999), Board of Directors Rock County Bar Assoc. (1996-1998), Board of Directors Janesville Jaycees (1994-1998). In addition to being admitted to practice in Wisconsin, he is also admitted to practice in the Eastern and Western Districts of Wisconsin, Northern District of Illinois, Northern District of Texas, the Eastern and Western Districts of Arkansas, the 7<sup>th</sup> Circuit Court of Appeals and the United States Supreme Court.