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# Wisconsin Briefs

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## REGULATION OF FIREARMS IN WISCONSIN

This brief summarizes laws which regulate firearms possession and use in Wisconsin, focusing on background checks and waiting periods when purchasing a firearm, the prohibition against carrying concealed weapons in public, and the constitutional provision enacted in 1998 which guarantees the right to keep and bear arms in Wisconsin.

Nationally, an estimated 70 million individuals own approximately 200 million guns. About two-thirds of these firearms are “long guns”, such as rifles and shotguns, and the remainder are handguns. Almost half (45%) of the nation’s households contain at least one firearm. In Wisconsin, where hunting and recreational target shooting are popular pastimes, the estimate is considerably higher at 60% of all households.

While the public generally supports private ownership as long as the firearms are used in a legal and responsible manner, there has been increased debate in recent years on how to prevent criminal use of guns. The U.S. Bureau of Justice Statistics calculates that about one million crimes each year involve firearms, usually handguns, and approximately 60% of all murders are committed with firearms. There are roughly 32,000 firearm deaths per year in the United States, with homicides (40%) and suicides (54%) accounting for about 94% of the total. Accidental deaths and legal uses, such as self-defense or police activity, make up the remaining 6%. About 100,000 nonfatal firearm injuries occur annually.

### BACKGROUND CHECKS AND WAITING PERIODS

Current federal and state law mandates instant background checks for all firearm purchases made through federally licensed dealers and a 48-hour waiting period before handgun sales may be completed.

**Evolution of Background Checks and Waiting Periods.** Wisconsin initiated background checks for handgun sales in 1978 by requiring federally licensed firearms dealers to comply with a minimum 48-hour waiting period between the time of a handgun purchase and actual transfer of the handgun. Background checks for handguns are conducted at the state level by the Wisconsin Department of Justice (DOJ). The state’s 48-hour waiting period applies only to handguns, not to purchases of rifles or shotguns.

From the time the Brady Handgun Violence Prevention Act of 1993 (Public Law 103-159) was passed, until November 30, 1998, federal law generally required a 5-day waiting period and criminal history background check before handgun purchases were completed. Wisconsin was exempted from the longer federal waiting period because its background check and 48-hour waiting period laws were already in place.

**Current Federal Instant Check System.** Since November 30, 1998, the Brady law has required all federally licensed firearms dealers to initiate background checks for all firearm purchases. Prior to any sale, the purchase must be approved through the National Instant Criminal Background Check System (NICS), which is operated by the Federal Bureau of Investigation (FBI). DOJ continues to be the NICS contact point for handgun checks, while the FBI handles NICS checks for long gun sales. Most sales are approved through the NICS within minutes. Dealers who fail to comply may be fined up to \$5,000 and risk losing their license. Nationwide, about 3% of gun purchase applications are rejected.

**Current State Requirements.** In addition to the instant checks required by federal law prior to any firearms sales, Wisconsin continues to enforce its 48-hour waiting period for handgun purchases. During the waiting period, a “firearms restrictions record search” is conducted on the prospective buyer by DOJ. If the search indicates a felony charge without a recorded disposition, the waiting period may be extended up to three additional working days [Section 175.35, Wisconsin Statutes]. The attorney general is authorized to inform local law enforcement agencies when a background check indicates that a person tried to obtain a handgun unlawfully so local authorities may prosecute the would-be purchaser.

## RESTRICTIONS ON CARRYING AND TRANSPORTING FIREARMS

**Concealed Weapons Prohibited.** In Wisconsin, only police officers may carry concealed firearms [s. 941.23]. In a 1993 case (*State v. Keith*, 175 Wis. 2d 75), the Wisconsin Court of Appeals defined the three elements of a concealed weapons violation: 1) the dangerous weapon is on the defendant’s person or within reach; 2) the defendant is aware of the weapon’s presence; and 3) the weapon is hidden.

A total of seven states (Illinois, Kansas, Missouri, Nebraska, New Mexico, Ohio, and Wisconsin) and the District of Columbia ban the carrying of a concealed firearm. Forty-three states allow concealed handguns, but all of them, except Vermont, require a license or permit. Many place restrictions on issuance of licenses or permits, such as criminal background checks, demonstrated proficiency, or passing a written test on gun safety and state laws governing the use of deadly force. Some require that a person be of “good character” as determined by local police or demonstrate a “convincing need” to carry a concealed firearm.

**Carrying Firearms in Public.** Wisconsin law does not specifically prohibit the open carrying of loaded or unloaded firearms in public, but a person doing so may risk being arrested and charged with disorderly conduct, on the grounds that the display threatens the public peace or safety.

**Firearms Prohibited in Public Buildings.** Except for law enforcement or private security personnel, persons are prohibited from going armed with a firearm in a public building owned or leased by the state or political subdivision [s. 941.235].

**Firearms Prohibited in Taverns.** Persons are prohibited from carrying handguns where alcohol beverages may be sold and consumed, such as taverns and restaurants with liquor licenses. Exceptions are made for owners, managers, or employees of the establishment, including licensed private security persons and police officers [s. 941.237].

**Transporting Firearms in Motor Vehicles, Boats, or Aircraft.** In general, no one may place, possess, or transport a firearm in a motor vehicle, motorboat, or aircraft unless the firearm is unloaded and in a carrying case. Loading or discharging a firearm in or from a vehicle is also prohibited [ss. 167.31 (2) (a) and (b), and (3) (a)].

## CONSTITUTIONAL RIGHT TO KEEP AND BEAR ARMS

**U.S. Constitution.** The Second Amendment to the U.S. Constitution reads:

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.

There is considerable debate over the meaning of this language. Some contend that it grants private citizens the right to own guns, while others believe that it should be construed more narrowly as merely protecting a state's right to organize an armed militia. Court rulings have not been definitive either way.

**Wisconsin Constitution.** In November 1998, Wisconsin electors approved a constitutional amendment guaranteeing the right to keep and bear arms by a 1,205,873-to-425,052 vote. Article I, Section 25 states:

The people have the right to keep and bears arms for security, defense, hunting, recreation or any other lawful purpose.

Similar constitutional provisions exist in all but six states (California, Iowa, Maryland, Minnesota, New Jersey, and New York).

## STATE PREEMPTION OF LOCAL GUN CONTROL ORDINANCES

Wisconsin and approximately 40 other states preempt local authority to regulate firearms. 1995 Wisconsin Act 72 prohibited local ordinances that would exceed state regulation of the sale, use, possession, carrying, transportation, licensing, registration, or taxation of firearms [s. 66.092]. Ordinances that are no more stringent than state law are permitted. For example, municipalities may restrict the discharge of firearms within municipal boundaries.

Act 72 invalidated existing local controls on the purchase, possession, and use of handguns in municipalities around the state, including ordinances in Eau Claire, Green Bay, La Crosse, Madison, Milwaukee, Racine, Sheboygan, Stevens Point, Superior, and Wausau.

## ENHANCED ENFORCEMENT EFFORTS IN MILWAUKEE

**Milwaukee's Operation Ceasefire.** In January 2000, Milwaukee inaugurated a program of strict enforcement of federal and state firearms laws. Modeled on Virginia's "Project Exile", which began operations in 1997, it involves swift prosecution and harsh punishment for violators of firearms laws using special gun courts, joint local-state-federal enforcement efforts and a prosecution task force that seeks to impose tougher penalties for felons who use guns. A city-wide media campaign designed to deter the unlawful possession of firearms is supported by state appropriations of \$150,000 in the 1999-2001 biennium.

## FIREARMS STANDARDS AND NEGLIGENCE LAWSUITS

Since 1972, federal law has specifically prohibited the federal Consumer Product Safety Commission from regulating firearms and ammunition, and there are no federal minimum standards or safety requirements for domestically manufactured firearms. Congress did, however, pass the Gun Control Act of 1968, which requires that imported handguns must be

suitable for sporting purposes. This, in effect, bans the import of small, cheap handguns, known as “Saturday Night Specials”. Imported revolvers also must pass a “drop test”, which means they will not accidentally discharge if dropped.

Attempts by various municipalities to sue firearms manufacturers for selling inherently dangerous products, as yet unresolved, have resulted in legislative activity to ban such suits. An example is 1999 Assembly Bill 246, which failed to pass, that would have prohibited the State of Wisconsin or local governments from filing lawsuits against manufacturers or dealers of legal firearms or ammunition. The bill also would have granted immunity for manufacturers or dealers from monetary awards in civil suits brought for damages resulting from firearm deaths or injuries, provided the product was not defective.

In some cases, manufacturers are volunteering to improve the safety of their firearms if granted immunity from liability claims. Smith and Wesson agreed in March 2000 to institute controls on the design and distribution of its guns, such as trigger locks, in return for being dismissed from lawsuits brought by various state and local governments. A New York law, which takes full effect on March 1, 2001, requires mandatory trigger locks on all firearms and provides for test-firing of new pistols in order to provide ballistic “fingerprinting” information to be stored in a computer databank. The law also mandates criminal background checks on sales of all firearms at gun shows, including those sold by unlicensed dealers not currently covered by the federal Brady law.

## WHO MAY NOT POSSESS FIREARMS

Discussed below are the categories of persons not permitted to possess firearms – felons, minors, the mentally ill, and persons under court-ordered abuse or harassment injunctions.

- **Felons.** Both Wisconsin and federal law prohibit felons from possessing firearms, but federal law allows individual states to determine what constitutes a restoration of civil rights for the purpose of firearm ownership. Although many states allow previously convicted felons to possess firearms after a certain number of years following completion of their sentences, Wisconsin requires that the felon must generally receive a pardon from the governor before being given a permit to own a gun [s. 941.29 (5) (b)]. In some cases, a felon may be able to obtain a gun by getting someone with a clean record (a “straw buyer”) to buy the weapon. Possession by the felon would still be illegal, but the straw buyer would not be charged with a crime unless the person was aware, at the time of purchase, that the gun would be used in a crime or that the person the gun was being bought for was a felon [ss. 941.29 (1) (a) and 939.05].
- **Minors.** Generally, both federal and state law prohibit persons under the age of 18 from possessing firearms [s. 948.60], but Wisconsin makes exceptions for long guns used for hunting or firearms used during adult-supervised activities such as target shooting. On the other hand, children adjudicated delinquent based on a felony may not own any type of gun, and school districts must suspend pupils found in possession of a firearm either on school property or while under the supervision of a school authority, such as on a field trip [s. 120.13 (1) (bm)].

- **Mentally Ill.** Persons charged with a felony but found not guilty or not responsible for the crime due to mental illness may not possess firearms. This ban extends to a person who has been involuntarily committed for treatment of mental illness, drug dependency, or developmental disability if the court deems the person to be a threat to self or others. For those involuntarily committed, the court must order the person's firearms seized or stored until the person is judged to no longer suffer from the mental illness and is no longer likely to be a danger to the public [s. 941.29 (1) (d)].
- **Persons Under Abuse or Harassment Injunctions.** Wisconsin law bars possession of a firearm in cases where a person is under a court-ordered injunction or restraining order for domestic abuse, child abuse, or harassment [ss. 813.12 (4m), 813.122 (5m), and 813.125 (4m)]. Such persons are required to surrender their firearms to the county sheriff or a third party approved by the court. Federal law also prohibits a person under a restraining order due to domestic violence from possessing a firearm.

## OTHER FIREARM REGULATIONS

### Prohibited Firearms

- **Machine Guns** [ss. 941.25, 941.26, 941.27].
- **Short-Barreled ("sawed-off") Shotguns and Short-Barreled Rifles** [s. 941.28].
- **Silencers** [s. 941.298].
- **Assault Rifles** Banned by the Federal Violent Crime Control and Law Enforcement Act of 1994.
- **Armor-Piercing Ammunition** Banned by federal law.
- **Plastic Firearms** Plastic weapons that cannot be sensed by metal detectors are banned by federal law.

### Illegal Use of Firearms

- **Armed Robbery** [s. 943.32 (2)].
- **Burglary** [s. 943.10 (2)].
- **Carjacking** [s. 943.23 (1g)].
- **Discharging a Firearm From a Vehicle** [s. 167.31 (2) (c)].
- **Drive-by Shootings** [s. 941.20 (3)].
- **Shooting Into a Vehicle or Building** [s. 941.20 (2) (a)].
- **Providing a Firearm or Facsimile to a Prisoner** [s. 946.44 (1m)].
- **Theft of a Firearm** [s. 943.20 (3) (d)].
- **Negligent or Intoxicated Use of a Firearm** [ss. 941.20 (1) (a), (1) (b), and (1) (c); 940.24; and 940.08].

- **Discharging Firearm Near Residence** [s. 941.20 (1) (d)].
- **Discharging Firearm Near a Park** [s. 167.30].
- **Shooting at Railroad Trains** [s. 943.07 (2)].
- **Shooting Near Highways and Roads** [s. 167.31 (2) and (4)].
- **Carrying or Displaying Facsimile Firearms** [s. 941.2965].
- **Imitation Firearms** [s. 941.297].
- **Using Armor-Piercing Bullets** [s. 941.296].

### **Protection of Children**

- **Transfers to Minors Prohibited.** It is illegal to intentionally sell, loan, or give a dangerous weapon to a child. The penalty is increased if the child discharges the weapon and thereby kills or injures someone. This law does not apply to long guns used for hunting or firearms used for target practice or instruction under adult supervision [s. 948.60 (2) (b)].
- **Safe Storage.** If an adult recklessly stores or leaves a loaded firearm within the reach or easy access of a child under the age of 14 years and the child acquires the gun without permission of a parent, guardian, or caretaker, the adult will be considered guilty of a misdemeanor if the child possesses or exhibits the firearm in a public place or uses it to injure or kill someone. Owners are exempt from prosecution if the firearm was: 1) stored in a reasonably secure container or location, 2) secured with a trigger lock, 3) on the person's body or within easy reach, 4) obtained as the result of an illegal entry, or 5) stored on a premises where the owner reasonably believes children will not be present [s. 948.55]. Whenever a firearm is transferred on a retail level, the seller must provide a prescribed written warning about the safe storage law [s. 175.37].
- **Gun-Free Schools.** Wisconsin law, which was modeled on the federal Gun-Free School Zone Act of 1990, prohibits the possession or shooting of a firearm within a school zone. It defines a school zone as in the school building, the school grounds, and the area within 1000 feet of the school grounds. The law provides a number of exceptions, including possessing a firearm on private property, using a firearm for a school program, or carrying a firearm while crossing a school zone to get to lands open to hunting, and it excludes beebee guns, air guns, and starter pistols from the definition of "firearm" [s. 948.605].

### **Hunting**

- **Hunter Education.** In 1985, Wisconsin instituted a statewide hunter education program, which includes instruction in the commonly accepted safety principles for handling hunting firearms. The law generally requires anyone born after January 1, 1973, who wishes to obtain a hunting license, to successfully complete the program [s. 29.226].

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- **Hunting by Children.** Wisconsin hunting laws provide that children under the age of 16 may use long guns under the following conditions [s. 29.227]: 1) Children under 12 may possess a long gun only during a hunter education class or under parental supervision while traveling to and from class. 2) Children ages 12 and 13 may possess a long gun under the above conditions or if they are with a parent or guardian or are on their family's land; they need not be under a parent's supervision to transport the firearm to and from a hunter education class. 3) Children ages 14 and 15 may possess a long gun under the above conditions and they may hunt on their own if they have been issued a certificate of accomplishment through the hunter education program or a similar program in another state.
  - **Hunting by the Disabled From Vehicles.** The Wisconsin Department of Natural Resources may permit persons with certain medically verified permanent or temporary physical disabilities to shoot or hunt from a stationary car, truck, snowmobile, or all-terrain vehicle [s. 167.31 (4)].