

2007 DRAFTING REQUEST

Bill

Received: **04/10/2007**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Dan Kapanke (608) 266-5490**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kapanke@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Facsimile firearms

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 04/20/2007	jdyer 05/10/2007		_____			
/P1	phurley 09/24/2007	jdyer 09/25/2007	rschluet 05/10/2007	_____	sbasford 05/10/2007		Crime
/1			pgreensl 09/25/2007	_____	lparisi 09/25/2007	cduerst 11/07/2007	

FE Sent For: N/A

<END>

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1/?	phurley	PI 9/10 jld					

FE Sent For:

5107
nw
<END>

**PROPOSED CHANGE TO RESTRICTIONS ON USE OF A FACSIMILE
FIREARM**

**PROPOSED BY OFFICER JON NEJEDLO
GREEN BAY POLICE DEPARTMENT
GREEN BAY, WI
APRIL 9, 2007**

Proposal – To amend the penalty for Wisconsin Statute 941.2965 from a Class C forfeiture to a felony, when a facsimile firearm is used in the commission of a crime and the victim believes the facsimile firearm is a real firearm.

Objective – Current state statute does not adequately address the rights of victims when a serious crime is committed against them by a person using a facsimile weapon. The victim has no way of knowing whether a suspect pointing a facsimile firearm at them or threatening them with a facsimile firearm is real or not. The only thing the victim is concerned with is staying alive and not being shot by what they perceive and believe to be a real firearm. I am proposing to change the penalty from a monetary forfeiture to a class H felony, with an enhanced penalty for those who are already convicted felons.

As outlined in state statute 941.29, Possession of a firearm, there are multiple restrictions on those who cannot possess a firearm. Those included are convicted felons, those affected by mental disease or defect, and the list goes on. It further addresses the punishment for those who do not abide by this statute. This statute, I believe, is designed to protect the public from those who have demonstrated their inability to properly possess and use a firearm for its intended purposes. The statute adequately addresses the strength of penalties imposed against those that have violated this law. Statute 941.2965, I feel, does not properly address the penalties for possessing a facsimile firearm. Furthermore, there is no mention of the penalty when that facsimile firearm is used in the commission of a crime. Nowhere in Wisconsin State Statutes is this penalty addressed.

I am proposing this amendment because I and fellow law enforcement officers have had first hand experience with crimes involving felons and non-felons alike, using facsimile firearms while committing crimes. To provide an unfortunate example of an incident involving a facsimile firearm, an officer with the Green Bay Police Department had to use deadly force against a subject who brandished a facsimile firearm and threatened the officer's life with it. It was only after the suspect had been fatally wounded was it discovered that the weapon was not real. At the time the officer was fighting for his life, the officer had no way of knowing the firearm was fake and believed it was a real firearm.

Facsimile firearms bear amazing resemblance to actual firearms, both in look and use, and it can be impossible to tell the difference unless actually holding it. I HAVE included photographs of both facsimile firearms and legitimate firearms, and it can be difficult if not impossible to tell the difference unless either holding the weapons or being told it was either real or fake. Facsimile firearms have little or no restrictions with regards to purchasing them and can be bought on-line or at many retail stores.

There are no available statistics that track crimes committed with facsimile firearms. State statute addresses penalties for felons in possession of a firearm, but not facsimile firearms. Statute 941.2965 deals with facsimile firearms. However, it does not specifically address the use of this type of firearm in the commission of a crime when the victim believes it is a real firearm. Someone possessing a facsimile firearm only carries a Class C forfeiture, a fine not exceeding \$500.00.

As of now, officers can charge a suspect who uses a facsimile firearm in the commission of a crime with the Class C forfeiture. If a suspect has the facsimile firearm concealed on their person or in a vehicle at the time of arrest, officers can charge them with carrying a concealed weapon, a Class A misdemeanor. The maximum penalty for a Class A misdemeanor is a fine not to exceed 10,000 dollars or imprisonment not to exceed 9 months, or both.

It has been my experience that when officers charge a suspect with Carrying a Concealed Weapon or possession of a Facsimile Firearm, those charges are typically dropped as part of a plea bargain, depending on the crime. Usually the District Attorney will drop the forfeiture or misdemeanor and charge the suspect with the felony, if one of the crimes committed is indeed a felony. Suspects are very aware that those charges are not as serious as felonies and the stigmas that go with them. Very few suspects want a felony charged against them, but are not nearly concerned about being charged with a forfeiture or misdemeanor.

To give a small example, the number of incarcerated people in the Wisconsin Division of Corrections in FY2005 was 21,977. 36% of the offenses committed by those incarcerated individuals involved assault and 6% involved assaults and drugs, according to the Department of Corrections. Those numbers do not reflect the large number of convicted felons already released into the community, but it does reflect the type of offenders that are being released back into our community, with a lot of them re-offending. According to probation and parole statistics released by the U.S. Department of Justice, Bureau of Justice Statistics, at the end of 2005, "forty-five percent of parole discharges in 2005 successfully completed their term of supervision, unchanged since 1995. Thirty-eight percent were returned to jail or prison, and 11% absconded." This study deals with national statistics, not just Wisconsin. But it does provide further evidence that nearly half of the people released from prison and are on parole re-offend.

I have spoken to the President of Fraternal Order of Police, Lodge #2 in Green Bay, the largest lodge in Wisconsin. He has expressed a very sincere interest in this proposal becoming law and given his support to this proposal. In addition, I have spoken to other officers on the Green Bay Police Department and they have also expressed great interest in seeing this proposal become law.

Thank you for taking time to read this proposal and I urge you to please give this issue the time and consideration it deserves. If criminals, both felons and non-felons alike, continue to offend and re-offend with the statute as it currently stands, it gives them yet again the upper hand because they know that they cannot be charged with a felony, only a forfeiture or at worse a misdemeanor. By amending the law to make the penalty a felony, offenders will no longer be protected by a law that does more harm to the victim, and victims will once again feel as if justice has been served.

STATE STATUES

941.29 Possession of a firearm. (1) A person is subject to the requirements and penalties of this section if he or she has been:

- (a) Convicted of a felony in this state.
- (b) Convicted of a crime elsewhere that would be a felony if committed in this state.
- (bm) Adjudicated delinquent for an act committed on or after April 21, 1994, that if committed by an adult in this state would be a felony.

(c) Found not guilty of a felony in this state by reason of mental disease or defect.

(d) Found not guilty of or not responsible for a crime elsewhere that would be a felony in this state by reason of insanity or mental disease, defect or illness.

(e) Committed for treatment under s. 51.20 (13) (a) and ordered not to possess a firearm under s. 51.20 (13) (cv).

(f) Enjoined under an injunction issued under s. 813.12 or 813.122 or under a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed under s. 806.247 (3).

(g) Ordered not to possess a firearm under s. 813.125 (4m).

(2) A person specified in sub. (1) is guilty of a Class G felony if he or she possesses a firearm under any of the following circumstances:

- (a) The person possesses a firearm subsequent to the conviction for the felony or other crime, as specified in sub. (1) (a) or (b).
- (b) The person possesses a firearm subsequent to the adjudication, as specified in sub. (1) (bm).
- (c) The person possesses a firearm subsequent to the finding of not guilty or not responsible by reason of insanity or mental disease, defect or illness as specified in sub. (1) (c) or (d).
- (d) The person possesses a firearm while subject to the court order, as specified in sub. (1) (e) or (g).
- (e) The person possesses a firearm while the injunction, as specified in sub. (1) (f), is in effect.

941.2965 Restrictions on use of facsimile firearms.

(1) In this section, "facsimile firearm" means any replica, toy, starter pistol or other object that bears a reasonable resemblance to or that reasonably can be perceived to be an actual firearm. "Facsimile firearm" does not include any actual firearm.

(2) No person may carry or display a facsimile firearm in a manner that could reasonably be expected to alarm, intimidate, threaten or terrify another person. Whoever violates this section is subject to a **Class C forfeiture**.

*or uses a
firearm*

*but
941.332(2)
(robbery) =
or aimed = weapon
or victim believes
941.29 (a)
see assault (b)*

(070)

*939.631
946.4152(c)
by and these
if also
or "intimidation"
w/ a real
gun
charge*

(3) Subsection (2) does not apply to any of the following:

- (a) Any peace officer acting in the discharge of his or her official duties.
- (b) Any person engaged in military activities, sponsored by the state or federal government, acting in the discharge of his or her official duties.
- (c) Any person who is on his or her own real property, in his or her own home or at his or her own fixed place of business.
- (d) Any person who is on real property and acting with the consent of the owner of that property.

941.23 Carrying concealed weapon. Any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor

FACSIMILE FIREARMS



Baby Desert Eagle - Silver

This CO2 gun offers great quality and excellent shooting performance. Several different options are available for the user's convenience: scope sights, lasers and lamps that can be easily mounted and removed. All guns include an accessory picatinny rail. BBs are loaded through a loading port on the top side.



Voltran The Jackal, Nickel

World's first, fully automatic machine gun pistol simulator.

Fires 15, 9mmPA gun powder charged blanks in 1.9 seconds. **Approved by ATF; no Federal license required for purchase or sale.**

Three Modes:

Safety

Semi-Auto

Full-Auto

Experience the heart-thumping, explosive power as each round blows the spent cartridges out the chamber. Feel the recoil and rapid-fire report during real-time scenarios

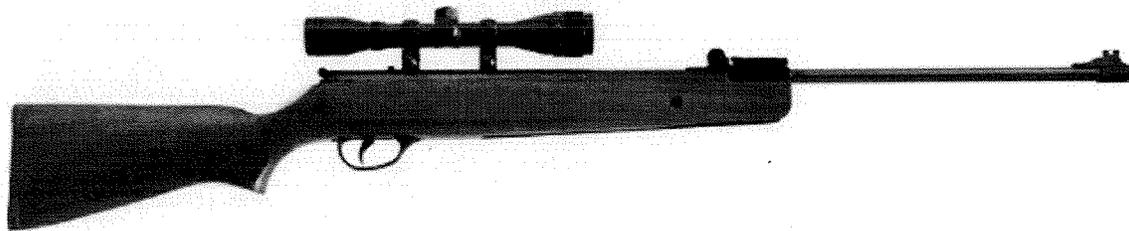


Smith and Wesson 586-4

This classic pistol features a 4" barrel polished blued steel, and a 10 shot rotary clip. It's similarity to the classic .357 magnum revolver is astonishing. Aside from the hours of shooting fun, this product offers collectors a long lasting value. The 10 shot rotary clip swings out for easy replacement as on the original revolver. Double action and the ability to purchase additional clips can provide you with hours of enjoyment.

Product Includes

- Includes 2 magazines
- 2 front sights
- bore brush
- tool to interchange the barrel



Winchester 1000X Combo

The combination of 1000fps maximum velocity and the uniquely designed Winchester 3-9X32 Hunting Scope makes this a powerhouse air rifle and scope combination. This Quick-Power break barrel air rifle featuring a walnut stock and a rifled steel barrel has beauty and brawn. Daisy's Winchester Hunting scopes are designed to withstand the unique recoil of these powerful air rifles. This variable power hunting scope is fogproof and shockproof with fully adjustable windage and elevation and a cross hair reticle. Optics mounting hardware is included.

LEGITIMATE FIREARMS



Baby Desert Eagle



Smith & Wesson Model M&P 360 Revolver
– Chief's Special

S/10

P1
JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1

AN ACT ...; relating to: use of a facsimile firearm

Analysis by the Legislative Reference Bureau

Under current law, a person who commits certain crimes by using or threatening to use a dangerous weapon or an article used or fashioned in a manner that the victim believes is a dangerous weapon is subject to greater penalties than he or she would be if he or she committed the crime without using a dangerous weapon. ✓

Under this bill, a person is subject to the same penalties as he or she would be under current law for using a dangerous weapon if the person commits a crime using a facsimile firearm. A facsimile firearm is any replica, toy, starter pistol or other object that bears a reasonable resemblance to or that reasonably can be perceived to be an actual firearm. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 943.32 (2) of the statutes is amended to read:
3 943.32 (2) Whoever violates sub. (1) by use or threat of use of a dangerous
4 weapon, a device or container described under s. 941.26 (4) (a), a facsimile firearm,
5 or any other article used or fashioned in a manner to lead the victim reasonably to

1 believe that it is a dangerous weapon or such a device or container is guilty of a Class
2 C felony.

3 History: 1977 c. 173; 1979 c. 114; 1993 a. 486; 1995 a. 288; 2001 a. 109.

SECTION 2. 940.225 (1) (b) of the statutes is amended to read:

4 940.225 (1) (b) Has sexual contact or sexual intercourse with another person

5 without consent of that person by use or threat of use of a dangerous weapon, a

6 facsimile firearm, or any other article used or fashioned in a manner to lead the

7 victim reasonably to believe it to be a dangerous weapon.

8 History: 1975 c. 184, 421; 1977 c. 173; 1979 c. 24, 25, 175, 221; 1981 c. 89, 308, 309, 310, 311; 1985 a. 134; 1987 a. 245, 332, 352; 1987 a. 403 ss. 235, 236, 256; 1993 a. 445; 1995 a. 69; 1997 a. 220; 2001 a. 109; 2003 a. 51; 2005 a. 273, 344, 388, 435, 436.

9 SECTION 3. 939.63 (1) (intro) of the statutes is amended to read:

10 939.63 (1) Intro. If a person commits a crime while possessing, using or threatening

11 to use a dangerous weapon or a facsimile firearm, the maximum term of

12 imprisonment prescribed by law for that crime may be increased as follows:

13 History: 1979 c. 114; 1981 c. 212; 1987 a. 332 s. 64; 1995 a. 448; 2001 a. 109.

SECTION 4. 946.415 (2) (c) of the statutes is amended to read:

14 946.415 (2) (c) While acting under pars. (a) and (b), remains or becomes armed

15 with a dangerous weapon or a facsimile firearm or threatens to use a dangerous

16 weapon regardless of whether he or she has a dangerous weapon.

History: 1995 a. 93; 2001 a. 109.

(END)

Hurley, Peggy

From: Gustafson, Andrew
Sent: Wednesday, September 12, 2007 3:35 PM
To: Hurley, Peggy
Subject: RE: LRB 07-2408/P1 Topic: Facsimile firearms

Works for me Peggy. Thank you so much.

From: Hurley, Peggy
Sent: Wednesday, September 12, 2007 3:34 PM
To: Gustafson, Andrew
Subject: RE: LRB 07-2408/P1 Topic: Facsimile firearms

No, you really have to choose one or the other. If you want to give maximum flexibility, I suppose going with a Class A would be appropriate because the judge can go "up to" the maximums, but is not required to do so.

From: Gustafson, Andrew
Sent: Wednesday, September 12, 2007 3:21 PM
To: Hurley, Peggy
Subject: RE: LRB 07-2408/P1 Topic: Facsimile firearms

Would it be unheard of to use both? Offer a bit more flexibility.

From: Hurley, Peggy
Sent: Wednesday, September 12, 2007 3:13 PM
To: Gustafson, Andrew
Subject: RE: LRB 07-2408/P1 Topic: Facsimile firearms

Hi Andy,

I think it makes sense. Would you prefer a Class A (a fine up to \$10,000, up to 9 months in jail, or both) or a Class B (fine up to \$1000, up 90 days in jail, or both) misdemeanor?

From: Gustafson, Andrew
Sent: Wednesday, September 12, 2007 9:56 AM
To: Hurley, Peggy
Subject: LRB 07-2408/P1 Topic: Facsimile firearms

Peggy -

I think this makes sense right?

From: Baxter, Tim - DAIT
Sent: Tuesday, September 11, 2007 4:16 PM
To: Gustafson, Andrew
Subject: RE:

Andy:

I have sent out the proposals to the members of the WDAA Executive Board. I don't expect anyone to object to what it being proposed, but our early concern is that Wis. Stat. sec. 941.2965 be addressed jointly.

09/24/2007

Sec. 941.2965 is the statute that deals with the possession of facsimile firearms on their face, and not in conjunction with another crime. In this section, one who carries or displays "a facsimile firearm in a manner that could reasonably be expected to alarm, intimidate, threaten or terrify another person" is guilty of a Class C forfeiture.

A Class C forfeiture carries with it a maximum possible penalty of a \$500 forfeiture. A 'forfeiture' designates that this is not a criminal offense.

We would request that you look at amending this proposal to make this offense a crime; either a Class A or B misdemeanor.

If you would like any further, more specific details, please do not hesitate to contact me.

Thank you for your consideration.

Tim Baxter

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

1 AN ACT to amend 939.63 (1) (intro.), 940.225 (1) (b), 943.32 (2) and 946.415 (2)

2 (c) of the statutes; relating to: use of a facsimile firearm

and providing a maximum penalty

penalty

Analysis by the Legislative Reference Bureau

Under current law, a person who commits certain crimes by using or threatening to use a dangerous weapon or an article used or fashioned in a manner that the victim believes is a dangerous weapon is subject to greater penalties than he or she would be if he or she committed the crime without using a dangerous weapon.

Under this bill, a person is subject to the same penalties as he or she would be under current law for using a dangerous weapon if the person commits a crime using a facsimile firearm. A "facsimile firearm" is any replica, toy, starter pistol or other object that bears a reasonable resemblance to or that reasonably can be perceived to be an actual firearm.

Insert Analysis #1
MOVED

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3 SECTION 1. 939.63 (1) (intro.) of the statutes is amended to read:

4 939.63 (1) (intro.) If a person commits a crime while possessing, using or
5 threatening to use a dangerous weapon or a facsimile firearm, the maximum term
6 of imprisonment prescribed by law for that crime may be increased as follows:

✓
crime

Insert B ✓

1 SECTION 2. 940.225 (1) (b) of the statutes is amended to read:

2 940.225 (1) (b) Has sexual contact or sexual intercourse with another person
3 without consent of that person by use or threat of use of a dangerous weapon, a
4 facsimile firearm, or any other article used or fashioned in a manner to lead the
5 victim reasonably to believe it to be a dangerous weapon.

6 SECTION 3. 943.32 (2) of the statutes is amended to read:

7 943.32 (2) Whoever violates sub. (1) by use or threat of use of a dangerous
8 weapon, a device or container described under s. 941.26 (4) (a), a facsimile firearm,
9 or any other article used or fashioned in a manner to lead the victim reasonably to
10 believe that it is a dangerous weapon or such a device or container is guilty of a Class
11 C felony.

12 SECTION 4. 946.415 (2) (c) of the statutes is amended to read:

13 946.415 (2) (c) While acting under pars. (a) and (b), remains or becomes armed
14 with a dangerous weapon or a facsimile firearm or threatens to use a dangerous
15 weapon regardless of whether he or she has a dangerous weapon.

16 (END)

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2408/P1ins
PJH:jld:rs

INSERT Analysis:

④ Current law also prohibits a person from carrying or displaying a facsimile firearm in a way that would alarm, intimidate, threaten, or terrify another person. Anyone who does so is guilty of a Class C forfeiture and may be required to pay a forfeiture not to exceed \$500.

This bill increases that penalty to a Class A misdemeanor and a person who violates the provision may be fined up to \$10,000, imprisoned for up to nine months, or both.

INSERT B:

SECTION 1. 941.2965 (2) of the statutes is amended to read:

941.2965 (2) No person may carry or display a facsimile firearm in a manner that could reasonably be expected to alarm, intimidate, threaten or terrify another person. Whoever violates this section is subject to a Class C forfeiture guilty of a Class A misdemeanor.

History: 1993 a. 191; 1993 a. 491 s. 262; Stats. 1993 s. 941.2965.

Duerst, Christina

From: Gustafson, Andrew
Sent: Wednesday, November 07, 2007 3:47 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-2408/1 Topic: Facsimile firearms

Please Jacket LRB 07-2408/1 for the SENATE.

Thank you.