

**2011 DRAFTING REQUEST**

**Senate Amendment (SA-AB7)**

Received: **05/17/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Jon Erpenbach (608) 266-6670**

By/Representing: **Julie**

May Contact:

Drafter: **phurley**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Guns in a polling place

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**Instructions:**

make taking a gun into a polling place a crime

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**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>
/1	phurley 05/17/2011	csicilia 05/17/2011	jfrantze 05/17/2011	_____	lparisi 05/17/2011	lparisi 05/17/2011	

FE Sent For:

<END>

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FE Sent For:

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941.23

**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. Notwithstanding s. 939.22 (22), for purposes of this section, peace officer does not include a commission warden who is not a state-certified commission warden.

941.23 - ANNOT.

**History:** 1977 c. 173; 1979 c. 115, 221; 2007 a. 27.

941.23 - ANNOT.

*The burden is on the defendant to prove that he or she is a peace officer and within the exception. State v. Williamson, 58 Wis. 2d 514, 206 N.W.2d 613 (1973).*

941.23 - ANNOT.

*A defendant was properly convicted under this section for driving a vehicle with a gun locked in a glove compartment. State v. Fry, 131 Wis. 2d 153, 388 N.W.2d 565 (1986).*

941.23 - ANNOT.

*To "go armed" does not require going anywhere. The elements for a violation of s. 941.23 are: 1) a 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. State v. Keith, 175 Wis. 2d 75, 498 N.W.2d 865 (Ct. App. 1993).*

941.23 - ANNOT.

*A handgun on the seat of a car that was indiscernible from ordinary observation by a person outside, and within the immediate vicinity, of the vehicle was hidden from view for purposes of determining whether the gun was a concealed weapon under this section. State v. Walls, 190 Wis. 2d 65, 526 N.W.2d 765 (Ct. App. 1994).*

941.23 - ANNOT.

*There is no statutory or common law privilege for the crime of carrying a concealed weapon under s. 941.23. State Dundon, 226 Wis. 2d 654, 594 N.W.2d 780 (1999), 97-1423.*

941.23 - ANNOT.

*Under the facts of the case, the privilege of self-defense was inapplicable to a charge of carrying a concealed weapon. State v. Nollie, 2002 WI 4, 249 Wis. 2d 538, 638 N.W.2d 280, 00-0744.*

941.23 - ANNOT.

*The concealed weapons statute is a restriction on the manner in which firearms are possessed and used. It is constitutional under Art. I, s. 25. Only if the public benefit in the exercise of the police power is substantially outweighed by an individual's need to conceal a weapon in the exercise of the right to bear arms will an otherwise valid restriction on that right be unconstitutional, as applied. The right to keep and bear arms for security, as a general*

*matter, must permit a person to possess, carry, and sometimes conceal arms to maintain the security of a private residence or privately operated business, and to safely move and store weapons within those premises. State v. Hamdan, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785, 01-0056. See also State v. Cole, 2003 WI 112, 264 Wis. 2d 520, 665 N.W.2d 328, 01-0350.*

941.23 - ANNOT.

*A challenge on constitutional grounds of a prosecution for carrying a concealed weapon requires affirmative answers to the following before the defendant may raise the constitutional defense: 1) under the circumstances, did the defendant's interest in concealing the weapon to facilitate exercise of his or her right to keep and bear arms substantially outweigh the state's interest in enforcing the concealed weapons statute? and 2) did the defendant conceal his or her weapon because concealment was the only reasonable means under the circumstances to exercise his or her right to bear arms? State v. Hamdan, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785, 01-0056.*

941.23 - ANNOT.

*This section is constitutional as applied in this case. The defendant's interest in exercising his right to keep and bear arms for purposes of security by carrying a concealed weapon in his vehicle does not substantially outweigh the state's interest in prohibiting him from carrying a concealed weapon in his vehicle. State v. Fisher, 2006 WI 44, 290 Wis. 2d 121, 714 N.W.2d 495, 04-2989.*

941.23 - ANNOT.

*Judges are not peace officers authorized to carry concealed weapons. 69 Atty. Gen. 66.*

941.235

**941.235 Carrying firearm in public building.**

941.235(1)

(1) 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 A misdemeanor.

941.235(2)

(2) This section does not apply to peace officers or armed forces or military personnel who go armed in the line of duty or to any person duly authorized by the chief of police of any city, village or town, the chief of the capitol police, or the sheriff of any county to possess a firearm in any building under sub. (1). Notwithstanding s. 939.22 (22), for purposes of this subsection, peace officer does not include a commission warden who is not a state-certified commission warden.

941.235 - ANNOT.

**History:** 1979 c. 221; 1991 a. 172; 1993 a. 246; 2001 a. 109; 2007 a. 27.

941.237

**941.237 Carrying handgun where alcohol beverages may be sold and consumed.**

941.237(1)

(1) (intro.) In this section:

941.237(1)(a)

(a) "Alcohol beverages" has the meaning given in s. 125.02 (1).

941.237(1)(b)

(b) "Correctional officer" means any person employed by the state or any political subdivision as a guard or officer whose principal duties are the supervision and discipline of inmates.

941.237(1)(c)

(c) "Encased" has the meaning given in s. 167.31 (1) (b).

941.237(1)(cm)

(cm) "Firearms dealer" means any person engaged in the business of importing, manufacturing or dealing in firearms and having a license as an importer, manufacturer or dealer issued by the U.S. department of the treasury.

941.237(1)(d)

(d) "Handgun" has the meaning given in s. 175.35 (1) (b).

941.237(1)(dm)

(dm) "Hotel" has the meaning given in s. 254.61 (3).

941.237(1)(dr)

(dr) Notwithstanding s. 939.22 (22), "peace officer" does not include a commission warden who is not a state-certified commission warden.

941.237(1)(e)

(e) "Premises" has the meaning given in s. 125.02 (14m), but excludes any area primarily used as a residence.

941.237(1)(em)

(em) "Private security person" has the meaning given in s. 440.26 (1m) (h).

941.237(1)(f)

(f) "Target range" means any area where persons are allowed to use a handgun to fire shots at targets.

941.237(1)(fm)

(fm) "Tavern" means an establishment, other than a private club or fraternal organization, in which alcohol beverages are sold for consumption on the premises.

941.237(1)(g)

(g) (intro.) "Unloaded" means any of the following:

941.237(1)(g)1.

1. Having no shell or cartridge in the chamber of a handgun or in the magazine attached to a handgun.

941.237(1)(g)2.

2. In the case of a caplock muzzle-loading handgun, having the cap removed.

941.237(1)(g)3.

3. In the case of a flintlock muzzle-loading handgun, having the flashpan cleaned of powder.

941.237(2)

(2) Whoever intentionally goes armed with a handgun on any premises for which a Class "B" or "Class B" license or permit has been issued under ch. 125 is guilty of a Class A misdemeanor.

941.237(3)

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

941.237(3)(a)

(a) A peace officer.

941.237(3)(b)

(b) A correctional officer while going armed in the line of duty.

941.237(3)(c)

(c) A member of the U.S. armed forces or national guard while going armed in the line of duty.

941.237(3)(cm)

(cm) (intro.) A private security person meeting all of the following criteria:

941.237(3)(cm)1.

1. The private security person is covered by a license or permit issued under s. 440.26.

941.237(3)(cm)2.

2. The private security person is going armed in the line of duty.

941.237(3)(cm)3.

3. The private security person is acting with the consent of the person specified in par. (d).

941.237(3)(d)

(d) The licensee, owner, or manager of the premises, or any employee or agent authorized to possess a handgun by the licensee, owner, or manager of the premises.

941.237(3)(e)

(e) The possession of a handgun that is unloaded and encased in a vehicle in any parking lot area.

941.237(3)(f)

(f) The possession or use of a handgun at a public or private gun or sportsmen's range or club.

941.237(3)(g)

(g) The possession or use of a handgun on the premises if authorized for a specific event of limited duration by the owner or manager of the premises who is issued the Class "B" or "Class B" license or permit under ch. 125 for the premises.

941.237(3)(h)

(h) The possession of any handgun that is used for decoration if the handgun is encased, inoperable or secured in a locked condition.

941.237(3)(i)

(i) The possession of a handgun in any portion of a hotel other than the portion of the hotel that is a tavern.

941.237(3)(j)

(j) The possession of a handgun in any portion of a combination tavern and store devoted to other business if the store is owned or operated by a firearms dealer, the other business includes the sale of handguns and the handgun is possessed in a place other than a tavern.

941.237(4)

(4) The state does not have to negate any exception under sub. (3). Any party that claims that an exception under sub. (3) is applicable has the burden of proving the exception by a preponderance of the evidence.

941.237 - ANNOT.

**History:** 1993 a. 95, 491; 1995 a. 461; 2007 a. 27.

941.237 - ANNOT.

*Sub. (3) does not allow going armed with a concealed handgun in violation of s. 941.23. State v. Mata, 199 Wis. 2d 315, 544 N.W.2d 578 (Ct. App. 1996), 95-1336.*



PH  
ej3

SENATE AMENDMENT,  
TO 2011 ASSEMBLY BILL 7

S-17-11

Wash

1 At the locations indicated, amend the bill, as shown by assembly substitute  
2 amendment 2, as follows:

Insert 1

3 1. Page 2, line 18: after "activities" insert "carrying a firearm into a polling  
4 place".

5 2. Page 76, line 5: after that line insert:

6 SECTION 143m. 941.239 of the statutes is created to read:

7 **941.239 Carrying firearm in a polling place.** (1) Any person who goes  
8 armed with a firearm in a polling place is guilty of a Class A misdemeanor.

9 (2) This section does not apply to peace officers or armed forces or military  
10 personnel who go armed in the line of duty or to any person duly authorized by the  
11 chief of police of any city, village or town, the chief of the capitol police, or the sheriff  
12 of any county to possess a firearm in any building under sub. (1). Notwithstanding

polling place



✓

1 s. 939.22 (22), for purposes of this subsection, peace officer does not include a  
2 commission warden who is not a state-certified commission warden.

3 (END)

Insert 2

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa1058/lins

.....

INSERT 1:

“**SECTION 143c.** 938.34 (14q) of the statutes is amended to read:

938.34 (14q) CERTAIN BOMB SCARES AND FIREARM VIOLATIONS. In addition to any other disposition imposed under this section, if the juvenile is found to have violated s. 947.015 and the property involved is owned or leased by the state or any political subdivision of the state, or if the property involved is a school premises, as defined in s. 948.61 (1) (c), or if the juvenile is found to have violated s. 941.235, 941.239, or 948.605, immediately suspend the juvenile’s operating privilege, as defined in s. 340.01 (40), for 2 years. The court shall immediately forward to the department of transportation the notice of suspension, stating that the suspension is for a violation of s. 947.015 involving school premises, or for a violation of s. 941.235, 941.239, or 948.605. If otherwise eligible, the juvenile is eligible for an occupational license under s. 343.10.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253, 277, 344; 2007 a. 97, 116; 2009 a. 8, 28, 103, 137, 185, 302, 334; s. 13.92 (2) (i).

**SECTION 143g.** 938.78 (3) of the statutes is amended to read:

938.78 (3) RELEASE OF INFORMATION WHEN ESCAPE OR ABSENCE; RULES. If a juvenile adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 or found to be in need of protection or services under s. 48.13 (12), 1993 stats., or s. 48.13 (14), 1993 stats., or s. 938.13 (12) or (14) on the basis of a violation of s. 943.23 (1m) or (1r), 1999 stats., or s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.239, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a), 943.23 (1g), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.085 (2), 948.60, 948.605, or 948.61 or any crime specified in ch. 940 has escaped from a juvenile correctional facility, residential care center for children and

youth, inpatient facility, as defined in s. 51.01 (10), juvenile detention facility, or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, center, or jail, or has been allowed to leave a juvenile correctional facility, residential care center for children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail for a specified time period and is absent from the facility, center, home, or jail for more than 12 hours after the expiration of the specified period, the department or county department having supervision over the juvenile may release the juvenile's name and any information about the juvenile that is necessary for the protection of the public or to secure the juvenile's return to the facility, center, home, or jail. The department shall promulgate rules establishing guidelines for the release of the juvenile's name or information about the juvenile to the public.

**History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283; 1999 a. 9; 2001 a. 38, 59, 109; 2003 a. 292, 321; 2005 a. 25, 277, 293, 344, 406, 434; 2007 a. 20 ss. 3834, 9121 (6) (a); 2007 a. 97; 2009 a. 79, 302, 338.

**SECTION 143n.** 939.632 (1) (e) 3. of the statutes is amended to read:

939.632 (1) (e) 3. Any misdemeanor under s. 940.19 (1), 940.225 (3m), 940.32 (2), 940.42, 940.44, 941.20 (1), 941.23, 941.235, 941.239, 941.24 or 941.38 (3).

**History:** 1995 a. 22; 2001 a. 109; 2005 a. 277; 2007 a. 116, 127; 2009 a. 180, 302.

INSERT 2:

**SECTION 143w.** 973.137 (1) of the statutes is amended to read:

973.137 (1) A violation of s. 941.235 or 941.239.”.

**History:** 2003 a. 200.