

1999 DRAFTING REQUEST

Bill

Received: **10/30/98**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **James Kreuser (608) 266-5504**

By/Representing: **Candis Croker**

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

Drafter: **olsenje**

May Contact:

Alt. Drafters:

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

Extra Copies:

Topic:

Exception for peace officers to certain firearms regulations

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>
/P1	olsenje 10/30/98	gilfokm 11/2/98	ismith 11/4/98	_____	lrb_docadmin 11/4/98		
/1	olsenje 01/23/99	gilfokm 01/23/99	ismith 01/26/99	_____	lrb_docadmin 01/26/99	lrb_docadmin 01/26/99	

FE Sent For:

<END>

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/P1	olsenje 10/30/98	gilfokm 11/2/98	ismith 11/4/98	_____	lrb_docadmin 11/4/98		

FE Sent For: *1-1-23-99 KMG* *IS 1/26/99* *IS/HH 1/26/99* **<END>**

Jacket "1" for Assembly
JED

1999 DRAFTING REQUEST

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1?	olsenje	/p1-11-2 KMG	IS/KM 11/4	IS/KM 11/4			

FE Sent For:

<END>

Submit
"P" Drafts



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8522
REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

0692

October 13, 1998

MEMORANDUM

To: Representative James Kreuser
From: Jefren E. Olsen, Legislative Attorney, (608) 266-8906
Subject: Exceptions to firearms regulations for police officers acting in the line of duty

For mtg
Nov. 27

As background for a possible amendment of s. 167.31 (4), stats., your office asked me for a list of statutes that regulate or restrict the carrying or use of firearms and that contain an exception for police officers acting in the line of duty.

The following list contains a brief title or description of the relevant statute, the statutory citation and, if applicable, a note as to any unusual aspects of the statute:

Per cards 10/28
except
a. peace
officer etc.
whether on
duty
or
acting in
line of duty

1. Possessing or transporting a firearm in a vehicle, motorboat or aircraft; discharging a firearm while on a highway or roadway. *Section 167.31 (2), (3) and (4), stats.*
2. Endangering safety by discharging a firearm from a vehicle while on a highway or in a public parking lot. *Section 941.20 (3), stats.*
3. Carrying a firearm in a public building. *Section 941.235, stats.*
4. Carrying a handgun in a place where alcohol beverages may be sold and consumed. *Section 941.237 (2) and (3), stats.* *note*
5. Possession and transportation of machine guns and tear gas bombs or similar devices. *Section 941.26 (1), (1m), (3) and (4) (c) 2., stats.* (NOTE: section 941.26 (4) (c) 2., stats., refers to a peace officer "acting in his or her official capacity".)
6. Possession of a short-barreled shotgun or rifle. *Section 941.28 (2) and (4), stats.* (NOTE: s. 941.28 (4), stats., does not appear to require that the peace officer be acting in the line of duty for this exception to apply.)
7. Possession of a firearm by a person subject to a domestic abuse injunction, a child abuse injunction or a harassment injunction. *Section 941.29 (1) (f) and (g) and (10) (a), stats.* (NOTE: the exception in s. 941.29 (10) (a), stats., applies to a peace officer "while in the line of duty or, if required to do so as a condition of employment, while off duty.")

8. Possession, transportation and use of improvised explosive devices. *Section 941.31 (2), stats.*
9. Leaving or storing a loaded firearm within the reach or easy access of a child. *Section 948.55 (2), (3) and (4) (d), stats.* (NOTE: the exception in s. 948.55 (4) (d), stats., includes time periods "incidental" to the peace officer's duties.)
10. Possession or discharge of a firearm in a school zone. *Section 948.605 (2) (a) and (b) 6. and (3) (a) and (b) 4., stats.* (NOTE: the exceptions in s. 948.605 (2) (b) 6. and (3) (b) 4., stats., refer to a law enforcement officer "acting in his or her official capacity".)

Once you have had a chance to review these statutes, please give me a call and we can discuss how to proceed.

164.015

164.015 Engaging in political activity. No law enforcement officer may be prohibited from engaging in political activity when not on duty or not otherwise acting in an official capacity, or be denied the right to refrain from engaging in political activity.

164.06(2)

(2) No city, village, town or county may prohibit a law enforcement officer from being a candidate for any elective public office, if that law enforcement officer is otherwise qualified to be a candidate. No law enforcement officer may be required, as a condition of being a candidate for any elective public office, to take a leave of absence during his or her candidacy. This section does not affect the authority of a city, village, town or county to regulate the conduct of a law enforcement officer while the law enforcement officer is on duty or otherwise acting in an official capacity.

175.40(3)

(3) For purposes of civil and criminal liability, any peace officer outside his or her territorial jurisdiction acting under sub. (2) is considered to be acting in an official capacity while in fresh pursuit under sub. (2), making an arrest under sub. (2) or transporting a person arrested under sub. (2).

175.40(6)(c)

(c) For purposes of civil and criminal liability, any peace officer outside of his or her territorial jurisdiction acting under par. (a) is considered to be acting in an official capacity.

601.12(2)

(2) **Enforcement.** Upon request of the commissioner, the attorney general shall proceed in any federal or state court or agency to recover any tax or fee related to insurance payable under the laws of this state and not paid when due, and any penalty or forfeiture authorized by chs. 600 to 655. Upon request of the commissioner, the attorney general or, in a proper case, the district attorney of any county, shall aid in any investigation, hearing or other procedure under chs. 600 to 655 and shall institute, prosecute and defend proceedings relating to the enforcement or interpretation of chs. 600 to 655, including any proceeding to which the state, or the insurance commissioner or any employe of the office, in the employe's official capacity, shall be a party or in which the commissioner or the employe is interested.

940.20(2)

(2) **Battery to law enforcement officers and fire fighters.** Whoever intentionally causes bodily harm to a law enforcement officer or fire fighter, as those terms are defined in s. 102.475 (8) (b) and (c), acting in an official capacity and the person knows or has reason to know that the victim is a law enforcement officer or fire fighter, by an act done without the consent of the person so injured, is guilty of a Class D felony.

941.21

941.21 Disarming a peace officer. Whoever intentionally disarms a peace officer who is acting

in his or her **official capacity** by taking a dangerous weapon or a device or container described under s. 941.26 (1) (b) or (4) (a) from the officer without his or her consent is guilty of a Class E felony. This section applies to any dangerous weapon or any device or container described under s. 941.26 (1) (b) or (4) (a) that the officer is carrying or that is in an area within the officer's immediate presence.

941.26(2)(f)

(f) Any person who violates sub. (1) (b) regarding the use of the bomb, grenade, projectile, shell or container under sub. (1) (b) to cause bodily harm or bodily discomfort to a person who the actor knows, or has reason to know, is a **peace** officer who is acting in an **official capacity** is guilty of a Class D felony.

941.26(4)(c)2.

2. Any **peace** officer acting in his or her **official capacity**.

941.26(4)(d)

(d) Whoever intentionally uses a device or container described under par. (a) to cause bodily harm or bodily discomfort to a person who the actor knows, or has reason to know, is a **peace** officer who is acting in an **official capacity** is guilty of a Class D felony.

948.605(2)(b)6.

6. By a law **enforcement** officer acting in his or her **official capacity**; or

948.605(3)(b)4.

4. By a law **enforcement** officer acting in his or her **official capacity**.

813.12(4m)(ag)

(ag) If the respondent is a peace officer, an injunction issued under sub. (4) may not require the respondent to surrender a **firearm** that he or she is required, as a condition of employment, to possess whether or not he or she is on **duty**.

813.122(5m)(ag)

(ag) If the respondent is a peace officer, an injunction issued under sub. (5) may not require the respondent to surrender a **firearm** that he or she is required, as a condition of employment, to possess whether or not he or she is on **duty**.

813.125(4m)(cg)

(cg) If the respondent is a peace officer, an order issued under par. (a) may not require the respondent to surrender a **firearm** that he or she is required, as a condition of employment, to possess whether or not he or she is on **duty**.

941.28(4)

(4) This section does not apply to the sale, purchase, possession, use or transportation of a short-barreled shotgun or short-barreled rifle to or by any armed forces or national guard personnel in line of **duty**, any peace officer of the United States or of any political subdivision of the United States or any person who has complied with the licensing and registration requirements under 26 USC 5801 to 5872. This section does not apply to the manufacture of short-barreled shotguns or short-barreled rifles for any person or group authorized to possess these weapons. The restriction on transportation contained in this section does not apply to common carriers. This section shall not apply to any **firearm** that may be lawfully possessed under federal law, or any **firearm** that could have been lawfully registered at the time of the enactment of the national **firearms** act of 1968.

948.55(4)(d)

(d) The person is a peace officer or a member of the armed forces or national guard and the child obtains the **firearm** during or incidental to the performance of the person's **duties**.

✓ 167.31(4)(a)

(a) (intro.) Subsections (2) and (3) do not apply to any of the following who, **in the line of duty**, place, possess, transport, load or discharge a firearm in, on or from a vehicle, motorboat or aircraft or discharge a firearm from or across a highway or within 50 feet of the center of a roadway:

230.12(1)(dm)

(dm) *Damaged personal articles.* The compensation plan shall include provision for reimbursement of employes whose articles of clothing, watches or eye glasses are damaged **in the line of duty**, if the damage is not caused by employe carelessness or normal wear and tear resulting from the type of work performed by an employe, subject to a minimum actual value or repair cost specified in the plan. Payments are subject to approval of an employe's appointing authority and shall not exceed a maximum amount specified in the plan.

✓ 941.20(3)(b)1.

1. (intro.) Paragraph (a) does not apply to any of the following who, **in the line of duty**, discharges a firearm from a vehicle:

✓ 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).

✓ 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)2.

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

✓ 941.26(3)

(3) This section does not apply to the sale, possession, modification, use or transportation of any weapons or containers under sub. (1) or (1m) to or by any armed forces or national guard personnel **in the line of duty**, any civil enforcement officer of the state or of any city or county. This section does not apply to the sale, possession, modification, use or transportation of weapons under sub. (1) (a) or (1m) to or by any person duly authorized by the chief of police of any city or the sheriff of any county. This section does not apply to the restoration of any weapon under sub. (1) (a) or (1m) by a person having a license to collect firearms as curios or relics issued by the U.S. department of the treasury. The restriction on transportation contained in this section does not apply to common carriers.

941.26(4)(c)3.

3. Any armed forces or national guard personnel acting **in the line of duty**.

941.29(10)(a)

(a) The person is a peace officer and the person possesses a firearm while **in the line of duty** or, if required to do so as a condition of employment, while off duty.

941.29(10)(b)

(b) The person is a member of the U.S. armed forces or national guard and the person possesses a firearm while **in the line of duty**.

941.298(3)(b)

(b) Any armed forces or national guard personnel, while **in the line of duty**.

941.31(2)(c)

(c) This subsection does not apply to the transportation, possession, use or transfer of any improvised explosive device by any armed forces or national guard personnel or to any peace officer **in the line of duty** or as part of a duty-related function or exercise. The restriction on transportation in this subsection does not apply to common carriers.

943.61(4)

(4) An official or adult employe or agent of a library who has probable cause for believing that a person has violated this section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer, or to the person's parent or guardian in the case of a minor. The detained person shall be promptly informed of the purpose for the detention and be permitted to make phone calls, but shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. Compliance with this subsection entitles the official, agent or employe effecting the detention to the same defense in any action as is available to a peace officer making an arrest **in the line of duty**.

948.60(3)(b)

(b) This section does not apply to a person under 18 years of age who is a member of the armed forces or national guard and who possesses or is armed with a dangerous weapon **in the line of duty**. This section does not apply to an adult who is a member of the armed forces or national guard and who transfers a dangerous weapon to a person under 18 years of age **in the line of duty**.

MB
per. (a)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0692/P1

JEO: King

By
Fri 11/6
P.m.

D. Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen. cat.

1 AN ACT ^{gen. cat.} relating to: exceptions for peace officers to certain prohibitions
2 relating to firearms.

Analysis by the Legislative Reference Bureau

Current law provides for various prohibitions relating to the possession, carrying and use of firearms. Among these prohibitions are the following:

1. No person may place, possess or transport a firearm in or on a vehicle, motorboat or aircraft unless the firearm is unloaded and encased.

2. No person may load or discharge a firearm in, on or from a vehicle, motorboat or aircraft or from or across a highway or within 50 feet of the center of a roadway. In addition, more severe penalties apply if a person discharges a firearm from a vehicle while on a highway or in a public parking lot and the firearm is discharged at or toward another or at or toward any building or other vehicle.

3. No person may carry a firearm in a building owned or leased by the state or any political subdivision of the state.

These listed prohibitions do not apply to a peace officer who is acting in the line of duty. This bill provides that these prohibitions do not apply to a peace officer at any time, regardless of whether the peace officer is acting in the line of duty.

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

3 SECTION 1. 167.31 (2) (d) of the statutes is amended to read:

1 167.31 (2) (d) Except as provided in sub. (4) (a), (am), (cg) and (e), no person may
2 discharge a firearm or shoot a bolt or an arrow from a bow or crossbow from or across
3 a highway or within 50 feet of the center of a roadway.

History: 1985 a. 36; 1987 a. 27, 353; 1991 a. 77; 1993 a. 147; 1995 a. 182, 201; 1997 a. 248, 249; s. 13.93 (2) (c).

4 **SECTION 2.** 167.31 (4) (a) 1. of the statutes is repealed.

5 **SECTION 3.** 167.31 (4) (am) of the statutes is created to read:

6 167.31 (4) (am) Subsections (2) and (3) do not apply to a peace officer, as defined
7 ~~under~~ⁱⁿ s. 939.22 (22), who places, possesses, transports, loads or discharges a firearm
8 in, on or from a vehicle, motorboat or aircraft or who discharges a firearm from or
9 across a highway or within 50 feet of the center of a roadway.

10 **SECTION 4.** 941.20 (3) (b) 1. (intro.) of the statutes is renumbered 941.20 (3) (b)

11 1. and amended to read:

12 941.20 (3) (b) 1. Paragraph (a) does not apply to ~~any of the following~~ a member
13 of the U.S. armed forces or national guard who, in the line of duty, discharges a
14 firearm from a vehicle.

History: 1977 c. 173; 1987 a. 399; 1989 a. 131; 1993 a. 94, 486; 1997 a. 248, 249; s. 13.93 (2) (c).

15 **SECTION 5.** 941.20 (3) (b) 1. a., b. and c. of the statutes are repealed.

16 **SECTION 6.** 941.20 (3) (b) 1m. of the statutes is created to read:

17 941.20 (3) (b) 1m. Paragraph (a) does not apply to ~~to~~^{to} a peace officer who
18 discharges a firearm from a vehicle.

19 **SECTION 7.** 941.235 (2) of the statutes is renumbered 941.235 (2) (intro.) and

20 amended to read:

21 941.235 (2) (intro.) ~~This section~~ Subsection (1) does not apply to ~~peace~~ any of
22 the following:

23 (a) Peace officers ~~or armed~~.

1 **(b) Armed forces or military personnel who go armed in the line of duty or to**
2 **any.**

3 **(c) Any person duly authorized by the chief of police of any city, village or town,**
4 **the chief of the capitol police or the sheriff of any county to possess a firearm in any**
5 **building under sub. (1).**

6 History: 1979 c. 221; 1991 a. 172; 1993 a. 246.

6 **SECTION 8. Initial applicability.**

7 (1) This act first applies to the placement, possession, transportation, loading
8 or discharging of a firearm, and to ~~the~~ going armed with a firearm, that occurs on the
9 effective date of this subsection.

10

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0692/P1dn

JEO: k...
King

Candis Croker:

In accordance with your instructions, this draft changes the exceptions in ss. 167.31 (4), 941.20 (3) and 941.235 (2), stats., so that they apply to a peace officer regardless of whether the peace officer is acting in the line of duty.

As it turns out, there is no need to amend s. 941.237 (3), stats., because that already apparently applies to peace officers regardless of whether they are acting in the line of duty. Section 941.237 (3) (a), stats., refers simply to a peace officer, while the persons covered under s. 941.237 (3) (b), (c) and (cm), stats., have to be going armed in the line of duty.

Please let me know if you have any questions or redrafting instructions.

Jefren E. Olsen
Legislative Attorney
266-8906

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0692/P1dn
JEO:kmg:ijs

November 4, 1998

Candis Croker:

In accordance with your instructions, this draft changes the exceptions in ss. 167.31 (4), 941.20 (3) and 941.235 (2), stats., so that they apply to a peace officer regardless of whether the peace officer is acting in the line of duty.

As it turns out, there is no need to amend s. 941.237 (3), stats., because that already apparently applies to peace officers regardless of whether they are acting in the line of duty. Section 941.237 (3) (a), stats., refers simply to a peace officer, while the persons covered under s. 941.237 (3) (b), (c) and (cm), stats., have to be going armed in the line of duty.

Please let me know if you have any questions or redrafting instructions.

Jefren E. Olsen
Legislative Attorney
266-8906

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 11/4/98

To: Representative Kreuser

Relating to LRB drafting number: LRB-0692

Topic

Exception for peace officers to certain firearms regulations

Subject(s)

Criminal Law - guns and weapons, Criminal Law - law enforcement

1. **JACKET** the draft for introduction

Rep. Tim Kreuser

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Legislative Attorney
Telephone: (608) 266-8906



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0692/P1

JEO:kmg:ijs

*Redraft
miller
rcw*

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Ken Cox.

1 AN ACT *to repeal* 167.31 (4) (a) 1. and 941.20 (3) (b) 1. a., b. and c.; *to renumber*
2 *and amend* 941.20 (3) (b) 1. (intro.) and 941.235 (2); *to amend* 167.31 (2) (d);
3 and *to create* 167.31 (4) (am) and 941.20 (3) (b) 1m. of the statutes; **relating**
4 **to:** exceptions for peace officers to certain prohibitions relating to firearms.

Analysis by the Legislative Reference Bureau

Current law provides for various prohibitions relating to the possession, carrying and use of firearms. Among these prohibitions are the following:

1. No person may place, possess or transport a firearm in or on a vehicle, motorboat or aircraft unless the firearm is unloaded and encased.

2. No person may load or discharge a firearm in, on or from a vehicle, motorboat or aircraft or from or across a highway or within 50 feet of the center of a roadway. In addition, more severe penalties apply if a person discharges a firearm from a vehicle while on a highway or in a public parking lot and the firearm is discharged at or toward another or at or toward any building or other vehicle.

3. No person may carry a firearm in a building owned or leased by the state or any political subdivision of the state.

These listed prohibitions do not apply to a peace officer who is acting in the line of duty. This bill provides that these prohibitions do not apply to a peace officer at any time, regardless of whether the peace officer is acting in the line of duty.

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

1 **SECTION 1.** 167.31 (2) (d) of the statutes is amended to read:

2 167.31 (2) (d) Except as provided in sub. (4) (a), (am), (cg) and (e), no person may
3 discharge a firearm or shoot a bolt or an arrow from a bow or crossbow from or across
4 a highway or within 50 feet of the center of a roadway.

5 **SECTION 2.** 167.31 (4) (a) 1. of the statutes is repealed.

6 **SECTION 3.** 167.31 (4) (am) of the statutes is created to read:

7 167.31 (4) (am) Subsections (2) and (3) do not apply to a peace officer, as defined
8 in s. 939.22 (22), who places, possesses, transports, loads or discharges a firearm in,
9 on or from a vehicle, motorboat or aircraft or who discharges a firearm from or across
10 a highway or within 50 feet of the center of a roadway.

11 **SECTION 4.** 941.20 (3) (b) 1. (intro.) of the statutes is renumbered 941.20 (3) (b)

12 1. and amended to read:

13 941.20 (3) (b) 1. Paragraph (a) does not apply to any of the following a member
14 of the U.S. armed forces or national guard who, in the line of duty, discharges a
15 firearm from a vehicle.

16 **SECTION 5.** 941.20 (3) (b) 1. a., b. and c. of the statutes are repealed.

17 **SECTION 6.** 941.20 (3) (b) 1m. of the statutes is created to read:

18 941.20 (3) (b) 1m. Paragraph (a) does not apply to a peace officer who
19 discharges a firearm from a vehicle.

