



# Wisconsin's Concealed Carry Law: How to Prepare for the Impact on Your College

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September 21, 2011



# The Basics of Concealed Carry

- Wisconsin Supreme Court had invalidated most bans on concealed carry as unconstitutional
- Recent US Supreme Court decisions clarified 2<sup>nd</sup> Amendment includes right to carry
- 2011 Wisconsin Act 35
- Wisconsin becomes 49<sup>th</sup> state to allow concealed carry
- Will take effect November 1, 2011
- Wisconsin Department of Justice (“DOJ”) will release regulations implementing the law
  - Timeline for release of regulations is unknown
- Federal law applies to carrying of firearms on federal property



# Open Carry Is Still The Law

- Current law:
  - *“The people have a right to keep and bear arms for security, defense, hunting, recreation or other lawful purpose.”* Wisconsin Constitution, Article 1, Section 25
- Concealed Carry Law does not limit open carry
- Open carry is allowed in all places concealed carry is allowed and school zones
- No license required
- With CC license you can open carry in school zones and vehicles



## Open Carry Is Still The Law cont...

- Weapons which cannot be carried openly:
  - ❑ **switch blade**
  - ❑ **short barreled shotgun or rifle**
  - ❑ **Electric weapon (taser, unless have CCW license)**
  - ❑ **Machine gun**
  - ❑ **Firearm silencer**



## Qualifying Weapons for Concealed Carry

- **Under the Law, “weapon” includes:**
  - ❑ Handguns
  - ❑ Knives (other than switchblades)
  - ❑ Billy clubs
  - ❑ Electronic weapons (such as stun guns)
  
- **Under the Law “weapon” subject excludes:**
  - ❑ long guns
  - ❑ switch blade
  - ❑ short barreled shotgun or rifle
  - ❑ Machine gun
  - ❑ Firearm silencer



## Where Concealed Carry is Prohibited

- Concealed carry is prohibited only in the following places (open carry also prohibited in these locations):
  - ❑ Police stations, sheriffs' offices, state patrol stations, and DOJ offices;
  - ❑ Jails, prisons, houses of correction, secured correctional facilities;
  - ❑ Certain secured treatment and mental health facilities;
  - ❑ County, state, and federal courthouses;
  - ❑ Municipal courtrooms if court is in session; and
  - ❑ Areas beyond security checkpoints in airports
- Penalties for concealed carry in any of these places:
  - ❑ Monetary fine up to \$500;
  - ❑ Imprisonment up to thirty (30) days; or both



## Who May Carry

- **The DOJ is required to issue a license to any applicant, unless any of the following applies:**
  - ❑ **Applicant is less than 21 years of age**
  - ❑ **Applicant is not a Wisconsin resident**
  - ❑ **Applicant is prohibited under state or federal law from possessing weapons**
  - ❑ **Applicant is prohibited by a court from carrying a weapon while on bail or release and facing charges; or**
  - ❑ **Applicant has not provided proof of qualifying training**
    - **Training Requirements set by law**
    - **DOJ will have to fill in some of the detail**



## Statistics on Concealed Carry

- 2.9% will get permits (Wis – 168,988; MKE Metro – 49,196)
- 30% of permit holders will actually carry (Wis. - 50,696 or .8% of pop)



## Statistics on Concealed Carry Cont...

- 1% will get permits (controlled for outlier states)
- 30% of permit holders will actually carry (.3% of pop)



## Statistics on Concealed Carry Cont...

- 5% will get permits (highest rate of any state nationally)
- 30% of permit holders will actually carry (1.5% of pop)
- License for gun deer season in 2010 = 621,094 (11% of pop)



## To Post or Not to Post





## Immunity and Liability Issues

- Law grants complete immunity only to “persons” or employers who *do not* prohibit concealed carry from liability arising from such decision:
- **(b)** 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.
- **(c)** An employer that does not prohibit one or more employees from carrying a concealed weapon is immune from any liability arising from its decision.



## Immunity and Liability Issues Cont...

- Should you prohibit concealed carry? Consider:
  - No express immunity
  - Your entity's risk factors
  - New risks/duties due to posting



- **Municipal liability limits under Sec. 893.80(3) & (4), Stats. not affected by CCW prohibition.**
  - \$50,000 cap
  - Prohibition of punitive damages for torts
  - Immunity from suit-intentional acts of employees.



## Liability/Immunity – If you post; don't go too far

### § 1983. CIVIL ACTION FOR DEPRIVATION OF RIGHTS

- Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State [includes municipalities] ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress
- \$50,000 cap will not apply



## **Liability/Immunity – if you post, don't go too far**

- **Local law enforcement will not enforce it**



## **Enforcing a Posting... Trespass Sec. 943.13 (1m)c 4.**

4. Enters or remains in any part of a building that is owned, occupied, or controlled by the state or any local governmental unit, excluding any building or portion of a building under s. 175.60 (16) (a), if the state or local governmental unit has notified the actor not to enter or remain in the building while carrying a firearm or with that type of firearm. This subdivision does not apply to a person who leases residential or business premises in the building or, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the building used as a parking facility



# Enforcing a Posting... Trespass

## **Sec. 943.13 (1m)c 5.**

5. Enters or remains in any privately or publicly owned building on the grounds of a university or college, if the university or college has notified the actor not to enter or remain in the building while carrying a firearm or with that type of firearm. This subdivision does not apply to a person who leases residential or business premises in the building or, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the building used as a parking facility.



## Special Event

- Trespass: How to Ban Concealed Carry
- **Special event defined:**
  - Open to the public
  - Duration not > 3 weeks
  - Either has designated entrances that are locked when event is closed
  - Requires admission
- **Signage (notice) requirements for special events:**
  - Must be posted in prominent place near all entrances to the event
  - Must be at least five (5) by seven (7) inches
  - Must be posted so persons can reasonably be expected to see them
  - Law does not require specific language



## Trespass: How to Ban Concealed Carry

- Signage (notice) requirements:
  - Signs on buildings
    - Must be posted in a prominent place near all entrances of the part(s) of the building to which the restriction applies
      - Also at all probable access points to grounds
    - Must be at least five (5) by seven (7) inches
    - Must be posted so persons can reasonably be expected to see them
    - Law does not require specific language
    - Law does not require specific language, color or design (DOJ may provide guidance)



## Parking Lot/Car Issues:

- May require weapon (except handgun):
  - be unloaded
  - encased
  - out of sight or in locked gun rack, and
  - in a locked car



## Residence Halls/Apartments

- If on the “grounds” of the college can prohibit by posting
- If not will depend on several factors:
  1. Is the school the “tenant”?
  2. Does student sign “Lease” or “License to Occupy”?



## Space the College Leases to others

- Trespass: Rights and Penalties
  - Law gives tenants the right to determine whether to post
  - Could college require that tenants to post as a term of a lease?
    - Possibly, the law is not clear and additional liability may attach if you chose to do this



## Space the College Rents or Leases

- If it is on the “grounds” – can post that space
- If it is off the grounds, as a tenant of multiple-tenant nonresidential buildings – can post that space



## What about other instructional locations not in college buildings?

- ❑ Outdoor training, e.g. evac track, wind towers, training towers, pole farms, flight line, etc.
- ❑ Clinical, internship sites
- ❑ Premises of other employers
  - Contracted training sites
  - K-12 schools (gun free school zone)



## Special Issues – K-12 Schools cont...

- Persons may not knowingly possess a firearm (concealed or otherwise) in or on the grounds of a school, unless:
  - ❑ The firearm is not loaded and is encased or in a locked firearms rack that is on a motor vehicle;
  - ❑ The person is a state-certified warden; or
  - ❑ The person is legally hunting in a school forest and the school board has permitted hunting in the school forest; or
  - ❑ Firearm is for use in a program approved by a school



## Special Issues – K-12 Schools cont...

- Persons may not knowingly possess a firearm within 1000 feet of the grounds of a school, unless:
  - The person has a valid Wisconsin concealed carry

Or

- The person is carrying the firearm or other dangerous weapon on private property.



## **Special Issues...Trucks, Planes and Automobiles**

- **167.31 allows a person to carry a loaded and uncased handgun in a vehicle or plane**
- **Nothing in law allows school to post**
- **Practical solution.**



## Employers

- May prohibit employees from carrying concealed weapons during course of employment
- *May not*, as a condition of employment, prohibit employees from carrying concealed weapons in their own motor vehicles
  - Even if motor vehicles are driven or parked on employer's property
  - Even if motor vehicles are used in course of employment



## Next Steps if Posting

- ❑ Identify all areas of ingress/egress for posting
- ❑ Understand local ordinances on discharge of firearm for all college locations
- ❑ Prepare plan with local law enforcement on response for concealed or open carry violations
- ❑ Establish protocols when harassment restraining orders are in force relating to employees or students
- ❑ Assess security issues associated with concealed carry and convicted felons on premises
- ❑ Discuss enforcement plan with local law enforcement
- ❑ Prepare policy



## Policy Issues

- Reserve the right to search employee desks, lockers, any other work areas or when entering or leaving premises
- General Prohibition for any weapons in college buildings (owned, rented or leased)
- Define weapons
- Prohibit illegal weapons on property, e.g.
  - Switchblade
  - Machine guns
  - Short barreled shotguns or rifles



## Policy Issues cont...

- Prohibit person prohibited by law from carry weapon anywhere on college property
- Legal weapons in parking lots must be encased and unloaded (except handguns); in locked car and out of sight
- Any person in possession in areas not prohibited must comply with applicable local, state and federal law.
- No employee may carry weapon while acting as an employee except for **own** personal vehicle.
- Employees and students must adhere to policy of any other employer or property owner at any alternative site



## Policy Issues cont...

- Exceptions
  - Peace officers (law enforcement) on and off duty, on duty serving military and federal law enforcement officers
    - Must be consistent with directives of their direct supervisor or commanding officer and policy of agency
  - Instructional purposes
    - Authorized in advance for both employee and student
    - necessary for instructional purposes
    - encased and unloaded except when used for instruction in college buildings
    - handled consistent with specific program practices and procedures.



## Policy Issues cont...

- Policy must conform to state and federal laws in order to be enforced by local law enforcement when required.
- Practical tip: Students in outdoor or remote training sites - Have students in a college building prior to engaging in the training at least for a short period which triggers the no weapons policy.



## Policy Issues cont...

- Enforcement for both illegal and prohibited conduct
  - Employees call College Security or 911, depending on situation
  - Call local law enforcement
  - Have procedures worked out ahead of time
  - List of CCW Licensees is not a public document
  - Law enforcement can ask to see CCW license
- Update Campus Security Policies and Procedures to conform



## Implementation

- Brief all employees on policy procedures
- Update student policies and update students
- Prior to November 1, 2011
  - Issue revised policy
  - Post buildings
  - Communicate to stakeholders
- Monitor and assess results



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Questions?

