

Concealed Carry

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2011 Wisconsin Act 35 (Act) made the concealed carrying of weapons legal in Wisconsin. The Act also made a number of other substantial changes to Wisconsin law accommodating firearms generally. This article will cover the aspects of concealed carry and the other changes that will most directly affect town and village governments.

Timeline and types of licenses

The concealed carry law takes effect on November 1st. The Wisconsin Department of Justice (DOJ) has been mandated to have all application forms prepared by September 1st and has also been mandated to process all applications received between September 1st and December 1st within 45 days. It is estimated that there will be perhaps 100,000 applications during this time. After December 1st applications must be processed within 21 days.

A license will be granted to qualifying in-state applicants. § 175.60(2). The DOJ has also been instructed to identify which concealed carry permits issued by other states should also be effective in Wisconsin. § 175.60(1)(f). In addition, current, out-of-state and some former law enforcement officers will be issued a photo identification card by their departments allowing them to concealed carry. Finally, there is an emergency license that can be issued by a county circuit court to someone facing threats of death or great bodily harm. § 175.60(9r).

Applicable weapons

The weapons that are eligible to be carried while concealed are: handguns; electric weapons (tasers, etc.); knives except switchblades; and billy clubs. § 175.60(1)(j). “Handgun” refers to true handguns designed to be fired one-handed and does not include machine guns, short-barreled rifles or short-barreled shotguns. § 175.60(1)(bm).

Other issues

There are several law changes associated with the carrying of firearms generally. One is that effective immediately an offense of disorderly conduct cannot be based solely upon the fact that someone is carrying a firearm alone, whether openly or concealed. § 66.0409(6).

Secondly, there has been an exception carved out of municipal ordinances that regulate the discharge of a firearm (I wrote about this back in November of 2008 if you want a copy of that article). Although only the DNR may regulate hunting, towns with village powers and villages can create local ordinances that restrict areas where firearms may be discharged. These regulations should only be undertaken in areas where population density or other factors necessitate such restrictions in the interest of public safety.

The exception-creating language is here: “[a]ny ordinance or resolution that restricts the discharge of a firearm does not apply and may not be enforced if the actor's conduct is justified or, had it been subject to a criminal penalty, would have been subject to a defense described in s.

939.45.” § 66.0409(3)(b). Section 939.45 lists possible defenses in criminal law, such as asserting a right of self-defense. Unfortunately, the word “justified” is not defined anywhere. In any case, municipalities can still create and maintain ordinances restricting the discharge of a firearm and those should remain applicable in the vast majority of instances.

Your town or village board can disallow your employees from carrying concealed weapons in the course of their employment. However, you cannot require an employee not to carry a concealed weapon on their own time and you cannot disallow employees from having weapons in their car, even if they have to use their personal car for work purposes. § 175.60(15m).

Finally, loaded handguns may now be carried openly or concealed (with a license) while riding an ATV, in a car, in a boat and in a non-commercial airplane. §§ 23.33(3)(e) & 167.31.

Can your town or village restrict the concealed or open carrying of weapons?

Automatically under the Act no weapons are allowed in a police station, a municipal courtroom if court is in session and beyond a security checkpoint in an airport. However, the Act also says that judges may both carry weapons in court and give written permission for others to do so. § 175.60(16). The Act did not exclude municipal judges when granting this privilege to “judges” so I assume the intent was to include municipal judges.

Otherwise, municipalities can only restrict the carrying of concealed weapons from the inside of municipal buildings or from a municipally-organized special event like a festival. § 943.13(1m)(c). (Carrying weapons into a public building is still illegal per § 941.235 but there is now an exception for those permitted to conceal carry.) It is not possible for municipalities to restrict the carrying of weapons in outdoor areas unless that is related to a special event of three weeks or less with defined entrances that can either be locked or requiring admission. § 943.13(1e)(h). At all other times, all town or village parks, parking lots and other outdoor areas controlled by the town or village now automatically allow weapons to be carried open or concealed and you cannot prevent that.

A town or village can ban the carrying of concealed weapons into municipal buildings or special events by using signs. § 943.13(2)(bm). The signs have to be at least five by seven inches in size. They certainly can be bigger than that. Signs must be posted so as to be “located in a prominent place near all of the entrances to the part of the building to which the restriction applies and any individual entering the building can be reasonably expected to see the sign.” The requirements for signs at special event entrances are the same. The Act lists no additional guidelines for signs such as to wording, color, symbols, etc. Although there is no prescription as to required form or language other than the size and placement, signs should be very plain and direct so as to be easily understood. Your town or village board can decide to post signs by motion, resolution or ordinance.

That all being said, the Act makes an immunity exception for allowing weapons. Your town or village cannot be held liable for the mere act of allowing concealed weapons into your

buildings or special events. § 175.60(21). In other words, you would not be liable for the mere act of not disallowing weapons.

A new day in Wisconsin

In any case, this issue is now up to your town or village board. Below is a sample sign of actual size five by seven inches. I will make JPEG images of samples available on the WTA website saying both “Building” and “Event.” If your board desires, the actual size sign below could be reproduced and posted where appropriate and you are of course free to come up with your own design.

