

## **Appendix I – Wisconsin Statute 942.23 - 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.

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

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).

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).

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).

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).

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

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.

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.

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.

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.

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

### **941.235 Carrying firearm in public building.**

(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.

(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.