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**DISTRICT ATTORNEY CLARIFICATION:  
"OPEN CARRY" FIREARM RESTRICTIONS**

Wisconsin Attorney General J.B. Van Hollen recently released an Attorney General Advisory clarifying the right for persons to openly carry a firearm. While that Advisory correctly stated and explained that right, I am issuing a supplement for Sheboygan County to ensure that those wanting to exercise their right to openly carry firearms do not inadvertently violate Wisconsin law governing firearm restrictions not affected by the "open carry" right. I have listed a statute by statute identification and explanation of those Wisconsin laws. *Please note that while some exceptions to specific statutes have been listed, there are others which do not apply to the general public. To view these statutes in their entirety to determine if you fit one of the exceptions, please research them on-line.*

**Carrying a Concealed Weapon, 941.23**

Except for law enforcement officers, anyone who goes armed with a concealed firearm, loaded or not, is subject to a maximum \$10,000 fine and 9 months in jail. "Concealed" means hidden from ordinary observation and the firearm does not have to be completely hidden. A firearm worn openly in a holster on the hip, for example, would not be considered "concealed", but a firearm stuck into pants, or a garment pocket or purse would be considered "concealed". And if someone is legally openly carrying a firearm but who then puts on an outer garment that covers the firearm, either completely or partially, they would be in violation of this statute.

This prohibition does *not* apply to a person in his or her home or to the owner in his/her place of business. [*See State v. Hamdan*, 2003 WI 113, 264 Wis.2d 433, (2003).]

**Transport of Firearms in a Vehicle, 167.31(2)(b)**

Except for law enforcement officers, any firearm transported in a vehicle must be unloaded and completely enclosed in a case expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed. The penalty is a non-criminal fine of \$100. A holster that exposes any part of the firearm would not qualify as a "case", so a person exercising their right to "open carry" a firearm must, prior to traveling in any vehicle, comply with this statute.

However, Wisconsin Courts have ruled that an uncased firearm in the passenger area of a vehicle, loaded or not, may be considered a “concealed” weapon subject to the Carrying a Concealed Weapon penalties listed above. [See *State v. Walls*, 190 Wis. 2d 65 (Ct. App. 1994)].

### **Carrying a Firearm in a Public Building, 941.235**

Except for law enforcement officers, anyone who goes armed with a firearm in any building owned or leased by the state or any political subdivision of the state is subject to a maximum \$10,000 fine and 9 months jail. This would generally include police and fire stations, court houses, city and town and village halls, libraries, in short, *all* buildings where local, state or federal government business is conducted or houses a government agency, and would also include University of Wisconsin and Wisconsin Technical School buildings.

### **Possession of Firearm in School or School Zone, 948.605**

Except for law enforcement officers, anyone who goes armed with a loaded firearm in a public, parochial or private school [Grades 1-12], or within 1,000 feet of such a school, is subject to a maximum fine of \$10,000 and 3.5 years prison. There are exceptions for school sponsored/approved programs involving firearms and for someone simply driving through a school zone with their firearm(s) properly packaged for travel.

### **Possession of Firearm by Juvenile [Under age 18], 948.60**

Any person under the age of 18 who possess or goes armed with a firearm is subject to a maximum \$10,000 fine and 9 months in jail if they are 17 years old, or juvenile court proceedings if younger. An exception exists for target practice and firearm instruction if the juvenile is under the supervision of an adult.

### **Possession of Firearm Where Alcohol Beverages May Be Sold And Consumed, 941.237**

Any person who goes armed with a handgun, loaded or unloaded, in a place which is licensed to sell fermented malt beverages [beer, ale, etc.], whether sold to be consumed on the premises or not, is subject to a maximum fine of \$10,000 and 9 months in jail, which prohibition would include liquor stores, bars, taverns and restaurants selling beer. Leaving the firearm properly secured in a vehicle parked in the business’ parking lot would not be a violation. Included in this prohibition are those events which receive “temporary” Class B licenses or permits for a limited term event. There are exceptions for owners or their designated employees including private security guards hired by the owner and properly licensed to carry firearms. There are also exceptions for “private” clubs, that is, those not open to the general public, including private gun or shooting clubs.

### **Endangering Safety By Use of a Firearm, 941.20**

Anyone who possesses a firearm, whether loaded or unloaded, and endangers another’s safety by the negligent operation of the firearm; or, operates or goes armed with a firearm while under the influence of an intoxicant; or, operates or goes armed with any detectable amount of an illegal controlled substance in their blood; or, intentionally points a firearm at or toward another person [*self-defense is an exception*]; is subject to a maximum fine of \$10,000 and 9 months in jail.

### **Convicted Felon Possessing Firearm, 941.29**

Anyone convicted of a felony in Wisconsin, another state, or in federal court; or who is found not guilty of a felony by reason of insanity or mental disease or defect in Wisconsin, another state or in federal court; and who possesses a firearm, is subject to a maximum fine of \$25,000 and 10 years in prison. This is a life-time prohibition unless the person is pardoned by the Governor and the President of the United States.

### **Private Business Prohibitions**

Constitutional rights are checks on *government* power, not private entities. Accordingly, any private business, whether a mini-mart, a grocery store or a factory, etc., may prohibit firearms on their property and in their buildings. Failure to comply with such a private business prohibition may result in trespass or disorderly conduct charges.

**Prohibited Types of Firearms**

Wisconsin law bans only two types of firearms. Anyone who possesses a fully automatic firearm [941.26(1)] and/or a short-barreled shotgun or rifle [941.28(2)] is subject to a maximum fine of \$10,000 and 6 years in prison. A “fully automatic firearm” is any firearm that fires more than one shot with a single function (pull) of the trigger without manual reloading. A “short-barrel” shotgun or rifle has a barrel less than 16 inches measured from the closed breech or bolt face to muzzle, or which has a total overall length of less than 26 inches.

I am aware that the vast majority of people who choose to own firearms recognize the deadly potential of guns and are highly responsible in their storage and use. But I am also aware that all it takes to own a firearm is to clear a background check and pay for it, with no mandated training of any kind including no mandated instruction on Wisconsin’s legal restrictions, the “open carry” right notwithstanding. I am publicizing these restrictions to help eliminate misunderstandings of well-meaning gun owners who may inadvertently violate them.

DATED THIS 4<sup>th</sup> DAY OF MAY, 2009.

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Sheboygan County