



Weapons and Schools

On July 8, 2011, Governor Scott Walker signed new legislation permitting licensed individuals to carry concealed weapons. The law, 2011 Wisconsin Act 35, commonly referred to as the Carrying Concealed Weapon (CCW) Law, effectively allows those with training and registration to carry concealed weapons in most settings unless specifically prohibited by law. The new law also made significant changes concerning the presence of weapons in schools. In particular, Act 35 changed the state law governing firearms in or on school grounds or within 1,000 feet of school grounds. Most of the provisions of Act 35 will take effect on November 1, 2011. This Legal Comment addresses the changes to Wisconsin law as a result of Act 35 and the ramifications for school boards as a result of these changes to the law.¹

General Rights and Requirements Under Act 35

Act 35 generally allows qualified persons to carry concealed weapons in public.² Allowable “weapons” include handguns, electronic weapons, billyclubs, and knives other than switchblades.³ Any person carrying a concealed weapon must generally have with him or her a valid license (either a valid Wisconsin CCW license or a valid out-

of-state CCW license) and a photographic identification card. A licensee who is carrying a concealed weapon must display the license and photo identification to a law enforcement officer upon the request of the officer if the officer is acting in an official capacity and with lawful authority.

To obtain a Wisconsin CCW license, applicants must be twenty-one years of age or older, not be prohibited from possessing a firearm under state or federal law, not have been ordered as a condition of bail or release in a criminal case from possessing a dangerous weapon, be a Wisconsin resident, and have provided proof of the firearms training required for a license. The applicant must also undergo a background check. The license is generally valid for five years. Act 35 defines an out-of-state licensee as an individual with an out-of-state license who is 21 years of age or over and who is not a Wisconsin resident. Thus, if a person is a Wisconsin resident, an out-of-state license is not enough to carry a concealed weapon in Wisconsin. The Department of Justice is required to create a list of states whose out-of-state licenses will be honored in Wisconsin.⁴

Restrictions on Firearms on School Grounds

Despite the rights granted under Act 35, certain restrictions apply.

In particular, the Wisconsin gun-free school zones law, which was amended by Act 35, places certain restrictions on individuals possessing firearms while on or around school grounds.⁵ “School” is defined as a public school, parochial or private school or tribal school, which provides an educational program for one or more grades between grades 1 and 12 which is commonly known as an elementary school, middle school, junior high school, senior high school, or high school. The restrictions under the amended gun-free school zones law are enumerated below.

First, under the amended law, there is a general prohibition against an individual, including students, knowingly possessing a firearm in or on school grounds. There is no exception for CCW licensees. However, some exceptions make it lawful to possess a firearm (1) on private property that is not part of school grounds; (2) for use in a program approved by a school in the school zone; (3) in accordance with a contract entered into between a school in the school zone and the individual or employer of the individual; (4) by a law enforcement officer acting in his or her official capacity; (5) when the firearm is unloaded and is possessed by an individual while transverseing school premises for the purpose of gaining access to public or private lands



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open to hunting, if the entry on the school premises is authorized by school authorities; (6) when the firearm is not loaded and is encased or in a locked firearms rack that is on a motor vehicle; (7) by a state-certified commission warden acting in his or her official capacity; or (8) by a person legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest.

Second, under the amended law, it prohibits an individual from knowingly possessing a firearm at a place that the individual knows, or has reasonable cause to believe, is within 1,000 feet of the grounds of a school. Unlike the restriction above concerning firearms on school grounds, there is an exception allowing CCW licensees to possess a firearm within 1,000 feet of the grounds of a school. The other exceptions noted above also apply.

A third restriction under the amended law prohibits anyone from knowingly, or with reckless disregard for the safety of others, discharging or attempting to discharge a firearm at a place the person knows is in, on, or within 1,000 feet of school grounds. The only exceptions to this rule are those listed under numbers (1) through (4) and (7) above.

Thus, in general, firearms are not allowed on school grounds, regardless of any rights afforded under Act 35 for carrying concealed weapons. Further, although a CCW licensee may possess a firearm within 1,000 feet of school grounds, other individuals, including students, are generally prohibited from such possession. Discharge of a firearm in, on, or within 1,000 feet of school grounds is prohibited (even for CCW licensees), absent one of the narrow exceptions mentioned above. School officials must also suspend a student from school, commence an expulsion hearing, and expel a student from school for not less than one year for possessing a firearm on school premises or while under the supervision of a school authority.⁶

Restrictions on Dangerous Weapons on School Premises

Wisconsin law also restricts certain dangerous weapons on school premises. Specifically, the law generally prohibits any person, including students, from knowingly possessing or being armed with a dangerous weapon on school premises.⁷ “Dangerous weapon” excludes firearms, but includes any beebee or pellet-firing gun that expels a projectile through the force of air pressure or any starter gun; any device designed as a weapon and capable of producing death or great bodily harm; any electronic weapon; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede breathing or circulation of blood; or any other device which, in the manner used or intended to be used, is calculated or likely to produce death or great bodily harm. “School premises” means any school building, grounds, recreation area, athletic field, or any other property owned, used or operated for school administration.

Thus, despite any rights under Act 35, the law still restricts dangerous weapons from school premises, except in very limited instances. There is no exception allowing for CCW licensees to possess dangerous weapons on school premises. It is lawful, however, to possess a dangerous weapon when any person (1) uses the weapon solely for school-sanctioned purposes; (2) engages in military activities, sponsored by the federal or state government, when acting in the discharge of his or her official duties; (3) is a law enforcement officer or state-certified commission warden acting in his or her official duties; (4) participates in a convocation authorized by school authorities in which weapons of collectors or instructors are handled or displayed; or (5) drives a motor vehicle in which the weapon is located onto school premises for school-sanctioned purposes or for the purpose of delivering or picking up passengers or property, as long as the weapon is not removed from the vehicle or used in any manner.

Placing Other Restrictions on Carrying Concealed Weapons

The above discussion shows that there are a number of restrictions on persons, including students, possessing firearms and dangerous weapons on or around school grounds. Despite these restrictions, school district officials may be concerned with employees or other individuals carrying concealed weapons on other property (which does not fall within the definition of school or school premises) owned by the school district or off school property during school-related functions (such as field trips). To address these concerns, school district officials may need to take additional steps as provided under Act 35 to limit any right to carry concealed weapons in such instances.

With respect to other property owned by the school district, Act 35 creates provisions in the state’s trespass statute under which certain owners of property may prohibit the concealed carry of weapons if it provides an appropriate notice.⁸ In this respect, local governmental units may prohibit persons, while carrying a firearm, from entering or remaining in any part of a building that is owned, occupied, or controlled by the local governmental unit, provided that notice is given.⁹ This provision does not apply to a person who leases premises in the building or if the firearm is in a vehicle driven or parked in the parking facility. Notice requires posting a sign (which must be five inches by seven inches) in a prominent place near all of the entrances of the parts of the building to which the restriction applies. Any individual entering the building must be reasonably expected to see the sign.¹⁰ The sign must simply state the restriction imposed, which at a minimum should inform people that weapons and firearms are prohibited. The specific provision above only references prohibiting the possession of firearms; however, property owners may also prohibit the possession of other weapons on their property.

(I) f an employer or property owner does prohibit such carrying of a concealed weapon, they may be subject to greater liability than if they do not prohibit such carrying.

With respect to restricting carrying concealed weapons off school property during school-related functions, the law also prohibits a person, while carrying a firearm, from entering or remaining at a special event if the organizers of the event have provided notice not to enter the event while carrying a firearm. This provision does not apply if the firearm is in a vehicle driven or parked in the parking facility to any part of the special event grounds. A sign (five inches by seven inches) must be posted in a prominent place near all of the entrances to the special event, and the individual attending the special event must be reasonably expected to see the sign.

Act 35 also permits employers to prohibit their employees from carrying concealed weapons in the course of their employment or during any part of the course of their employment.¹¹ As a result, school boards may place restrictions on school personnel carrying concealed weapons with them on school field trips or during other activities that are not held on school grounds. However, an employer may not, as a condition of employment, prohibit an employee from carrying a concealed weapon in his or her own motor vehicle, regardless of whether the motor vehicle is driven or parked on the employer's property or whether the vehicle is used in the course of employment. Of course, as discussed above, subject to certain exceptions, school personnel are restricted from possessing firearms and other dangerous weapons on school grounds even if contained in his or her vehicle. Thus, an employee's right to carrying a concealed

weapon in his or her vehicle while on school grounds is limited.

Immunity

The new law contains two areas of immunity of importance to school districts. First, property owners or occupiers that do *not* prohibit an individual from carrying a concealed weapon on property are immune from any liability arising from its decision.¹² Second, an employer that does *not* prohibit one or more employees from carrying a concealed weapon in the course of employment is immune from any liability arising from its decision.¹³

The new law is silent as to any immunity when an employer or property owner *does* prohibit a licensed individual from carrying a concealed weapon onto the property. Thus, if an employer or property owner does prohibit such carrying of a concealed weapon, they may be subject to greater liability than if they do not prohibit such carrying. However, typically, in order for a property owner or employer to have liability, there must be some basis for holding them responsible, such as whether they could reasonably foresee the situation taking place.

Conclusion

Regardless of any rights afforded under Act 35 for carrying concealed weapons, such carrying of concealed weapons is limited on or around school grounds. School officials, therefore, will not need to post notices to restrict the carrying of concealed weapons on most property owned by the school district. There may be some buildings, however, that fall outside of the protections of the amended gun-free

school zone law and the dangerous weapon law that school officials may want to provide notice to ensure that individuals do not carry concealed weapons on the property. In addition, school officials who would like to ban employees from carrying concealed weapons in the course of their employment should ensure that they have workplace policies in place.

When determining whether to post, it is important to note that the new law provides immunity related to that decision if you do not post. Those who decide to prohibit concealed weapons will not enjoy the same immunity. The creation of immunity under the new law, however, does not necessarily mean there will be an increase in liability for those who prohibit concealed carry. The normal rules of liability for negligence will likely apply. ■

REFERENCES

1. For additional information on related topics, see *Wisconsin School News*, "Expulsion for Firearm Possession" (May 1999); "Federal Laws Address Weapons in Schools" (September 1995).
2. Wis. Stat. s. 175.60(2g)(a).
3. Wis. Stat. s. 175.60(1)(j).
4. Wis. Stat. s. 165.25(12).
5. Wis. Stat. s. 948.605.
6. Wis. Stat. s. 120.13(1)(bm) and (c)2m.
7. Wis. Stat. s. 948.61.
8. Wis. Stat. s. 943.13(1m).
9. Wis. Stat. s. 943.13(1m)(c)4.
10. Wis. Stat. s. 943.13(2)(bm).
11. Wis. Stat. s. 175.60(15m)(a).
12. Wis. Stat. s. 175.60(21)(b).
13. Wis. Stat. s. 175.60(21)(c).

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