

5401 CARRYING A WEAPON BY LICENSEE WHERE PROHIBITED — § 175.60(16)**Statutory Definition of the Crime**

Section 175.60(16) of the Wisconsin Statutes provides that it is unlawful for any (licensee) (out-of-state licensee) to knowingly carry (a concealed weapon) (a weapon that is not concealed) (a firearm that is not a weapon) in a place where carrying a weapon is prohibited.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was (a licensee) (an out-of-state licensee).

("Licensee" means an individual holding a valid license to carry a concealed weapon issued under section 175.60 of the Wisconsin Statutes.)¹

("Out-of-state licensee" means an individual who is 21 years of age or over, who is not a Wisconsin resident, and who has been issued an out of state license to carry a concealed weapon.)²

2. The defendant knowingly carried (a concealed weapon) (a weapon that is not concealed) (a firearm that is not a weapon).

"Carried" means "went armed with."³

The phrase "went armed" means that the (weapon) (firearm) must have been either on the defendant's person or that the (weapon) (firearm) must have been within the defendant's reach.⁴

"Knowingly" requires that the defendant knew the (weapon) (firearm) was on (his) (her) person or within (his) (her) control.

["Concealed" means hidden from ordinary observation. The weapon does not have to be completely hidden.]⁵

["Weapon" means (a handgun) (an electric weapon) (a knife other than a switchblade knife) (a billy club).]⁶

FOR CASES INVOLVING "A FIREARM THAT IS NOT A WEAPON" ADD THE FOLLOWING.

["A firearm that is not a weapon" means a firearm other than a handgun.

"Firearm" means a device that acts by the force of gunpowder.]⁷

3. The defendant carried the (concealed weapon) (weapon that was not concealed) (firearm that was not a weapon) in (specify a place listed in § 175.60(16)(a) 1. through 8.).⁸

Deciding About Knowledge

You cannot look into a person's mind to determine knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 5401 was approved by the Committee in February 2012.

This instruction is for violations of § 175.60(16)(a) a statute created by 2011 Wisconsin Act 35. Effective date: November 1, 2011. The penalty is a fine of \$500 or imprisonment for 30 days or both. See § 175.60(17)(b).

Note that this statute applies only to persons licensed to carry a concealed weapon by Wisconsin or by another state whose licensees are recognized in Wisconsin. Persons who are not licensees would be prosecuted under the regular criminal statutes, such as those prohibiting carrying a concealed weapon [§ 941.23] or carrying a firearm in a public building [§ 941.235].

Subsection (b) of § 175.60(16) provides that the "prohibitions under par. (a) do not apply to any of the following:

1. A weapon in a vehicle driven or parked in a parking facility located in a building that is used as, or any portion of which is used as, a location under par. (a).
2. A weapon in a courthouse or courtroom if a judge who is a licensee is carrying the weapon or if another licensee or out-of-state licensee, whom a judge has permitted in writing to carry a weapon, is carrying the weapon.
3. A weapon in a courthouse or courtroom if a district attorney, or an assistant district attorney, who is a licensee is carrying the weapon."

1. This is the definition of "licensee" provided in § 175.60(1)(d).
2. This is the definition of "out-of-state licensee" provided in § 175.60(1)(g), with the addition of the last phrase: "to carry a concealed weapon." "Out of state license" is defined in § 175.60(1)(f).
3. Section 175.60(1)(ag) defines "carry" as "to go armed with."
4. See footnote 4, Wis JI-Criminal 1335 for an explanation of the derivation of the definition of "went armed."
5. This is the definition of "concealed" used in Wis JI-Criminal 1335, Carrying A Concealed Weapon. It is to be included in the instruction only if the "concealed weapon" option is selected for the second element.
6. This is the definition of "weapon" provided in § 175.60(1)(j).

"Handgun" is defined as follows in § 175.60(1)(bm): ". . . any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of any explosive to expel a projectile through a smooth or rifled bore. 'Handgun' does not include a machine gun, as defined in s. 941.27(1), a short-barreled rifle, as defined in s. 941.28(1)(b), or a short-barreled shotgun, as defined in s. 941.28(1)(c)."

"Electric weapon" is defined in § 941.295(1c)(a).

7. Section 175.60(16)(a) refers to three categories of weapons: a concealed weapon; a weapon that is not concealed; and, a firearm that is not a weapon. "Weapon" is defined in § 175.60(1)(j) as a handgun, electric weapon, a knife other than a switchblade, or a billy club. "Handgun" is defined in § 175.60(1)(bm) to exclude machine guns and short-barreled rifles or shotguns. [See footnote 6, which contains the complete definition.] The latter would still qualify as firearms, because they operate by force of gunpowder. Thus, in the Committee's judgment, the statutory reference to "a firearm that is not a weapon" would include machine guns and short-barreled rifles or shotguns.

The definition of firearm is the standard one used in the instructions [see Harris v. Cameron, 81 Wis. 239, 51 N.W. 437 (1892)], modified to refer to "device" in place of the usual reference to "weapon."

8. Section 175.60(16)(a) prohibits carrying a weapon or a firearm that is not a weapon in the following places.

1. Any portion of a building that is a police station, sheriff's office, state patrol station, or the office of division of criminal investigation special agent of the department.
2. Any portion of a building that is a prison, jail, house of correction, or secured correctional facility.
3. The facility established under s. 46.055. [The secure mental health facility for sexually violent persons.]
4. The facility established under s. 46.056. [The Wisconsin Resource Center.]
5. Any secured unit or secured portion of a mental health institute under s.51.05, including a facility designated as the Maximum Security Facility at Mendota Mental Health Institute.
6. Any portion of a building that is a county, state, or federal courthouse.
7. Any portion of a building that is a municipal courtroom if court is in session.
8. A place beyond a security checkpoint in an airport.