

**1323 ENDANGERING SAFETY BY USE OF A DANGEROUS WEAPON:
DISCHARGING A FIREARM WITHIN 100 YARDS OF BUILDING —
§ 941.20(1)(d)**

Statutory Definition of the Crime

Endangering safety by use of a dangerous weapon, as defined in § 941.20(1)(d) of the Criminal Code of Wisconsin, is committed by one who while on the lands of another discharges a firearm within 100 yards of any building devoted to human occupancy situated on and attached to the lands of another without the express permission of the owner or occupant of the building.

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 four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant discharged a firearm.

The term "firearm" means a weapon that acts by the force of gunpowder.¹ To "discharge a firearm" simply means to shoot a gun.

2. The defendant shot the gun while on lands belonging to someone else.
3. The defendant shot the gun within 100 yards of a building² devoted to human occupancy and situated on and attached to the lands of another.
4. The defendant shot the gun without the express permission of the (owner) (occupant) of the building.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four 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

This instruction was originally published as Wis JI-Criminal 1322 in 1983 and revised in 1988 and 1990. It was renumbered Wis JI-Criminal 1323 in 1995. This revision was approved by the Committee in August 2004 and involved adoption of a new format.

Section 941.20 was amended by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. The title of the statute was changed from "reckless use of weapons" to "endangering safety by use of a dangerous weapon." That is the only change that affected the subsection addressed by the instruction. The effective date of the statutory change was January 1, 1989, and this instruction replaced Wis JI-Criminal 1322 (© 1983) for offenses committed on or after that date.

1. The term "firearm" is considered to mean a weapon that acts by the force of gunpowder. See, for example, Harris v. Cameron, 81 Wis. 239, 51 N.W. 437 (1892). This definition excludes air guns.

2. Section 941.20(1)(d) was revised by 1989 Wisconsin Act 131 (effective date: March 31, 1990) to include "house trailer or mobile home" within the definition of "building." The revised definition provides: "'Building' as used in this paragraph includes any house trailer or mobile home, but does not include any tent, bus, truck, vehicle or similar portable unit."