

**1327 ENDANGERING SAFETY BY USE OF A DANGEROUS WEAPON:
INTENTIONALLY DISCHARGING A FIREARM FROM A VEHICLE —
§ 941.20(3)**

Statutory Definition of the Crime

Endangering safety by use of a dangerous weapon, as defined in § 941.20(3) of the Criminal Code of Wisconsin, is committed by one who intentionally discharges a firearm from a vehicle while on a highway¹ at or toward (another person) (any building) (another vehicle).²

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 are present.

Elements of the Crime That the State Must Prove

1. The defendant discharged a firearm from a vehicle³ while on a highway.⁴

The term "firearm" means a weapon that acts by the force of gunpowder. To "discharge a firearm" simply means to shoot a gun.⁵

2. The defendant shot the gun at or toward (another person) (a building) (another vehicle).⁶
3. The defendant shot the gun intentionally.

This requires that the defendant acted with the purpose to discharge the firearm at or toward (another person) (a building) (another vehicle).

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 1327 was originally published in 1994. This revision was approved by the Committee in August 2004.

Sub. (3) of § 941.20 was created by 1993 Wisconsin Act 94 (effective date: Dec. 25, 1993). Violations of sub. (3), referred to as "drive-by shootings," are closely related to offenses defined in § 941.20(1)(d), discharging a firearm within 100 yards of a building devoted to human occupancy, and in § 941.20(2), discharging a firearm into a vehicle or building.

1. The statute also applies to the discharge of a firearm "on a vehicle parking lot that is open to the public." If a parking lot is involved, the instruction would have to be modified to substitute that phrase wherever "on a highway" appears.

2. The phrases in parentheses are adapted from the alternatives found in sub. (3)(a)1. and 2. Sub. (3)(a) refers to discharging a firearm "under any of the following circumstances . . . : 1. The person discharges the firearm at or toward another. 2. The person discharges the firearm at or toward any building or other vehicle." Thus, the firearm must be discharged at or toward another person, any building, or another vehicle, as reflected in the instruction.

3. "Vehicle" is defined in § 939.22(44).

4. The statutory definition of the offense explicitly refers to "a highway, as defined in s. 340.01(22)." The Committee concluded that it was not necessary to include that definition in the instruction for the usual case. If definition of "highway" is needed, obviously the one provided in § 340.01(22) should be used.

The statute also applies to violations that take place "on a vehicle parking lot that is open to the public." See note 1, supra.

5. These definitions are those used for other violations of § 941.20. See Wis JI-Criminal 1322.

6. See note 2, supra.