1337 CARRYING A FIREARM IN A PUBLIC BUILDING — § 941.235

Statutory Definition of the Crime

Section 941.235 of the Criminal Code of Wisconsin is violated by any person[1] who goes armed with a firearm in any building owned or leased by the state or any political subdivision of the state.

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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant went armed with a firearm.

   The phrase "went armed" means that a firearm must have been on the defendant's person or that a firearm must have been within the defendant's reach.[2] In addition, the defendant must have been aware of the presence of the firearm.[3]

   The term "firearm" means a weapon that acts by force of gunpowder.[4]

2. The defendant went armed with a firearm in a building owned or leased by (the state.) (a political subdivision of the state. _____ is a political subdivision of the state.)[5]

Jury's Decision

If you are satisfied beyond a reasonable doubt that both 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 1337 was originally published in 1995 and revised in 2007 and 2011. The 2011 revision updated footnote 1 to refer to changes made by 2011 Wisconsin Act 35. This revision was approved by the Committee in April 2019; it added the material at footnote 3.

1. Subsection (2)(a) of § 941.235 provides that the statute does not apply:

> . . . to peace officers or armed forces or military personnel who go armed in the line of duty or to any person duly authorized by the chief of police of any city, village or town, the chief of the capitol police or the sheriff of any county to possess a firearm in any building under sub.(1).

2011 Wisconsin Act 35 amended § 941.235(2) by creating subsecs. (2)(c)-(e), which recognize three additional exceptions:

- a qualified out-of-state law enforcement officer, as defined in s. 941.23(1)(g) – sub. (2)(c)
- a former officer, as defined in s. 941.23(1)(c) – sub. (2)(d)
- a licensee, as defined in s. 175.60(1)(d), or an out-of-state licensee, as defined in s. 175.60(1)(g) – sub. (2)(e).

The general rule in Wisconsin is that an exception which appears in a separate section of the statute is a matter of defense which the prosecution need not anticipate in the pleadings. State v. Harrison, 260 Wis. 89, 92, 150 N.W.2d 38 (1951); Kreutzer v. Westfahl, 187 Wis. 463, 477, 204 N.W.2d 595 (1925).

These situations are best handled, in the Committee's judgment, in the same manner as "affirmative defenses." That is, they are not issues in the case until there is some evidence of their existence. Once there is evidence sufficient to raise the issue, the burden is on the state to prove, beyond a reasonable doubt, that the defense, or the exception, is not present. See Moes v. State, 91 Wis.2d 756, 284 N.W.2d 66 (1979); State v. Schultz, 102 Wis.2d 423, 307 N.W.2d 151 (1981).

2. This is the definition of "went armed" used in Wis JI-Criminal 1335, Carrying A Concealed Weapon. See note 2 of that instruction for cases discussing "went armed."

3. The "aware of the presence" requirement was approved as a correct statement of the law in State v. Asfoor, where the court stated that "[c]oncealing or hiding a weapon precludes inadvertence." 75 Wis.2d 411, 415, 249 N.W.2d 529 (1976). The concept is similar to that involved for offenses requiring "possession." See Wis JI Criminal 920. For cases identifying "aware of the presence" as an element of

the crime, see note 3 of Wis JI-Criminal 1335. The 1995 revision of that instruction added "aware of the presence" as a separate element.

4. 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 airguns.

5. Whether a particular entity is a "political subdivision" of the state is a question of law that may be communicated to the jury. Over twenty Wisconsin statutes define the term, the most common being as follows: "'Political subdivision' means a county, city, town or village." See, for example, § 560.60(13). Subsection 102.475(8)(d) refers to "counties, municipalities and municipal corporations." Subsection 144.442(9m)(a) adds "public inland lake protection and rehabilitation districts." Subsection 166.08(2)d), dealing with emergency government, adds "special districts, authorities and other public corporations and entities whether organized and existing under charter or general law."

The title of § 941.235 uses the term "public building" but that term is not used in the text. That term may have a broader meaning in general usage, referring to buildings that are open to the public. See, for example, § 101.01(2)(g). The Wisconsin Supreme Court discussed the meaning of "public building" in City of Milwaukee v. K.F., 145 Wis.2d 24, 426 N.W.2d 329 (1988), where the majority concluded that the Milwaukee War Memorial was a public building even when rented by a group for private use. The majority relied in part on the definition in § 101.01(2)(g). A dissenting opinion argued that a public building could lose its public character when a private event is held there and cautioned against incorporating definitions from civil statutes into the criminal setting.

Section 941.235 avoids some potential difficulties by referring to buildings owned by a "political subdivision" but does not define that term as do most other statutes which use it.

