

**2178A POSSESSION OF A FIREARM IN A SCHOOL ZONE — § 948.605(2)(a)****Statutory Definition of the Crime**

Possession of a firearm on school grounds, as defined in § 948.605(2) of the Criminal Code of Wisconsin, is committed by any person who knowingly possesses a firearm at a place that the person knows, or has reasonable cause to believe, is in or on the grounds of a school.

**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 knowingly possessed a firearm.

"Possessed" means that the defendant knowingly had a firearm under (his) (her) actual physical control.<sup>1</sup>

The term "firearm" means a weapon that acts by the force of gunpowder.<sup>2</sup>

2. The defendant possessed a firearm in or on the grounds of a school.<sup>3</sup>

["School" means a public, parochial, or private school or a tribal school which provides an education program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school, or high school.]<sup>4</sup>

3. The defendant knew or had reasonable cause to believe that (he) (she) possessed a firearm in or on the grounds of a school.

"Reasonable cause to believe" means that a reasonable person in the defendant's position would have believed that the place where the firearm was possessed was in or on the grounds of a school.

### **Deciding About Knowledge Or Belief**

You cannot look into a person's mind to determine knowledge or belief. Knowledge or belief 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 and belief.

### **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 2178A was originally published in 1991 and revised in 2009. It was amended in 2012 to reflect changes made by 2011 Wisconsin Act 35. This revision was approved by the Committee in July 2015; it revised the Comment.

This instruction is for a violation of § 948.605(2), created by 1991 Wisconsin Act 17. The statute had an effective date of September 1, 1991 and is a Class I felony. Subsection (3) of § 948.605 makes it a Class G felony to discharge a firearm in a school zone. See Wis JI-Criminal 2178B.

Related offenses are addressed by the following statutes: § 948.61, Dangerous weapons other than firearms on school premises (see Wis JI-Criminal 2179); § 941.20, Endangering safety by use of a dangerous weapon (see Wis JI-Criminal 1305 and 1321-1324); and § 941.23, Carrying a concealed weapon (see Wis JI-Criminal 1335).

Subsection (2)(b) of § 948.605 sets forth eight situations where the prohibition of sub. (2)(a) does not apply. The exceptions in sub. (2)(b)2d., 2f., and 2h. were created by 2015 Wisconsin Act 23 [effective date: June 26, 2015]. 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, 250 N.W.2d 38 (1951). Kreutzer v. Westfahl, 187 Wis. 463, 477, 204 N.W. 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).

1. The definition of "possession" is based on the one provided in Wis JI-Criminal 920. That instruction also includes optional explanations for cases where an object is arguably under the defendant's control but not in his physical possession. The approach taken in Wis JI-Criminal 920 was cited with approval in State v. Allbaugh, 148 Wis.2d 807, 436 N.W.2d 898 (Ct. App. 1989).

The statute expressly refers to "knowingly possesses." Even without such reference, "knowingly" would be required because inherent in the legal definition of "possession" is the concept of knowing or conscious possession. See Schwartz v. State, 192 Wis. 414, 418, 212 N.W. 664 (1927); Doscher v. State, 194 Wis. 67, 69, 214 N.W. 359 (1927). Also see Wis JI-Criminal 6000, Note on the Knowledge Requirement in Controlled Substances Cases.

2. 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.

3. 2011 Wisconsin Act 35 amended § 948.605(2) to limit the criminal offense to possession of a firearm "in or on the grounds of a school." Offenses "within 1,000 feet of the grounds of a school" are no longer criminal – they are Class B forfeitures (for those without a concealed carry license).

4. This is the definition of "school" provided in § 948.61(1)(b); § 948.605(1)(b) states that it applies to this offense.