2178B DISCHARGE OF A FIREARM IN A SCHOOL ZONE — § 948.605(3)(a)

Statutory Definition of the Crime

Discharge of a firearm in a school zone, as defined in § 948.605(3) of the Criminal Code of Wisconsin, is committed by any person who knowingly[1] discharges[2] a firearm at a place that the person knows is a school zone.

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[3] discharged a firearm.

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

   To "discharge a firearm" simply means to shoot a gun.[5]

2. The defendant discharged a firearm in a school zone.

   "School zone" means in or on the grounds of a school (or within 1,000 feet from the grounds of a school).[6]

   ["School" means a public, parochial, or private 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.][7]

3. The defendant knew that (he) (she) was in a school zone when (he) (she) discharged a firearm.

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 2178B was originally published in 1991 and revised in 2009. This revision was approved by the Committee in July 2015; it revised the Comment.

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

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 (3)(b) of § 948.605 sets forth seven situations where the prohibition of sub. (3)(a) does not apply. The exceptions in sub. (3)(b)5., 6., and 7. 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, the 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 instruction deals only with "knowingly" discharging a firearm. But note that the statute reads in the disjunctive: ". . . knowingly, or with reckless disregard for the safety of another." Since the statute is written in the alternative, the Committee assumed that proof of either alternative is sufficient and that proof of "reckless disregard" is not required in all cases. If that is the case, it seems that the "reckless disregard" alternative would require substantially greater proof than the "knowingly" alternative

requires. "Recklessness" under the Criminal Code requires that the actor create a substantial and unreasonable risk of death or great bodily harm and that the actor be aware of that risk. See § 939.24. The "knowingly" alternative apparently requires only that the defendant know that he discharged a firearm; no additional risk to others or awareness of such a risk is necessary. That being the case, the Committee expects that all cases would be charged and prosecuted under the "knowingly" alternative.

2. The statute also prohibits "attempts to discharge" a firearm. If an attempt is involved, the instruction would have to be modified accordingly. See Wis JI-Criminal 580 for the general definition of "attempt," which may be useful in developing an instruction for the attempt variety of this offense (which is, of course, punished the same as the completed crime in this instance).

3. See note 1, supra.

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 air guns.

5. This definition is used in Wis JI-Criminal 1322.

6. This is the definition of "school zone" provided in § 948.605(1)(b).

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

