

2179 DANGEROUS WEAPONS OTHER THAN FIREARMS ON SCHOOL PREMISES — § 948.61**Statutory Definition of the Crime**

Section 948.61 is violated by a person who knowingly possesses or goes armed with a dangerous weapon on school premises.

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 possessed an object.

"Possessed" means that the defendant knowingly had the object under (his) (her) actual physical control.¹

2. The object was a dangerous weapon.

A "dangerous weapon" is (any device designed as a weapon and capable of producing death or great bodily harm) (any device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm).²

3. The defendant possessed a dangerous weapon on school premises.

"School premises" means any school building, grounds, recreation area or athletic field, or any other property owned, used, or operated for school administration.³

["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.]⁴

4. The defendant knew that (he) (she) possessed a dangerous weapon and knew that (he) (she) was on school premises.

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

Wis JI-Criminal 2179 was originally published in 1991 and revised in 1994. This revision was approved by the Committee in April 2009; it involved adoption of a new format and nonsubstantive changes to the text.

This instruction is for a violation of § 948.61, which is punished as a Class A misdemeanor if a first offense but as a Class E felony "if the violation is the person's 2nd or subsequent violation of this section within a 5-year period, as measured from the dates the violations occurred." § 948.61(2)(b). This instruction may be used for either the misdemeanor or felony offenses. As to the latter, the Committee concluded that the fact of prior conviction need not be submitted to the jury. "Other than the fact of prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Appendi v. New Jersey, 530 U.S. 466, 490 (2000) [emphasis added.]

Section 948.61 was created by 1987 Wisconsin Act 332 as part of the revision of the criminal statutes relating to crimes against children. It was amended by 1991 Wisconsin Act 17, effective date: September 1, 1991. The amendment limited this statute to dangerous weapons other than firearms. The same Act created § 948.605 which prohibits possession of a firearm in a school zone. See Wis JI-Criminal 2178A.

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).

The evidence was found to be sufficient to establish "knowingly possessed" in a prosecution under § 948.61 in In Interest of Michelle A.D., 181 Wis.2d 917, 512 N.W.2d 248 (Ct. App. 1994).

2. Section 948.61(1)(a) provides that "'dangerous weapon' has the meaning specified in § 939.22(10), except 'dangerous weapon' does not include any firearm." The Committee suggests using the part of the statutory definition that applies to the facts of the case. The definition in the instruction does not include all the alternatives provided in § 939.22(10), which, as amended by 2007 Wisconsin Act 127 and excluding "firearm," provides as follows:

"Dangerous weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede partially or completely, breathing or circulation of blood; any electric weapon as defined in § 941.295(4); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

A "BB" air pistol is a "dangerous weapon" under §§ 948.61 and 939.22(10). In Interest of Michelle A.D., 181 Wis.2d 917, 512 N.W.2d 248 (Ct. App. 1994).

See Wis JI-Criminal 910 for discussion of substantive issues relating to "dangerous weapon."

3. This is the definition of "school premises" provided in § 948.61(1)(c).

4. This is the definition of "school" provided in § 948.61(1)(b).