

Clearinghouse Rule 20-021

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE TBD)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to amend SPS 33.025, 34.07, and 35.01 (4m); and to create SPS 30.02 (2m) and 34.065, relating to electric weapons.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 440.26 (3m), Stats.

Statutory authority: Sections 227.11 (2) (a) and 440.26 (1) (b) and (3m), Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

Section 440.26 (1) (b), Stats., “The department may promulgate rules specifying activities in which a person may engage without obtaining a license or permit under this section.”

Section 440.26 (3m), Stats., “The department shall promulgate rules relating to the carrying of dangerous weapons by a person who holds a license or permit issued under this section or who is employed by a person licensed under this section. The rules shall meet the minimum requirements specified in 15 USC 5902 (b) and shall allow all of the following:

- (a) A person who is employed in this state by a public agency as a law enforcement officer to carry a concealed firearm if s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies.
- (b) A qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), to carry a concealed firearm if s. 941.23 (2) (b) 1. to 3. applies.
- (c) A former officer, as defined in s. 941.23 (1) (c), to carry a concealed firearm if s. 941.23 (2) (c) 1. to 7. applies.

(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), to carry a concealed weapon as permitted under s. 175.60.”

Related statute or rule: None.

Plain language analysis:

This rule project creates a definition for “electric weapon.” It also specifies that private security credential holders may go armed with an electric weapon if they are permitted to carry a firearm under SPS 34.015 (2) or are exempt from the permit requirement by statute. Further, the rule project clarifies that credential holders carrying an electric weapon under a firearm permit issued by the department, must have the permit on their person while on duty. Finally, several changes are made to bring the text into conformity with current drafting standards, including replacing references to “he or she.”

Summary of, and comparison with, existing or proposed federal regulation:

15 U.S.C. s. 5902 allows armored car crew members to carry a firearm in any state if they meet their state’s requirements to carry a firearm while on duty. Section 440.26 (3m), Stats., requires the department to promulgate rules relating to carrying dangerous weapons that, at a minimum, comply with the federal requirements in 15 U.S.C. s. 5902.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: N/A.

Comparison with rules in adjacent states:

Illinois:

Private security and private detective credential holders are required to complete a firearm training course before performing job duties requiring the use, carrying, or possession of a firearm. A credential holder who has passed the required firearm training may be issued a firearm control card by the Department of Financial and Professional Regulation-Division of Professional Regulation. This card allows the credential holder to carry a firearm as well as stun, taser, or tear gas guns. (Ill. Admin. Code 1240.530)

Iowa:

Iowa law allows individuals whose employment reasonably justifies the need to go armed while on duty, including private security and private investigators, to apply for a professional carry permit. (IA § 724.6, Stats.) In order to receive a professional carry permit the individual must complete a firearms training course. (IA Admin Code 661-91.4(1)) Iowa law defines a dangerous weapon as including devices which emit electric current designed to immobilize a person. (IA § 702.7, Stats.)

Michigan:

Michigan law allows the possession and reasonable use of an electro-muscular disruption device by private security officers and private detectives in the course of their official duties so long as the individual has been trained in the use, effects, and risks of the device. (MI § 750.224 (a), Stats.)

Minnesota:

Minnesota law requires private security and private detectives who carry weapons, or immobilizing or restraint techniques, to complete a certified training course. Weapons include electronic incapacitation devices. The training course must include training on the proper use of the weapon, including the risks and dangers of its use. The course must also include training in first aid, as well as the legal limitations on the use of the weapon and alternatives to the use of force. Finally, individuals going armed with a weapon must complete 6 hours of continuing education each year. (MN § 326.3361, Stats.)

Summary of factual data and analytical methodologies:

This rule is necessary to ensure the department rules relating to private security and private detectives reflect the current state of Wisconsin law, including recent changes enacted in 2019 Wisconsin Act 87. Failure to revise the rules could result in stakeholder confusion as to the legality of carrying an electric weapon while on duty as a private security person or private detective.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule was posted on the department's website for 14 days to solicit economic impact comments from small businesses and local governments. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The fiscal estimate and economic impact analysis is attached.

Effect on small business:

No impact.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing scheduled for 11:00 AM on July 31, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 30.02 (2m) is created to read:

SPS 30.02 (2m) “Electric weapon” has the meaning given in s. 941.295 (1c) (a), Stats.

SECTION 2. SPS 33.025 is amended to read:

SPS 33.025 Private security persons to carry permits. A private security person shall have on ~~his or her~~their person while on duty as a private security person the private security permit issued ~~to him or her~~ by the department and, if carrying a firearm or electric weapon, the firearms permit issued ~~to him or her~~ by the department if a permit is required.

SECTION 3. SPS 34.065 is created to read:

SPS 34.065 Electric weapons. An owner or employee of an agency may only be armed with an electric weapon while on duty if the owner or employee of the agency has been issued a permit under s. SPS 34.015 (2) to carry a firearm, or is exempt from the permit requirement under s. SPS 34.015 (5) to (8).

SECTION 4. SPS 34.07 is amended to read:

SPS 34.07 Other dangerous weapons. An owner or employee of an agency may only be armed with a dangerous weapon other than a firearm or electric weapon, which ~~he or she~~, based on their training, ~~is~~they are proficient in handling. The person shall understand the legal limits of force with the weapon, the dangers ~~and~~of misuse of the weapon and the safety rules relating to the weapon. The agency shall, upon request of the department, provide documentation of the training or experience which prepared the person to be proficient in the use of the weapon.

SECTION 5. SPS 35.01 (4m) is amended to read:

SPS 35.01 (4m) Failing to ~~have on his or her person~~possess a private security permit while on duty as a private security person and, if carrying a firearm ~~on, about or near his~~

~~or her person or electric weapon while on duty, failing to have on his or her person~~
possess the firearms permit issued by the department if a permit is required.

SECTION 6. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
