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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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IM-2022-04

### **FIREARM REGULATION IN WISCONSIN**

This information memorandum provides an overview of federal and state laws and regulations related to the purchase, possession, and carrying of firearms, with an emphasis on Wisconsin law. Among other topics, it summarizes state and federal possession laws and background check requirements; provides an overview of certain other laws related to transferring, transporting, and carrying firearms; and concludes with a brief overview of laws related to certain devices that have received attention in the last several years.

### **CONSTITUTIONAL FRAMEWORK AND AUTHORITY TO REGULATE**

#### **U.S. and State Constitutional Texts**

The U.S. and Wisconsin Constitutions both articulate a right to keep and bear arms. Specifically, the Second Amendment to the U.S. Constitution provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” [U.S. Const. amend. 2.] Similarly, the Wisconsin Constitution states: “The people have the right to keep and bear arms for security, defense, hunting, recreation, or any other lawful purpose.” [Wis. Const. art. I, s. 25.] These texts provide the legal backdrop for restrictions imposed on purchasing, possessing, and carrying of firearms.

#### **Recent U.S. Supreme Court Decisions**

Over the last two decades, the U.S. Supreme Court refined the Second Amendment’s meaning and protections in several landmark opinions. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court held that the Second Amendment protects an individual’s right to possess a firearm and to use that firearm for lawful purposes such as self-defense. The Court then declared unconstitutional a District of Columbia ban on handgun possession and a requirement that firearms in a home be kept disassembled or trigger-locked.

Two years later, in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court considered a Chicago ordinance, similar to the one in *Heller*, that effectively banned handgun possession by most city residents. In *McDonald*, the Court invalidated the Chicago ordinance, holding that the Second Amendment protects individuals against actions by state and local governments, in addition to protecting them against actions by the federal government.<sup>1</sup>

More recently, in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. \_\_\_\_ (2022), the Court articulated the proper framework for analyzing challenges to laws or regulations under the Second Amendment. In that case, the Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” The Court further held that, for such a regulation to be upheld, “the government must demonstrate that the

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<sup>1</sup> The Court interpreted the Fourteenth Amendment to the U.S. Constitution, which explicitly applies to the states, as having incorporated the Second Amendment.

regulation is consistent with the Nation's historical tradition of firearm regulation." The Court then concluded that, under this standard, the State of New York's requirement that a person who seeks to carry a handgun outside his or her home prove that "proper cause" exists to be issued an unrestricted license to carry a handgun was unconstitutional.

Although these cases confirmed individual rights and struck down particular firearms restrictions, the Supreme Court did not conclude that all firearm regulations are unconstitutional. For example, in *Heller*, the Court noted that the right secured by the Second Amendment "is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." [554 U.S. at 626.] The Court further stated that its opinion does not undermine longstanding prohibitions, such as possession of firearms by felons, or laws prohibiting carrying of firearms in sensitive places like schools, or imposing conditions and qualifications on commercial sales of arms. [*Id.* at 626-27.] And in *Bruen*, the Court noted a historical record of regulation in certain "sensitive places," citing examples of legislative assemblies, polling places, and courthouses. Specifically, the Court stated:

We therefore can assume it settled that these locations were "sensitive places" where arms carrying could be prohibited consistent with the Second Amendment. And courts can use analogies to those historical regulations of "sensitive places" to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible. [*Bruen*, 579 U.S. \_\_\_\_ (slip op. at 21) (emphasis in original).]

## **Federal and States' Authority to Regulate**

Both federal and state laws regulate various acts involving firearms, subject to these constitutional limitations. Congress grounds many of its firearms regulations under the authority of the Commerce Clause of the U.S. Constitution, which grants to Congress the authority "to regulate Commerce with foreign nations, among the several states, and with the Indian tribes." [U.S. Const. art. I, s. 8, cl. 3.]. For instance, 18 U.S.C. s. 922, which contains restrictions related to the possession, transfer, and sale of firearms, explicitly invokes Congress's authority to regulate interstate commerce. Federal courts have upheld Congress's authority to enact various firearms regulations, including regulations that restrict possession only, under the Commerce Clause.

A state's authority to regulate firearms is derived from the police powers each state has to protect the welfare, safety, and health of its citizens. In addition to being subject to constitutional limitations, state firearm regulations may also be circumscribed by federal law. The Supremacy Clause ensures that federal law is the highest form of law in the U.S. legal system. Accordingly, when the state and federal governments regulate in the same area, federal law preempts state law to the extent that there is a conflict. [*Arizona v. United States*, 567 U.S. 387, 398-99 (2012).]

## **Local Governments' Authority to Regulate**

Local units of government, such as cities, villages, towns, and counties, have a very limited role regarding firearms regulation in Wisconsin. With a few narrow exceptions, state law prohibits cities, villages, towns, and counties from enacting ordinances regulating the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration, or taxation of any knife, firearm, or ammunition, unless the ordinance

is the same as or similar to, and no more stringent than, state law.<sup>2</sup> [s. 66.0409 (2), Stats.] Cities, villages, and towns that exercise village powers generally may, however, enact ordinances that restrict the discharge of a firearm. [ss. 66.040 (3) (b) and 66.0409 (2), Stats.]

## **PERSONS PROHIBITED FROM POSSESSING A FIREARM**

Both state and federal law prohibit certain persons from possessing a firearm.<sup>3</sup> Although substantial overlap exists with respect to who is prohibited from possessing a firearm, the categories of persons prohibited under state and federal law are not identical.

### **Disqualification Based on Criminal Conduct**

Wisconsin law prohibits a person from possessing a firearm if any of the following applies:

- The person has been convicted of a felony in this state.
- The person has been convicted of a crime elsewhere that would be a felony if committed in this state.
- The person has been adjudicated delinquent for an act that would be a felony if committed by an adult in this state.
- The person has been found not guilty of a felony in this state by reason of mental disease or defect.
- The person has been found not guilty of, or not responsible for, a crime elsewhere that would be a felony in this state by reason of insanity or mental disease, defect, or illness.

[s. 941.29 (1m), Stats.]

Like Wisconsin law, federal law prohibits a person who has been convicted of a felony from possessing a firearm. In addition, federal law prohibits a person from possessing a firearm if any of the following applies:

- The person is a fugitive from justice.<sup>4</sup>

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<sup>2</sup> In *Wisconsin Carry, Inc. v. City of Madison*, 2017 WI 19, the Wisconsin Supreme Court struck down a rule prohibiting certain weapons on city buses. The City of Madison's Transit and Parking Commission had adopted a rule prohibiting passengers on Metro Transit's buses from bringing any items of a dangerous nature on board buses, including "pistols, rifles, knives or swords." The Court held that the city's rule was prohibited under s. 66.0409 (2), Stats., discussed above.

<sup>3</sup> Federal law defines a "firearm" to mean any of the following: (1) any weapon (including a starter gun) which will, is designed to, or may readily be converted to, expel a projectile by the action of an explosive; (2) the frame or receiver of any such weapon; (3) any firearm muffler or firearm silencer; or (4) any destructive device, defined to include certain explosive devices and weapons. The federal definition of "firearm" specifically excludes antique firearms, including muzzleloading rifles. [18 U.S.C. s. 921 (a) (3).] For purposes of the state possession law, Wisconsin courts have interpreted "firearm" to mean a weapon that acts by force of gunpowder to fire a projectile, including such a weapon in its disassembled state. [*State v. Rardon*, 185 Wis. 2d 701 (Ct. App. 1994); see also s. 167.31 (1) (c), Stats.]

<sup>4</sup> A fugitive from justice is any person who has fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding. [18 U.S.C. s. 921 (a) (15).]

- The person has been convicted of a misdemeanor crime of domestic violence.<sup>5</sup>

[18 U.S.C. s. 922 (g) (1), (2), and (9).]

## **Disqualification Due to Orders Regarding Mental Health or Addiction**

Wisconsin law also prohibits persons subject to certain types of court orders related to mental health and addiction from possessing a firearm. Specifically, a person may be prohibited from possessing a firearm if any of the following applies:

- The person was involuntarily committed for mental illness, drug dependence, or alcohol dependence under chapter 51, Stats.
- The person was adjudicated incompetent by a court in a guardianship proceeding under chapter 54, Stats.
- The person was ordered into protective placement or was receiving protective services when determined to be incompetent due to a developmental disability, degenerative brain disorder, or serious and persistent mental illness under chapter 55, Stats.

[s. 941.29 (1m) (e) and (em), Stats.]

All three types of orders listed above follow court proceedings, including a hearing. In conjunction with these orders, a court must order an individual not to possess a firearm if the court determines the individual is prohibited from possessing a firearm under a provision of federal law that prohibits the possession of a firearm “by any person who has been adjudicated as a mental defective or has been committed to a mental institution.” [18 U.S.C. 922 (g) (4).] If a court orders the individual not to possess a firearm, it must order the seizure of any firearm owned by the individual. Generally, those restrictions remain in effect even after the corresponding order is no longer in effect. However, a person may petition a court to cancel the firearms order. [ss. 51.20 (13) (cv), 51.45 (13) (i), 54.10 (3) (f), and 55.12 (10), Stats.]

As noted above, under federal law, a person who has been adjudicated as a “mental defective” or committed to a mental institution is prohibited from possessing a firearm or ammunition. Federal law also prohibits the possession of a firearm or ammunition by any person who is an unlawful user of, or addicted to, any controlled substance. [18 U.S.C. s. 922 (g) (3) and (4).]

## **Disqualification Based on Restraining Order or Injunction**

Wisconsin law prohibits the possession of firearms by individuals who are subject to certain court orders relating to abuse or harassment that result from procedures allowing a person to request that another person refrain from certain acts against the petitioner. While informally referred to as “restraining orders,” these procedures involve two steps: (1) a petition for a temporary restraining order (TRO), which may be granted without notice to the respondent; and (2) a hearing to determine whether to issue an injunction, which is the “final relief” in such actions. Wisconsin law authorizes the following four types of TROs and injunctions: domestic

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<sup>5</sup> A misdemeanor crime of domestic violence is an offense that is a misdemeanor under federal, state, or tribal law that includes, as an element, either the use or attempted use of physical force or the threatened use of a deadly weapon, and is committed by a person with a specified domestic relationship with the victim. An exception to this restriction allows the possession of a firearm by a person with only one conviction for a misdemeanor crime of domestic violence against a person in a dating relationship, if at least five years have passed since the completion of the person’s sentence, and the person has not been convicted of certain disqualifying offenses. [18 U.S.C. ss. 921 (a) (33) and 922 (g) (9) and *Doubek v. Kaul*, 2022 WI 31.]

abuse; child abuse; individual-at-risk; and harassment. [ss. 813.12, 813.122, 813.123, and 813.125, Stats.]

A person who is subject to a domestic abuse or child abuse injunction is categorically prohibited from possessing a firearm. A person who is subject to an individual-at-risk or harassment injunction may be prohibited from possessing a firearm if the court includes such an order in the injunction, based on certain findings related to risk of harm or endangerment of public safety. For all types of injunctions, if a person is prohibited from possessing a firearm, the court must order the person to surrender any firearms that he or she owns or has in his or her possession to a county sheriff or other court-approved person. [ss. 813.12 (4m), 813.122 (5m), 813.123 (5m), 813.125 (4m), and 941.29 (1) (f) and (g), Stats.]

As under Wisconsin law, federal law prohibits a person from possessing a firearm if the person is subject to certain types of restraining orders. Under federal law, a person is prohibited from possessing a firearm if he or she is subject to a court order, issued after a hearing, which contains all of the following provisions:

- The order restrains the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
- The order includes a finding that the person to whom the order applies represents a credible threat to the physical safety of his or her intimate partner or the partner's child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the person's intimate partner or child that would reasonably be expected to cause bodily injury.

[18 U.S.C. s. 922 (g) (8).]

Because the federal prohibition applies only to restraining orders that meet the above criteria, it applies to some, but not all, individuals subject to a restraining order in Wisconsin. For example, an injunction issued by a Wisconsin court that does not involve an intimate partner or intimate partner's child would not fall within the scope of the federal restriction.

## **Disqualification Based on Age**

Under federal law, with certain exceptions, a person under age 18 is generally prohibited from possessing a handgun. [18 U.S.C. s. 922 (x) (2).] Federal law also prohibits a federal firearms licensed dealer (FFL) from selling or delivering a handgun to any individual the FFL knows or has reason to believe is under 21. [18 U.S.C. s. 922 (b) (1).]

Under Wisconsin law, a person under age 18 is generally prohibited from possessing or going armed with a firearm, also subject to certain exceptions. As discussed below, a person must be 21 years of age or older to be eligible for a state license to carry a concealed weapon. [ss. 29.304, 175.60 (3) (a), and 948.60, Stats.]

## **Disqualification Based on Certain Citizenship or Military Statuses**

Finally, federal law prohibits possession by individuals based on certain citizenship or military statuses. Specifically, federal law prohibits possession by: an "alien" (defined as any person who is not a U.S. citizen or national) who meets certain conditions; a person who has renounced his or her U.S. citizenship; and a person who has been discharged from the Armed Forces under dishonorable conditions. [18 U.S.C. s. 922 (g) (5), (6), and (7).]

## **BACKGROUND CHECK REQUIREMENTS**

A background check is required under two circumstances: (1) to purchase a firearm from an FFL; and (2) to apply for a license to carry a concealed weapon in Wisconsin (CCW). The purpose of a background check is to determine whether a person is ineligible to possess a firearm for any of the reasons described above.

Federal law requires that a background check be conducted when a person purchases a firearm through an FFL, and prohibits an FFL from selling or delivering a firearm to a person who the FFL has reasonable cause to believe is ineligible to possess a firearm because of age, or is ineligible to possess or purchase a firearm under state law. [18 U.S.C. s. 922 (b) (1) and (2).] State law similarly prohibits an FFL from transferring possession of a handgun until a successful background check has been completed. [18 U.S.C. s. 922 (t) and s. 175.35 (2), Stats.]

A person must become licensed as an FFL if he or she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominantly earn a profit through the repetitive purchase and resale of firearms. “To predominantly earn a profit” means that the intent underlying a sale is predominantly one of pecuniary gain, rather than improving or liquidating a personal collection. A person who makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby is exempt from the federal licensing requirement. [18 U.S.C. s. 921 (a) (21) (C) and (22).]

Background check procedures for purchasing a firearm vary depending on whether the firearm purchased is a handgun or long gun. Background checks for transfers of handguns are conducted through the state Department of Justice (DOJ) Handgun Hotline. Background checks for transfers of long guns are conducted through the National Instant Criminal Background Check System in the Federal Bureau of Investigation (commonly referred to as “NICS”). DOJ’s Handgun Hotline conducts the background check that is required for a CCW license. In general, background checks are completed immediately, unless the purchaser is under 21 years of age. [See 28 C.F.R. s. 25.6 (g), s. Jus 10.06 (2), Wis. Adm. Code, and 34 U.S.C. s. 40901 (l).]

A background check is not required under state or federal law for sales or transfers from sellers who are not FFLs, including sales or transfers between persons who are not FFLs at an event that is organized for the purposes of buying and selling firearms, e.g., a “gun show.” As noted above, however, an FFL must comply with the state and federal background check requirements regardless of where the sale takes place.

## **OTHER RESTRICTIONS RELATED TO FIREARM TRANSFERS**

Both federal and state law criminalize various acts related to providing false information when purchasing a firearm or transferring a firearm to a person who is prohibited from possessing a firearm. Acquiring a firearm for a person who is prohibited from possessing a firearm is commonly referred to as “straw purchasing.”

### **Straw Purchases**

Under Wisconsin law, it is a Class G felony to intentionally furnish, purchase, or possess a firearm for a person, knowing that the person is prohibited from possessing a firearm under state law. These acts constitute a violation of the crime of straw purchasing of firearms. This crime, however, does not apply to a person who has been designated to store the firearms of a

person who has been prohibited from possessing firearms due to certain types of court orders.<sup>6</sup> [s. 941.2905, Stats.]

Federal law also prohibits the straw purchasing of firearms. Under the federal straw purchasing law, it is unlawful for any person to knowingly purchase or conspire to purchase a firearm for, on behalf of, or at the request or demand of, any person with reasonable cause to believe the person: (1) is prohibited from possessing a firearm under federal law; (2) intends to use the firearm in furtherance of a felony, a federal crime of terrorism, or a drug trafficking crime; or (3) intends to sell or otherwise dispose of the firearm to a person who will do either of the above. A person who does so is guilty of the crime of straw purchasing firearms. [18 U.S.C. s. 932.]

In addition, federal law also prohibits any person from shipping, transporting, transferring, or receiving any firearm with reasonable cause to believe that the recipient's use, carrying, or possession of a firearm would constitute a felony. A person who does so is guilty of the crime of trafficking in firearms.<sup>7</sup> [18 U.S.C. s. 933.]

## **False Information**

Under Wisconsin law, a person who intentionally provides false information to an FFL during a handgun purchase is subject to a fine of \$500 to \$10,000 and imprisonment of up to nine months. A person who provides such false information with the purpose or intent to transfer the firearm to a person who the person knows is ineligible to possess a firearm under state or federal law is guilty of a Class H felony. [s. 175.35 (2e) and (3), Stats.]

Likewise, federal law prohibits any person, in connection with the acquisition or attempted acquisition of any firearm from an FFL, from knowingly making a false or fictitious oral or written statement or furnishing or exhibiting false, fictitious, or misrepresented identification that is intended or likely to deceive an FFL with respect to any fact material to the lawfulness of the firearm sale. [18 U.S.C. s. 922 (a) (6).]

## **GEOGRAPHIC RESTRICTIONS ON CARRYING A FIREARM**

### **Trespass**

Wisconsin's trespass statute provides that a person who enters specified types of property while carrying a firearm is subject to a Class B forfeiture. The types of property include:

- A residence that the person does not own or occupy, if the owner or occupant of the residence has notified the person not to enter or remain at the residence while carrying a firearm.
- Nonresidential buildings and grounds, and other land that the person does not own or occupy, if the owner or occupant of the building, grounds, or land has notified the person not to enter or remain in or on the relevant part of the building, grounds, or land while carrying a firearm.

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<sup>6</sup> A person is not guilty of Wisconsin's crime prohibiting firearm straw purchases if the person is designated to store the firearms of: (a) a person who is subject to an injunction prohibiting him or her from possessing firearms; (b) a person who is subject to an order prohibiting him or her from possessing from firearms in conjunction with an involuntary commitment, incompetency adjudication, or protective placement; or (c) a person who is otherwise temporarily prohibited from possessing firearms.

<sup>7</sup> Potential penalties for violating the federal prohibitions on straw purchases or firearm trafficking generally include forfeiture of certain property used or derived from the violation; fines, including on any profits earned from the offense; and imprisonment for up to 15 years. [18 U.S.C. ss. 924 (h) and 934.]

- Special event grounds, if the organizers of the special event have notified the person not to enter or remain at the special event while carrying a firearm.
- Any part of a building that is owned, occupied, or controlled by the state or any local governmental unit, if the state or local governmental unit has notified the person not to enter or remain in the building while carrying a firearm.
- Any privately or publicly owned building on the grounds of a university or college, if the university or college has notified the person not to enter or remain in the building while carrying a firearm.

[s. 943.13 (1m) (c), Stats.]

For most nonresidential property, the notification requirement is satisfied if the property owner or occupant has posted a sign or signs in prominent places near all entrances to the part of the building to which the restriction applies, such that any individual entering the building may be reasonably expected to see a sign.<sup>8</sup> Such signs must be at least five by seven inches. [s. 943.13 (2) (bm), Stats.]

## **Gun-Free School Zones**

State and federal gun-free school zones laws generally prohibit the possession of firearms in a “school zone,” meaning in a school, on school grounds, or within 1,000 feet of school grounds. Specifically, under Wisconsin law, a 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 is subject to a Class I felony, while such possession within 1,000 feet of the grounds of a school is subject to a Class B forfeiture. [18 U.S.C. s. 922 (q) (2) and s. 948.605, Stats.]

Exceptions to the state gun-free school zones law include possession of unloaded and encased firearms, possession of a firearm for use in a school-approved program, possession under a contract with the school, possession by law enforcement officers, possession while legally hunting in a school forest, and possession on private property that is not part of school grounds. In addition, under state law, a person who holds an in-state or out-of-state CCW license may possess a firearm within 1,000 feet of school grounds, but not on school grounds or inside a school, unless one of the other exceptions applies. [s. 948.605 (2) (b), Stats.]

The federal gun-free school zones law contains similar exceptions, with some differences. For example, the federal prohibition does not apply to individuals who possess firearms pursuant to a license issued by the state in which the school zone is located if the law enforcement authorities of the state (or a political subdivision of the state) verify that the individual is qualified under law to receive the license. In effect, that exception authorizes a person who holds an in-state CCW license to possess firearms in, on the grounds of, or within 1,000 feet of the grounds of a school under federal law.<sup>9</sup> (In contrast, as mentioned above, state law prohibits CCW license holders from possessing a firearm in or on the grounds of a school unless one of the other state exceptions applies.) Also, the parallel exemption under federal law for an unloaded

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<sup>8</sup> For certain other types of property, including residential property, notification may occur orally.

<sup>9</sup> For purposes of the exception for in-state CCW licenses under federal law, Wisconsin law considers an out-of-state CCW licensee to be licensed by Wisconsin. [s. 175.60 (2) (d), Stats.]



firearm in a school zone requires the firearm to be in a locked container, while state law instead requires an unloaded firearm to be encased.<sup>10</sup> [18 U.S.C. s. 922 (q) (2).]

Note that an exception under the gun-free school zones laws does not overcome a restriction under the trespass statute, discussed above. For example, although the gun-free school zones laws provide an exception for carrying an unloaded firearm in a locked container, a person may not carry the firearm into a school building on which signs have been posted pursuant to the trespass statute.

## **Firearms in Vehicles**

Under Wisconsin law, a person may transport a loaded or unloaded handgun in a vehicle. A person may also transport a long gun in a vehicle, but the long gun cannot be loaded. [s. 167.31 (2) (b) 1., Stats.] To transport a concealed handgun in a vehicle, a person must have a Wisconsin or out-of-state CCW license, described below. [s. 175.60 (2g) (a), Stats.]

For purposes of what may be considered “concealed,” the Wisconsin Court of Appeals has articulated a test for what constitutes going armed with a concealed weapon within a vehicle. Under that test, a person is carrying a concealed weapon in a vehicle if: (1) the weapon is inside the vehicle and is within the person’s reach; (2) the person is aware of the presence of the weapon; and (3) the weapon is concealed, or is hidden from ordinary view.<sup>11</sup>

Other requirements apply to various additional types of vehicles, such as boats, all-terrain vehicles, and airplanes. [See, e.g., ss. 23.33 (3c) and 167.31, Stats.]

## **Interstate Travel**

States and local governments may have restrictions that may apply to a person traveling with a firearm across state lines. Federal law, however, provides that any person who is not otherwise prohibited from transporting, shipping, or receiving a firearm may transport a firearm for any lawful purpose from any place where the person may lawfully possess and carry the firearm to any other place where the person may lawfully possess the firearm, notwithstanding any other provision of any law or any rule or regulation of a state or political subdivision of a state. This provision, created in the Firearms Owners’ Protection Act of 1986, is commonly referred to as the “Safe Passage” provision. [18 U.S.C. 926A.]

The protections afforded by the Safe Passage provision apply if the firearm is unloaded during transport and neither the firearm nor any ammunition being transported is readily or directly accessible from the passenger compartment of the vehicle. For example, an unloaded firearm may be transported in a trunk. If the vehicle does not have a trunk, the firearm or ammunition must be contained in a locked container other than the glove compartment or console. [18 U.S.C. s. 926A.]

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<sup>10</sup> Under state law, “encased” means “enclosed in a case that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed.” [ss. 167.31 (1) (b) and 948.605 (1) (a), Stats.]

<sup>11</sup> The court interpreted the term “concealed” broadly with respect to firearms in vehicles, holding that a firearm in a vehicle is concealed if it is indiscernible from the ordinary observation of a person located outside and within the immediate vicinity of the vehicle. [*State v. Walls*, 190 Wis. 2d 65, 71-73 (Ct. App. 1994).]

## CONCEALED CARRY LICENSE

Wisconsin law generally prohibits any person from carrying<sup>12</sup> a concealed and dangerous weapon. However, Wisconsin law provides a general exception to that prohibition for persons who obtain a CCW license from the state, or who are licensed by another state that is recognized as having a comparable background check for concealed carry approval.<sup>13</sup> [ss. 165.25 (16) and 941.23 (2), Stats.]

DOJ must issue a CCW license to an applicant who pays the applicable fees and meets the following requirements:

- The applicant is at least 21 years old.
- The applicant is not prohibited from possessing a firearm or a dangerous weapon under state or federal law or by court order.
- The applicant is a Wisconsin resident.
- The applicant completes firearms training.
- The applicant passes a background check.

A CCW license allows a person to carry a concealed weapon, defined as a handgun, an electric weapon, or a billy club. The statute specifies certain types of locations at which concealed carry is not permitted. A license is valid for five years and may be renewed. [s. 175.60, Stats.]

## REGULATION OF CERTAIN DEVICES

Certain devices, including “assault weapons,” bump stocks, armor-piercing bullets, and silencers, have been a subject of recent legislative interest. State and federal law regarding those devices is summarized below.

### Assault Weapons

The term “assault weapon” does not currently appear in Wisconsin’s statutes, nor is it a defined term in the U.S. Code. Typically, the term refers to semiautomatic, military-style weapons, with high-capacity magazines.<sup>14</sup> These types of firearms may be obtained in Wisconsin in the same manner as any other firearm.<sup>15</sup>

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<sup>12</sup> “Carrying” a firearm means to “go armed with” a firearm. [s. 175.60 (1) (ag), Stats.] Wisconsin courts have interpreted “go armed with” to mean that the firearm was on the individual’s person or was within the individual’s reach and the individual was aware of the presence of the firearm. However, Wisconsin courts generally do not treat having an unloaded and encased firearm within one’s reach as “going armed with” the firearm. [See, e.g., *State v. Walls*, 190 Wis. 2d 65 (Ct. App. 1994).]

<sup>13</sup> DOJ maintains a list of out-of-state licenses for which reciprocity is recognized in Wisconsin. The list is available at: [www.doj.state.wi.us](http://www.doj.state.wi.us).

<sup>14</sup> Under federal law, “semiautomatic rifle” means “any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.” [18 U.S.C. s. 921 (a) (28).]

<sup>15</sup> The federal Public Safety and Recreational Firearms Use Protection Act, often referred to as the federal “assault weapons ban,” prohibited the possession, manufacture, and transfer of certain semiautomatic weapons during a 10-year period, from 1994 to 2004.

The term “assault weapon” also sometimes refers to fully automatic firearms. Fully automatic weapons are regulated at both the federal and state level. Wisconsin law generally prohibits the sale, possession, use, or transportation of any machinegun or other fully automatic firearm, subject to exceptions for law enforcement, military personnel, and licensed collectors. [s. 941.26 (1g) and (3), Stats.]

Under federal law, the purchase of a machinegun,<sup>16</sup> submachinegun, fully automatic rifle, short-barreled shotgun or rifle, or other “destructive device,” such as a hand grenade, is generally subject to a \$200 transfer tax, certification by local law enforcement, and registration of the weapon. These weapons are sometimes referred to as “Title II firearms,” from Title II of the Gun Control Act of 1968, although that Act modified the law that was already in place under the National Firearms Act of 1934.<sup>17</sup> [26 U.S.C. ss. 5811 (a), 5812, and 5841.]

## **Bump Stocks**

A “bump stock” (also called a “bump fire stock”) allows a semiautomatic weapon to fire in a rapid manner that is comparable to a fully automatic weapon. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has clarified by federal rule that “bump-stock-type devices” are included within the definition of “machinegun” for the purpose of federal law. [83 Fed. Reg. 66514 (Dec. 26, 2018).] Specifically, the ATF rule identifies bump-stock-type devices as “devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.” Note, however, that the ATF’s interpretation of bump-stock-type devices as being included within the definition of machinegun has been the subject of litigation in several federal appellate courts.

## **Armor-Piercing Ammunition**

Federal law prohibits the manufacture, sale, import, or delivery of armor-piercing ammunition, subject to limited exceptions, and further prohibits an FFL from willfully transferring armor-piercing ammunition. [18 U.S.C. s. 922 (a) (7) and (8) and 27 C.F.R. s. 478.99 (e).] Under Wisconsin law, it is a Class H felony to use or possess a handgun during the commission of a crime if: (1) the handgun is loaded with an armor-piercing bullet or a projectile or projectile core that may be fired from the handgun with a muzzle velocity of 1,500 feet per second or greater; or (2) the person possesses an armor-piercing bullet capable of being fired from the handgun. [s. 941.296, Stats.]

## **Silencers**

Under Wisconsin law, it is generally a Class H felony to sell, deliver, or possess a firearm silencer. However, an exception exempts from this prohibition “any person who has complied with the licensing and registration requirements under [federal law].” This allows a person to possess and use a firearm with a silencer if the person goes through the Title II registration

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<sup>16</sup> Federal law defines “machinegun” to mean any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes the frame or receiver of any such weapon and any part designed and intended solely and exclusively for use in converting a weapon into a machinegun. [26 U.S.C. s. 5845 (b).]

<sup>17</sup> Unless a person furnishes false information, information in the registration of a Title II firearm cannot be used as evidence in a criminal proceeding. [26 U.S.C. s. 5848.] For more detailed information on the application process and other requirements for a Title II firearm, see the National Firearms Act Handbook, by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), available at: <https://www.atf.gov/firearms>.

process, described above. There are also exceptions for law enforcement and military personnel.  
[s. 941.298, Stats.]

This information memorandum was prepared by David Moore and Amber Otis, Senior Staff Attorneys, and Tom Koss, Staff Attorney, on August 26, 2022.