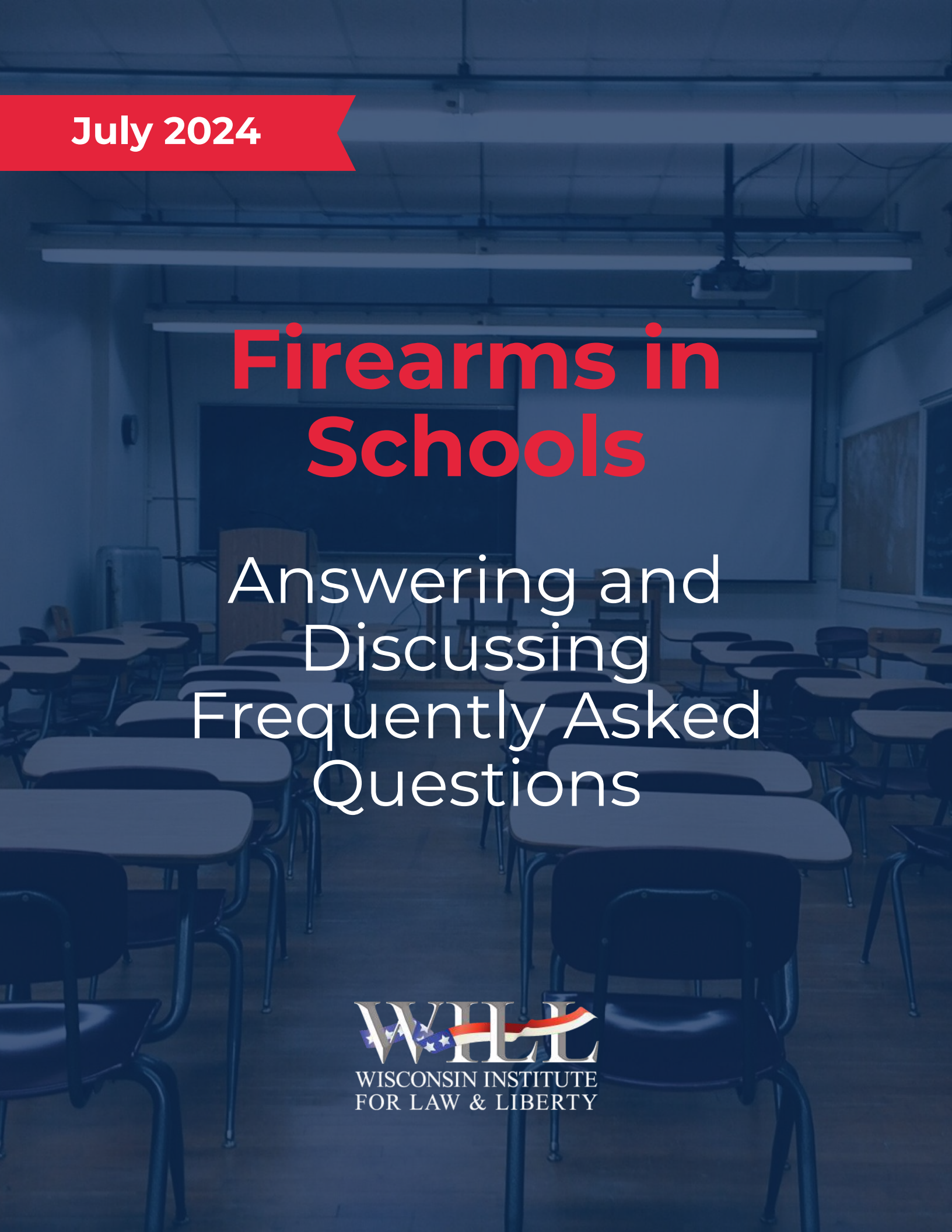

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Firearms in Schools

Answering and Discussing Frequently Asked Questions

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Firearms in Schools FAQ

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Can the government restrict my 2nd amendment right to bear arms in schools?

Yes.

The Supreme Court of the United States has said that the second amendment right to bear arms can be restricted in "sensitive places" without violating the constitution. In *D.C. v. Heller,* the Supreme Court noted that the right to bear arms is not an unlimited one. As such, the right to bear arms could be restricted in sensitive places like schools and government buildings. *D.C. v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 2786, 171 L. Ed. 2d 637 (2008). However, not everywhere that people congregate should be considered a "sensitive place." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 31, 142 S. Ct. 2111, 2134, 213 L. Ed. 2d 387 (2022).

What is the federal law on possessing firearms in schools?

The Gun-Free School Zones Act of 1990 made it a federal offense to knowingly possess a firearm in a school zone (defined as being within 1,000 feet of a school) with some exceptions.

The Gun Free School Zones Act makes it a federal offense to knowingly possess a firearm in a school zone, but there are seven major exceptions to this rule.

It is *not a federal offense to knowingly possess a firearm in a school zone if:*

1. You are on private property that is not a part of the school grounds. 18 U.S.C. § 922(q)(2)(B)(i).
2. You have a license to possess the firearm by the state in which the school is located. 18 U.S.C. § 922(q)(2)(B)(ii).
3. Your firearm is unloaded and in a locked container or locked firearms rack. 18 U.S.C. § 922(q)(2)(B)(iii).
4. You possess the firearm for a program approved by the school in the school zone. 18 U.S.C. § 922(q)(2)(B)(iv).
5. You possess the firearm in accordance with a contract with a school in the school zone. 18 U.S.C. § 922(q)(2)(B)(v).
6. You are a law enforcement officer acting in your official capacity. 18 U.S.C. § 922(q)(2)(B)(vi).
7. You are traveling across school premises to get to public or private lands open to hunting, the school authorizes you to travel across, and the firearm is unloaded. 18 U.S.C. § 922(q)(2)(B)(vii).

Is there a difference in the law for private schools and public schools under Federal law?

No.

"A 'school zone' means within a distance of 1,000 feet from the grounds of a *public, parochial, or private school*." 18 U.S.C. § 921(a)(26), emphasis added.

Is the law in Wisconsin different from federal law?

Yes.

The federal law sets the *minimum* standards for states, but states can choose to restrict further. Wisconsin has chosen to further restrict the possession of firearms on school grounds and in school zones by not including all the exceptions contained in the federal law. Wis. Stat. § 948.605.

What is the law in Wisconsin when it comes to possessing firearms on school grounds or in school zones?

Possessing a firearm on school grounds is a felony and possessing a firearm in a school zone is a fine. Note that there is a difference between a school zone and school grounds under the law with a more severe penalty for possessing a firearm on the grounds of a school.

In Wisconsin, anyone who knowingly possesses a firearm in or on the grounds of a school is guilty of a Class I felony. Wis. Stat § 948.605(2)(a). A Class I felony in Wisconsin could be up to three and a half years in prison, a $10,000 fine, or both. Wis. Stat. § 939.50(3)(i).

Anyone who knowingly possesses a firearm in a school zone (i.e., within 1,000 feet of the grounds of a school) is subject to a Class B forfeiture. Wis. Stat. § 948.605(2)(a). A Class B forfeiture in Wisconsin could be up to a $1,000 fine. Wis. Stat. § 939.52(3)(b).

Are there exceptions in Wisconsin law when it comes to possession of a firearm on school grounds and in a school zone like there are in Federal law?

Yes. Just like federal law, there are important exceptions in Wisconsin law listed below. Some of the exceptions are clear but some are not. The examples that are not so clear are given further explanation below. But please be aware that there is no case law that clarifies or explains the exception, so relying upon them to possess a firearm on school grounds or in a school zone does carry some risk.

It is *not against Wisconsin law* to possess a firearm on school grounds or in a school zone if:

1. You are on private property that is not a part of the school grounds. Wis. Stat. § 948.605(2)(b)1m.
2. You possess the firearm for a program approved by the school in the school zone. Wis. Stat. § 948.605(2)(b)1m.
3. You possess the firearm in accordance with a contract with a school in the school zone. Wis. Stat. § 948.605(2)(b)1m.

4. You are a law enforcement officer acting in your official capacity. Wis. Stat. § 948.605(2)(b)1m.
5. You are traveling across school premises to get to public or private lands open to hunting, the school authorizes you to travel across, and the firearm is unloaded. Wis. Stat. § 948.605(2)(b)1m.
6. So long as you are not on the school grounds, a person with a concealed carry license as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g), may carry in a school zone.
7. You are employed in Wisconsin by a government agency as a law enforcement officer and authorized by the agency to carry a firearm. Wis. Stat. § 948.605(2)(b)2d.
8. You are a qualified out-of-state law-enforcement officer. Wis. Stat. § 948.605(2)(b)2f.
9. You were formerly employed as a law enforcement officer and meet the qualifications in Wis. Stat. 941.23(2)(c)1-7. Wis. Stat. § 948.605(2)(b)2f.
10. You are a state certified commission warden acting in your official capacity. Wis. Stat. § 948.605(2)(b)2m.
11. You have a firearm that is unloaded and encased or locked in a firearms rack. Wis. Stat. § 948.605(2)(b)3.
12. You are legally hunting in a school forest with permission from the school board. Wis. Stat. § 948.605(2)(b)3m.

Four of the exceptions listed above deserve a more complete discussion. We recognize that the answers below may be unsatisfactory to the reader, but the law is currently unclear and what local law enforcement and local prosecutors may choose to prosecute is unpredictable. If you intend to rely upon one of these exceptions, you should discuss it with your own attorney and develop a risk mitigation strategy to make sure that you are minimizing exposure to prosecution under the statute.

1. *You are on private property that is not a part of the school grounds.*

If your house is within 1,000 feet (about the height of the Empire State Building) of the grounds of a school, then you and anyone in your house is technically in a "school zone." Normally, the law prohibits anyone within 1,000 feet of the grounds of a school from possessing a firearm, as discussed above. Wis. Stat. § 948.605(2)(a). However, this exception allows you and others on your property to possess a firearm, *even if* your property is within a school zone. The same is true for private businesses in the school zone.

One important thing to understand, however, is that once you exit the private property, you are then in a school zone where the prohibition on possession of a firearm applies, absent a different exception applying (like unloading and encasing your firearm or having a concealed carry permit and being in the school zone but not on school grounds).

A church located in the school zone is a hard question. Is the church on private property not part of the school grounds? Churches that are separate from schools likely qualify as private businesses and this section would apply, even if the church is technically in a school zone.

However, churches that are *affiliated with the school* may *not* fall under this exception. Factors to consider that may sway whether or not a church is on private property separate from the school could be: (a) whether the school is operated by the same entity as the church; (b) whether the church and the school are located on the same legal parcel or different legal parcels; (c) whether the church and school building are physically connected; (d) whether the property is operated as a single parcel; (e) whether church activities take place in the school and/or school activities take place in the church, etc.

There is no case law that explains or clarifies whether a church that is affiliated with a school and is nearby to the school is or is not part of the school grounds. There is also no case law that clarifies what the determining factors would be or how much weight they would be given.

2. *You possess the firearm for a program approved by the school in the school zone.*

It is likely that this exception applies to the possession of firearms for programs like shooting teams. As previously discussed, just *possessing* a firearm in a school zone or on school grounds would be breaking Wisconsin law. Wis. Stat. § 948.605(2)(a). However, this exception allows individuals to possess firearms for an educational program or team. Right now, there are at least 150 Wisconsin schools that have a shooting team, according to the USA clay target league.[1] While this exception does allow for the possession of firearms, teams do not use live ammunition.

[1] https://wi.usaclaytarget.com/teams/

There is a question, however, as to whether this exception could apply to something like a school-sanctioned gun-safety course. In 2017 a bill[2] was proposed to add such a class as an elective with approved curriculum from the state. This bill did not pass, but it does not fully answer the question of whether such a program is allowed. Could a school approve a program *without* a state-approved curriculum?

There is no case law further explaining this exception. What constitutes a "program," how it may be "approved," and who from the "school" can give the authorization is not clear.

3. ***You possess the firearm in accordance with a contract with a school in the school zone.***

As discussed below, if a school wants to hire private security, it can probably do that under this contract exception. However, some local ordinances require these private security guards to have certain additional licenses. *See* Milwaukee, Wis., Municipal Code §§ 81-104.7 and 84-55.

It should be noted, however, that there is nothing that further explains or clarifies this exception. What must be in the contract? Who may or must be parties to the contract? What terms, if any, must be in such a contract? What terms are prohibited from being in the contract? There are no clear answers here.

4. ***So long as you are not on the school grounds, a person with a concealed carry license as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g), may carry in a school zone.***

If you have a concealed carry license, then you may possess a firearm when driving on the streets in the school zones or otherwise in the school zone, but you ***may not*** possess a firearm ***on the school grounds*** absent another exception. The important thing to note here is that this is different and more restrictive than federal law and Wisconsin and local law enforcement are entitled to enforce the Wisconsin law.

Is there a difference in the law for private schools and public schools under Wisconsin law?

No.

[2] https://docs.legis.wisconsin.gov/2017/related/proposals/ab427

Just like the federal law, a "school" means a *public, parochial, private, or tribal school* that provides an educational program for one or more grades between grades 1 and 12. Wis. Stat. § 948.61(1)(b).

We've been talking about *possessing* a firearm, but are there different laws for *discharging* a firearm in a school zone in Wisconsin?

Yes. Discharging or attempting to discharge a firearm in a school zone subjects you to a felony.

Wisconsin law says that any individual who *knowingly discharges or attempts to discharge* a firearm at a place the individual knows is a school zone is guilty of a Glass G felony (up to 10 years in state prison, up to a fine of $25,000, or both) with some exceptions. Wis. Stat. §§ 939.50(3)(g) and 948.605(3).

In Wisconsin it is *not a felony to knowingly discharge or attempt to discharge a firearm in a school zone if:*

1. You discharge the firearm on private property not a part of school grounds. Wis. Stat. § 948.605(3)(b)1.
2. You discharge the firearm as a part of a program approved by the school. Wis. Stat. § 948.605(3)(b)2.
3. You discharge a firearm in accordance with a contract between you and the school. Wis. Stat. § 948.605(3)(b)3.
4. You are a law enforcement officer or state-certified commission warden. Wis. Stat. § 948.605(3)(b)4.
5. You are employed by the state as a law enforcement officer. Wis. Stat. § 948.605(3)(b)5.
6. You are a qualified out-of-state officer. Wis. Stat. § 948.605(3)(b)6.
7. You are a former officer. Wis. Stat. § 948.605(3)(b)7.

Can I carry in my church?

It depends.

In general, a licensed individual is not automatically prohibited from bringing a firearm into a church or other religious facility like he or she is in a school. However, individual churches or religious facilities can constrain who carries if:

1. You work for the church and your employer prohibits employees from carrying a concealed weapon. Wis. Stat. § 175.60(15m)(a).

2. The church or religious facility is on private property and the church has notified members to not enter the property while carrying a firearm. Wis. Stat. § 943.13(1m)(c).

Can I carry in my church if my church is part of a school?

Probably not.

As discussed above, even if your church does allow licensees to concealed carry in church, if your church is a part of a school (and no one knows precisely what that means), then it is unlikely the church would fall into the private property exception and the prohibition on possessing firearms within 1,000 feet of the school could apply— even in your church.

Can my school hire someone as a security guard armed for safety?

Yes.

The Milwaukee Public School District is the only district *required* to have a "school resource officer," but other districts across the state can electively decide whether to have one. Wis. Stat. § 62.90(8). Under Wisconsin statute, "school resource officer" means a law enforcement officer who is deployed in community-oriented policing and assigned by the law enforcement agency to work in a full-time capacity in collaboration with a school district. Wis. Stat. § 62.90(8).

If a school wants to hire school resource officers ("SROs") they can reach out to the local law enforcement agency to hire one. Districts handle how to pay for these officers differently. Some districts will split the cost with the local law enforcement agency, some have the law enforcement agency pay for the entire cost, and some have the school district pay for the entire cost. SRO funding models.[3] These SRO's may be armed on school grounds according to Wis. Stat. §§ 948.605(2)(b)1m and 948.605(2)(b)2d.

If a school wants to hire private security, it can do that as well. Wis. Stat. § 948.605(2)(b)1m. However, some local ordinances require these private security guards to have certain licenses. Milwaukee, Wis., Municipal Code §§ 81-104.7 and 84-55.

[3] https://go.boarddocs.com/wi/elmbrook/Board.nsf/files/BCWPY556D092/$file/Benchmark%20Comparisons%20-%20SRO%20Funding%20Models.pdf

What about weapons *other than firearms* on school grounds?

Any person who knowingly possesses or goes armed with a dangerous weapon on school premises in Wisconsin is guilty of a Class A misdemeanor (a fine of up to $10,000, up to 9 months in prison, or both), with some exceptions. Wis. Stat. §§ 939.51(3)(a) and 948.61(2).

Wisconsin restricts the use of "dangerous weapons" on school grounds. In Wisconsin, a "dangerous weapon" is:

1. Any device designed as a weapon and capable of producing death or great bodily harm. Wis. Stat. § 939.22(10).
2. Any instrument that could be used to partially or completely impede breathing or circulation of blood. Wis. Stat. § 939.22(10).
3. Any device designed, used, or intended to immobilize or incapacitate someone with an electric current. Wis. Stat. § 941.295(1c)(a).

Wisconsin law says that BB or pellet firing guns that use air pressure are not considered a "dangerous weapon" under this section. Wis. Stat. § 948.61(1)(a).

In Wisconsin it is *not a Class A misdemeanor to knowingly possess a dangerous weapon on school grounds if:*

1. The weapon is used solely for school sanctioned purposes. Wis. Stat. § 948.61(3)(a).
2. You are engaged in military activities sponsored by the state or federal government and acting in your official duties. Wis. Stat. § 948.61(3)(b).
3. You are a law enforcement officer or state-certified commission warden acting in your official capacity. Wis. Stat. § 948.61(3)(c).
4. You are participating in a convocation authorized by school authorities in which weapons are handled or displayed. Wis. Stat. § 948.61(3)(d).
5. You have a dangerous weapon in your car, and you are driving onto school property for a school-sanctioned purpose, or for delivering or picking up passengers or property. Wis. Stat. § 948.61(3)(e).
6. You possess a bow and arrow or knife while legally hunting in a school forest with permission from the school board. Wis. Stat. § 948.61(3)(f).