

## Legal Issues

# The Impact of Wisconsin's New Concealed Carry Legislation on Counties and Municipalities

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County-owned buildings have always served an infinite number of purposes. They often house the county courthouse, the registrar of deeds, the office of tax assessor and everything in between. For better or worse, visiting a county office building is often a stressful experience for many citizens, especially when the subject matter is a criminal case or a divorce proceeding before a judge. As a result, many counties are especially sensitive to issues of safety and security in county-owned facilities. Some counties utilize metal detectors that can address some (but not all) of the safety issues.

Until recently, public entities had a virtual *carte blanche* with respect to their safety policies, and had the right to promulgate and enforce restrictions on the possession of weapons in most public spaces. However, following the passage of 2011 Wisconsin Act 35 (Act), Wisconsin's new concealed carry legislation, the rules have changed. As explained below, counties and municipalities will still have the right to prohibit concealed weapons in publicly owned buildings, but the Act imposes certain procedural prerequisites that must be followed.

### General Background

The Act makes several important changes to Wisconsin law regarding the right to possess and carry a concealed weapon. In particular, the Act sets up an administrative system whereby individuals can apply for and be issued a license to carry certain concealed weapons. The Act was officially published on July 22, 2011, and will take effect on November 1, 2011.

### Applicability to County Buildings

The Act specifically identifies certain places where an individual is prohibited from carrying a concealed weapon (regardless of whether that individual has a state-issued license). See Wis. Stat. § 175.60(16). Notably, this list includes “[a]ny portion of a building that is a county, state, or federal courthouse.” *Id.* at § 175.60(16)(a)(6). It is important to note, however, that the Act contains a carve-out for parking areas. The same section of the Act states the prohibitions do not apply to “a weapon in a vehicle driven or parked in a parking facility located in a building that is used, or any portion of which is used as, [a county, state or federal courthouse.]” *Id.* at § 175.60(16)(b)(1). Thus, a county would have no obligation to post a sign to prohibit concealed weapons in any building

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that is used as a county courthouse. However, even though a notice is not required, where a county uses a building for multiple purposes, and it may not be clear to all who enter that the building houses the court facilities, the county may want to post a notice for added protection.

The list of places where concealed weapons are explicitly prohibited under the Act does not include public buildings that are not police stations, correctional facilities, courthouses, or airports. However, a county is able to prohibit concealed weapons in other county-owned facilities under a separate section of the Act.<sup>1</sup>

Section 80 of the Act amended the provisions of the Wisconsin Statutes regarding trespassing, and added a new category of trespassing offenses for individuals who attempt to carry a concealed weapon in certain places after being notified that such weapons are not permitted. The Act makes it a crime when an individual (even an individual with a state-issued license):

*Enters or remains in any part of a building that is owned, occupied, or controlled by the state or any local government unit . . . if the state or local governmental unit has notified the actor not to enter or remain in the building while carrying a firearm or with that type of firearm. This subdivision does not apply . . . if the firearm is in a vehicle driven or parked in the parking facility, to any part of the building used as a parking facility. Wis. Stat. § 943.12(1m)(c)(4).*

Thus, a county may prohibit concealed firearms in any buildings that are “owned, occupied or controlled” by the county provided it “notifies” individuals that firearms are prohibited. The Act explains this notification requirement

*For the purposes of [the above section] . . . the state or a local government unit . . . has notified an individual not to enter or remain in a part of the building while carrying a firearm or with a particular type of firearm if the . . . state or local government unit . . . has posted a sign that is located in a prominent place near all of the entrances to the part of the building to which the restriction applies and any individual entering the building can be reasonably expected to see the sign. Wis. Stat. § 943.12(2)(bm)(2)(am).*

Finally, the Act also specifies that the “sign” identified in the section above must be at least 5 by 7 inches. Notably, the Act does not specify either the form or the content of the text on the sign, except to require that it “state a restriction imposed [under the Act].” A county that chooses to post a sign should be sure to consult with legal counsel regarding its content.

As a result, a county may prohibit concealed firearms in any county-owned building, provided a sign that is at least 5 by 7 inches clearly stating the restriction is posted at *all* of the entrances to the building(s) where concealed firearms are prohibited.

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### Applicability to County Parks/ Land

As explained above, the Act permits a county to ban the carry of concealed weapons via posting in any buildings that are “owned, occupied or controlled” by the county. However, a state or local governmental unit generally may not prohibit a person with a concealed weapon from entering or remaining on the “grounds” of a publicly controlled building or on public land (including parks). The one possible exception is that the Act permits an entity (including a state or local governmental unit) to prohibit concealed weapons at a “special event.” The Act creates trespassing liability for an individual who:


*While carrying a firearm, enters or remains at a special event if the organizers of the special event have notified the actor not to enter or remain at the special event while carrying a firearm or with that firearm. This subdivision does not apply, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the special event grounds or building used as a parking facility. Wis. Stat. § 943.13(1m)(c)(3).*

Like the exceptions discussed above, a state or governmental entity would still need to post approved signs to prohibit firearms at a special event. The Act defines “special event” as “an event that is open to the public, is for a duration of not more than 3 weeks, and either has designated entrances to and from the event that are locked when the event is closed or requires an admission.” *Id.* at § 943.13(1e)(h). While this definition of special event would appear to include functions like county fairs or related festivals where an admission is required, it would not cover free events (like concerts) that are given in parks or other outdoor spaces.

Thus, if there was a “special event” going on in a county park, a county could prohibit concealed weapons during that event by posting approved signs. Absent these special

circumstances, however, there does not appear to be a basis to prohibit concealed weapons on county land.

### Conclusion

While 2011 Wisconsin Act 35 has changed the rules regarding concealed weapons, counties retain the right to prohibit concealed weapons in all county-owned buildings, and can exercise this right by posting appropriate notices at all entrances. By complying with the procedural prerequisites in the Act, counties can take additional steps to ensure the safety and security of their public buildings. 

### NOTES:

<sup>1</sup> Under Section 941.235 of the Wisconsin Statutes, it remains a Class A misdemeanor for any unlicensed individual to carry a firearm in “any building owned or leased by the state or any political subdivision of the state.”

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