

**941.20. Endangering safety by use of dangerous weapon**

(1) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Endangers another's safety by the negligent operation or handling of a dangerous weapon.

(b) Operates or goes armed with a firearm while he or she is under the influence of an intoxicant.

(bm) Operates or goes armed with a firearm while he or she has a detectable amount of a restricted controlled substance in his or her blood. A defendant has a defense to any action under this paragraph that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

(c) Except as provided in sub. (1m), intentionally points a firearm at or toward another.

(d) While on the lands of another discharges a firearm within 100 yards of any building devoted to human occupancy situated on and attached to the lands of another without the express permission of the owner or occupant of the building. "Building" as used in this paragraph does not include any tent, bus, truck, vehicle or similar portable unit.

(1m)

(a) In this subsection:

1. "Ambulance" has the meaning given in s. 256.01(1t).

1t. "Emergency medical responder" has the meaning given in s. 256.01(4p).

2. "Emergency medical services practitioner" has the meaning given in s. 256.01(5).

(b) Whoever intentionally points a firearm at or towards a law enforcement officer, a fire fighter, an emergency medical services practitioner, an emergency medical responder, an ambulance driver, or a commission warden who is acting in an official capacity and who the person knows or has reason to know is a law enforcement officer, a fire fighter, an emergency medical services practitioner, an emergency medical responder, an ambulance driver, or a commission warden is guilty of a Class H felony.

(2) Whoever does any of the following is guilty of a Class G felony:

(a) Intentionally discharges a firearm into a vehicle or building under circumstances in which he or she should realize there might be a human being present therein; or

(b) Sets a spring gun.

(3)

(a) Whoever intentionally discharges a firearm from a vehicle while on a highway, as defined in s. 340.01(22), or on a vehicle parking lot that is open to the public under any of the following circumstances is guilty of a Class F felony:

1. The person discharges the firearm at or toward another.

2. The person discharges the firearm at or toward any building or other vehicle.

(b)

1. Paragraph (a) does not apply to any of the following who, in the line of duty, discharges a firearm from a vehicle:

a. A peace officer, except for a commission warden who is not a state-certified commission warden.

b. A member of the U.S. armed forces.

c. A member of the national guard.

2. Paragraph (a) does not apply to the holder of a permit under s. 29.193(2) who is hunting from a standing motor vehicle, as defined in s. 29.001(57), in accordance with s. 29.193(2) (cr) 2

(c) The state does not have to negate any exception under par. (b). Any party that claims that an exception under par. (b) is applicable has the burden of proving the exception by a preponderance of the evidence.

(d) The driver of the vehicle may be charged and convicted for a violation of par. (a) according to the criteria under s. 939.05.

(e) A person under par. (a) has a defense of privilege of self-defense or defense of others in accordance with s. 939.48.

#### **History:**

Amended by Acts 2017 ch, 12,s 172, eff. 6/23/2017. Amended by Acts 2017 ch, 12,s 171, eff. 6/23/2017. Amended by Acts 2017 ch, 12,s 170, eff. 6/23/2017. Amended by Acts 2017 ch, 12,s 169, eff. 6/23/2017. 1977 c. 173; 1987 a. 399; 1989 a. 131; 1993 a. 94, 486; 1997 a. 248, 249; 1999 a. 32; 2001 a. 109; 2003 a. 97, 190; 2007 a. 11, 27, 130.

#### **Case Note:**

Pointing a firearm is not a lesser included offense of armed robbery and a defendant can be convicted of both. State v. Smith, 55 Wis. 2d 304, 198 N.W.2d 630 (1972).

A jury instruction that shooting "into" a building under sub. (2) (a) occurs when a bullet penetrates the building however slightly, conformed with common usage of the word and was not improper. State v. Grady, 175 Wis. 2d 553, 499 N.W.2d 285 (Ct. App. 1993).

Police officers do not have an absolute right to point their weapons, but privilege may be asserted as an affirmative defense. State v.

Trentadue, 180 Wis. 2d 670, 510 N.W.2d 727 (Ct. App. 1993).

Although intentionally pointing a firearm at another constitutes a violation of this section, under s. 939.48(1) a person is privileged to point a gun at another person in self-defense if the person reasonably believes that the threat of force is necessary to prevent or terminate what he or she reasonably believes to be an unlawful interference. State v. Watkins, 2002 WI 101, 255 Wis. 2d 265, 647 N.W.2d 244, 00-0064.