

1993 Senate Bill 648

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1993 WISCONSIN ACT 196

AN ACT *to renumber and amend* 51.30 (3); *to amend* 175.35 (2) (c), 175.35 (2) (d), 175.35 (2f), 175.35 (2g) (b), 175.35 (2g) (c) (intro.), 175.35 (2g) (c) 3, 175.35 (2g) (c) 4. (intro.), 175.35 (2g) (c) 4. a., 175.35 (2g) (c) 4. b., 175.35 (2g) (c) 4. c., 175.35 (2i), 175.35 (2j), 175.35 (2k) (a) 2, 175.35 (2k) (b) 2. a., 175.35 (2L), 968.20 (1) (intro.) and 968.20 (2); and *to create* 51.20 (13) (cv), 51.20 (16) (gm), 175.35 (1) (bg), 941.29 (1) (e), 941.29 (8) and 968.20 (1r) of the statutes, **relating to:** possession of firearms by persons who have been involuntarily committed for treatment for mental illness, drug dependency or developmental disability.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 51.20 (13) (cv) of the statutes is created to read:

51.20 (13) (cv) 1. If the court makes the disposition under par. (a) 3., 4., 4m or 5 and the court determines, based on evidence presented on the issue of the subject individual's dangerousness, that there is a substantial probability that the individual may use a firearm to cause physical harm to himself or herself or endanger public safety, the court shall prohibit the individual from possessing a firearm, order the seizure of any firearm owned by the individual and inform the individual of the requirements and penalties under s. 941.29.

2. A prohibition on the possession of a firearm under subd. 1 shall remain in effect until the commitment order and any subsequent consecutive commitment orders expire and the court determines, based on evidence presented on the issue of the subject individual's dangerousness, that there is no longer a substantial probability that the individual may use a firearm to cause physical harm to himself or herself or endanger public safety. If the court makes this determination, it shall cancel the prohibition and order the return of any firearm ordered seized under subd. 1.

3. In lieu of ordering the seizure under subd. 1, the court may designate a person to store the firearm until the prohibition has been canceled under sub. (16) (gm).

4. If the court prohibits a subject individual from possessing a firearm under subd. 1 or cancels a prohibition under subd. 2, the court clerk shall notify the department of justice of that fact and provide any information identifying the subject individual that is necessary to permit an accurate involuntary commitment history record search under s. 175.35 (2g) (c). No other information from the subject individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only as part of an involuntary commitment history record search under s. 175.35 (2g) (c).

SECTION 2. 51.20 (16) (gm) of the statutes is created to read:

51.20 (16) (gm) Upon a request under par. (a), a court may cancel the prohibition under sub. (13) (cv) 1 if the court determines, based on evidence presented on the issue of the subject individual's dangerousness, that there no longer is a substantial probability that the individual may use a firearm to cause physical harm to himself or herself or endanger public safety. If a court cancels a prohibition under sub. (13) (cv) 1 under this paragraph, the court clerk shall notify the department of justice of that

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fact and provide any information identifying the subject individual that is necessary to permit an accurate involuntary commitment record search under s. 175.35 (2g) (c). No other information from the subject individual's court records may be disclosed to the department of justice except by order of the court.

SECTION 3. 51.30 (3) of the statutes is renumbered 51.30 (3) (a) and amended to read:

51.30 (3) (a) ~~The~~ Except as provided in pars. (b) and (c), the files and records of the court proceedings under this chapter shall be closed but shall be accessible to any individual who is the subject of a petition filed under this chapter.

(b) An individual's attorney or guardian ad litem shall have access to ~~such~~ the files and records of the court proceedings under this chapter without the individual's consent and without modification of the records in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission or commitment under this chapter or ch. 971 or 975. ~~In other situations, such~~

(c) The files and records of court proceedings under this chapter may be released to other persons ~~only pursuant to~~ with the informed written consent of the individual ~~or,~~ pursuant to lawful order of the court which maintains the records ~~or under s. 51.20 (13) (cv) 4 or (16) (gm).~~

SECTION 4. 175.35 (1) (bg) of the statutes is created to read:

175.35 (1) (bg) "Involuntary commitment record search" means a search of department of justice records to determine whether a person who is seeking to purchase a handgun is prohibited from possessing a firearm under s. 51.20 (13) (cv).

SECTION 5. 175.35 (2) (c) of the statutes is amended to read:

175.35 (2) (c) The firearms dealer has conveyed the information from the completed notification form to the department of justice as required by rule under sub. (2g) (b) and requested a criminal history record search and involuntary commitment record search.

SECTION 6. 175.35 (2) (d) of the statutes is amended to read:

175.35 (2) (d) Forty-eight hours, subject to extension under sub. (2g) (c) 4. c., have elapsed from the time that the firearms dealer has received a confirmation number regarding the criminal history record search and involuntary commitment record search under sub. (2g) (c) from the department of justice and the firearms dealer has not been notified that the transfer would be in violation of s. 941.29.

SECTION 7. 175.35 (2f) of the statutes is amended to read:

175.35 (2f) When a firearms dealer requests that the department of justice provide a criminal history record search and involuntary commitment record search under sub. (2g), he or she shall provide truthful information

about his or her status as a firearms dealer and shall provide an accurate firearms dealer identification number obtained under sub. (2h). A person may request that the department provide a criminal history record search and involuntary commitment record search under sub. (2g) only if he or she is a firearms dealer.

SECTION 8. 175.35 (2g) (b) of the statutes is amended to read:

175.35 (2g) (b) The department of justice shall promulgate rules prescribing a notification form for use under sub. (2) requiring the transferee to provide his or her name, date of birth, gender, race and social security number and other identification necessary to permit an accurate criminal history record search and involuntary commitment record search under par. (c) 3. and the required notification under par. (c) 4. The department of justice shall make the forms available at locations throughout the state.

SECTION 9. 175.35 (2g) (c) (intro.) of the statutes is amended to read:

175.35 (2g) (c) (intro.) The department of justice shall promulgate rules for criminal history record searches and involuntary commitment record searches regarding transferees under sub. (2), including procedures for all of the following:

SECTION 10. 175.35 (2g) (c) 3. of the statutes is amended to read:

175.35 (2g) (c) 3. The department to conduct the criminal history record search and involuntary commitment record search regarding the transferee. The rules shall include, but not be limited to, a requirement that the department use the transaction management of enforcement system and the national crime information center system.

SECTION 11. 175.35 (2g) (c) 4. (intro.) of the statutes is amended to read:

175.35 (2g) (c) 4. (intro.) The department to notify the dealer, either during the initial telephone call or as soon thereafter as practicable, of the results of the criminal history record search and involuntary commitment record search as follows:

SECTION 12. 175.35 (2g) (c) 4. a. of the statutes is amended to read:

175.35 (2g) (c) 4. a. If the search ~~indicates~~ searches indicate that the transferee is prohibited from possessing a firearm under s. 941.29, the department shall provide the firearms dealer with a unique nonapproval number. The department may not disclose to the firearms dealer the reason the transferee is prohibited from possessing a firearm under s. 941.29.

SECTION 13. 175.35 (2g) (c) 4. b. of the statutes is amended to read:

175.35 (2g) (c) 4. b. If the search ~~indicates~~ searches indicate that the transferee is not prohibited from possessing a firearm under s. 941.29, the department shall

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provide the firearms dealer with a unique approval number.

SECTION 14. 175.35 (2g) (c) 4. c. of the statutes is amended to read:

175.35 (2g) (c) 4. c. If the criminal history record search indicates a felony charge without a recorded disposition, the deadline under sub. (2) (d) is extended to the end of the 3rd complete working day commencing after the day on which the finding is made. The department shall notify the firearms dealer of the extension as soon as practicable. During the extended period, the department shall make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable.

SECTION 15. 175.35 (2i) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

175.35 (2i) The department shall charge a firearms dealer an \$8 fee for each combined criminal history record search and involuntary commitment record search that the firearms dealer requests under sub. (2) (c). The firearms dealer may collect the fee from the transferee. The department may refuse to conduct criminal history record searches and involuntary commitment record searches for any firearms dealer who fails to pay any fee under this subsection within 30 days after billing by the department.

SECTION 16. 175.35 (2j) of the statutes is amended to read:

175.35 (2j) A firearms dealer shall maintain the original record of all completed notification forms and a record of all confirmation numbers and corresponding approval or nonapproval numbers that he or she receives regarding criminal history record searches and involuntary commitment record searches under sub. (2g). The firearms dealer shall mail the duplicate copy of each completed notification form to the department of justice.

SECTION 17. 175.35 (2k) (a) 2. of the statutes is amended to read:

175.35 (2k) (a) 2. Check each duplicate notification form received under sub. (2j) against the information recorded by the department regarding the corresponding request for a criminal history record search and involuntary commitment record search under sub. (2g). If the department previously provided a unique approval number regarding the request and nothing in the duplicate completed notification form indicates that the transferee is prohibited from possessing a firearm under s. 941.29, the department shall destroy all records regarding that criminal history record search and involuntary commitment record search within 30 days after receiving the duplicate form.

SECTION 18. 175.35 (2k) (b) 2. a. of the statutes is amended to read:

175.35 (2k) (b) 2. a. Except as provided in subd. 2. b., a log of dates of requests for criminal history record searches and involuntary commitment record searches

under sub. (2g) together with confirmation numbers, unique approval and nonapproval numbers and firearms dealer identification numbers corresponding to those dates.

SECTION 19. 175.35 (2L) of the statutes is amended to read:

175.35 (2L) The department of justice shall promulgate rules providing for the review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right to purchase a handgun because the firearms dealer received a nonapproval number under sub. (2g) (c) 4. a. may request a criminal history record search and involuntary commitment record search review under those rules. If the person disagrees with the results of that review, the person may file an appeal under rules promulgated by the department.

SECTION 20. 941.29 (1) (e) of the statutes is created to read:

941.29 (1) (e) Committed for treatment under s. 51.20 (13) (a) and ordered not to possess a firearm under s. 51.20 (13) (cv).

SECTION 21. 941.29 (8) of the statutes is created to read:

941.29 (8) This section does not apply to a person specified in sub. (1) (e) if the prohibition under s. 51.20 (13) (cv) 1 has been canceled under s. 51.20 (13) (cv) 2 or (16) (gm).

SECTION 22. 968.20 (1) (intro.) of the statutes is amended to read:

968.20 (1) (intro.) Any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant may apply for its return to the circuit court for the county in which the property was seized or where the search warrant was returned. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property, other than contraband or property covered under sub. (1m) or (1r) or s. 951.165, returned if:

SECTION 23. 968.20 (1r) of the statutes is created to read:

968.20 (1r) If the seized property is a firearm seized under s. 51.20 (13) (cv), the court that issued that order shall order the firearm returned if the prohibition under s. 51.20 (13) (cv) 1 has been canceled under s. 51.20 (13) (cv) 2 or (16) (gm).

SECTION 24. 968.20 (2) of the statutes is amended to read:

968.20 (2) Property not required for evidence or use in further investigation, unless contraband or property covered under sub. (1m) or (1r) or s. 951.165, may be returned by the officer to the person from whom it was seized without the requirement of a hearing.

SECTION 25. Initial applicability. The treatment of section 51.20 (13) (cv) of the statutes first applies to pro-

ceedings in which a petition is filed, under section 51.20 (1) of the statutes, on the effective date of this SECTION.
