

2001 DRAFTING REQUEST

Bill

Received: 11/13/2001

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Scott Gunderson (608) 266-3363

By/Representing: Mike

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - guns and weapons

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Licenses to carry concealed weapons

Instructions:

Companion to LRB-1086

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 11/21/2001	jdye 11/26/2001		_____			S&L
/1			rschluet 11/26/2001	_____	lrb_docadmin 11/26/2001	lrb_docadmin 12/20/2001	
				_____		lrb_docadmin 12/20/2001	

FE Sent For:

<END>

→ A+
Intro.

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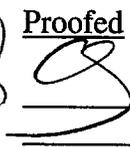
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1/?	mdsida	11/26 jld		 11-26-01			

FE Sent For:

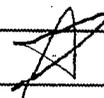
<END>

Mtg of

1) Include general ineligibility under fed'l law ATF website

2) Only apply to ~~transp~~ transport; not discharge

~~3)~~ Dishon. dischg. \Rightarrow inelig sub. ?
Merge 6+7



2/9 - Mike is still checking

4) Change ^{may} to shall
Move to elig.

~~5)~~ Don will check

6) Same restrictions for sheriff
Also see 19/1 - 8 - make applicable to sheriff

• Add penalty for false stmts on application
AB664 - straw purchaser penalty ~~6000~~
Use 9 mos + 500 - \$10000

Add to (c) - ~~7~~ To investigate accuracy of stmts made in application

7) Allow license before performing ✓

Relinquish license if background ✓ (+)

8) Move all elig stuff (incl. commitment) to sub (3) kept
Some of that " + crime will be copied here

Change to revocation; delete suspension

Scott Gunderson



STATE REPRESENTATIVE • 83RD DISTRICT

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P.O. Box 8952
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P.O. Box 7
Waterford, WI
53185

(414) 895-6254

Mike,

Here is the memo from Don Dyke

that we discussed.

Thanks,

Mike Gunderson



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: June 1, 2000

TO: REPRESENTATIVE SCOTT GUNDERSON

FROM: Don Dyke, Senior Staff Attorney *[Signature]*

SUBJECT: Possible Clarifications to 1999 Assembly Bill 605, Relating to Licenses to Carry a Concealed Weapon

18 use 922 (E)

This memorandum is in response to your request for a review of 1999 Assembly Bill 605 to determine whether any provisions of the bill may be in need of clarification.

Summarized below are aspects of the bill that may be in need of clarification, based on my review of the bill and comment on the bill from the two public hearings held on the bill by the Assembly Committee on Judiciary and Personal Privacy.

1. The relationship of the bill to federal law relating to possession of firearms is unclear. The bill does require an applicant for a concealed weapon license to provide a fingerprint and requires the sheriff to submit the fingerprint to the Department of Justice (DOJ). DOJ is required to submit the fingerprint to the Federal Bureau of Investigation (FBI) or the automated fingerprint identification system for the purpose of verifying the applicant's identity and obtaining records of his or her criminal arrest and conviction. However, the bill does not directly indicate that a person who is prohibited from possessing a firearm under federal law is ineligible for a license under the bill. Further, some of the eligibility and disqualification criteria under the bill appear inconsistent with federal law on possession of firearms. For example, an eligibility criterion under the bill is that the applicant be a resident of the United States. However, federal law prohibits a resident of the United States who is an illegal alien from possessing a firearm. [18 U.S.C. s. 922 (d) (5).]

9/8

2. Is the exemption on page 5, lines 20 to 21 too broad? For example, s. 167.31 (2) and (3), Stats., addresses not only the possession and transport of firearms but also the discharge of firearms.

3. There appears to be overlap and redundancy between the training criteria set forth on page 10, lines 23 to 25, of the draft and the criteria on page 11, lines 1 to 5. In other words, if

an applicant satisfies the page 10 criterion of military training giving the applicant experience with firearms that the sheriff determines is substantially equivalent to any course or class specified previously in the bill, then that person will have already met the page 11 criterion of participation in military firearms training whether or not the applicant is serving in the U.S. Armed Forces or has received a discharge from the Armed Forces under conditions other than dishonorable.

4. Is the use of "may" on page 11, line 22, intended? Further, why is the reason for denial of a license that is included in sub. (4), which begins on page 11, line 22, not included in the list of eligibility criteria that is set forth in the preceding subsection of the bill? B/c

5. Page 12, line 14, of the bill provides that the application form for a license to carry a concealed weapon include the applicant's Social Security number. Proponents of Assembly Bill 605 may wish to review federal law to determine whether providing Social Security numbers on the application may be made mandatory or voluntary only.

6. Should a limitation be provided on public access to records that the sheriff is required to maintain on page 16, lines 15 to 18? Compare the access limitations to records maintained by the DOJ under the bill. [See page 16, line 22, and page 18, lines 22 to 24, generally.]

7. On page 17, lines 24 to 25, an emergency license is valid for a period of five years if, among other things, a background check does not indicate that the person fails to meet specified qualifications for a license to carry a concealed weapon. The reference to a background check in this context is not clear; presumably, a background check was already performed as a condition of receiving the emergency license (page 17, lines 15 to 17). Or, is the intent that the 120-day emergency license may be issued before the results of the background check are received? If so, must the emergency license be surrendered if the background check shows the person unqualified?

8. Page 19, lines 18 to 25, and page 20, lines 1 to 12, may need clarification in at least two respects. First, it is not clear why the items listed in subds. 3. through 9. are not included in the eligibility criteria listed in sub. (3) of the bill. Second, reference is made to suspension *or* revocation of a license by a sheriff but no criteria are included for distinguishing between the two types of actions. Ordinarily, suspension is for a specified period of time and contemplates reinstatement; revocation implies some permanency and reapplication if it is possible to again become licensed after revocation. [See, for example, page 20, lines 13 to 17.]

9. The provision on page 20, lines 18 to 21, should, again, arguably be placed in the eligibility criteria of sub. (3). How is the sheriff to be notified of such an arrest or charge? More generally, how does the sheriff obtain information that disqualifies a licensee from maintaining a license after the license has been issued but before renewal of the license.

10. Page 22, line 12, makes reference to a license renewal form. There is no provision in the bill for DOJ designing the renewal application form. Is the sheriff responsible for the form?

11. Page 25, lines 20 to 23, exempt persons licensed under the bill and persons licensed to carry a concealed weapon in another state from the criminal prohibition against carrying a concealed and dangerous weapon. Is it clear that a person licensed to carry a concealed weapon in another state is subject to the provisions of sub. (16) relating to where a licensee may not carry a concealed weapon or to the provisions of sub. (2g) regarding carrying and display of a license to carry a concealed weapon? The latter provisions reference Wisconsin licensees and not licensees from other states.

Please contact me directly at the Legislative Council Staff offices if you have any questions regarding this memorandum.

DD:ksm:rv;tlu

Include reapply for revocation
+ denial of application

★ Check fed'l law ff. to see if there are any ~~time~~
for possession ~~commitment~~ restrictions that have
time limits, greater than what this bill provides

9) Move 20/18-21 to sub (3)

? did I do this?

11/20 "unless circumstances have changed to
render the person elig. for licensure"

10) Make DOS responsible

11) Add to 23/11 "or person licensed in another state"

~~7/18~~

25/21 changed ~~to~~ "licensed" to "authorized"

7/18 Rq. them to carry ^{a produce} document ^{which} authorizes

"evidence of authorization, incl. license"

✓ 23/14-17 w/ ¹⁹⁹⁸ ~~23/14~~ (Act 158)

Dsida, Michael

From: Dsida, Michael
Sent: Saturday, January 27, 2001 4:02 PM
To: Bruhn, Mike
Cc: Dyke, Don
Subject: Concealed carry bill

Here are some additional questions I have about the draft:

1. Under s. 175.50 (3), the bill disqualifies someone from getting a license if the person was convicted of a misdemeanor crime of violence, unless the person completed the sentence imposed for that crime more than 3 years before the date on which he or she applied for the license. In addition, a person is ineligible if convicted of a violation of ch. 961 in the three years preceding an application. But unlike the provisions relating to felonies (which come into play via s. 941.29), the misdemeanor and ch. 961 provisions do not refer to a delinquency adjudication or a finding that the person was not guilty by reason of mental disease or defect (an NGI case). The provisions calling for revoking a license upon conviction present the same problem. Do you want to have delinquency adjudications and NGI cases treated in the same way as convictions? *Treat same way*

2. Under s. 175.50 (14) (a) 6., the sheriff must revoke a person's license if the person is involuntarily committed under s. 51.20, but under s. 175.50 (3) (e), only commitments based on drug dependency preclude a person from obtaining a license. Do you want to cover other types of commitments under s. 51.20 (such as commitments based on mental illness or ~~dangerousness~~) in s. 175.50 (3) (e)? *Yes - Already covered in (k)*

3. Is it okay if the license renewal form requires the same information as the application form does under sub. (5)? (See item 10 in Don's memo.) Also, do you want DOJ to design the notice of expiration mentioned in sub. (15) (b) (intro.)? *yes*

4. What should happen if the DOJ's review of an a duplicate form under sub. (9g) (e) 1. b. indicates that the applicant is not qualified for a license? Do you want DOJ to notify the sheriff and have the sheriff revoke the license? *Have DOJ send sheriff notice*

5. A person who obtains an emergency license under sub. (9r) does not need to submit an application or a fingerprint. Thus, a person who gets an emergency license may ultimately acquire a 5-year license by using someone else's name. (And since renewals don't require fingerprints, they would never have to submit a fingerprint.) If this is not your intent, I can draft language to require that the person not only satisfy the firearm training or firearm safety course requirement, but also fulfill other requirements that he or she would be subject to if applying for a license for the first time. Alternatively, I could make the extension of the emergency license more like a renewal. (If you choose the latter approach, keep in mind that there is no fingerprint requirement for renewals.) *add fingerprint to (9r)(b)*

6. If the background check for a person who was issued an emergency license indicates that the person is ineligible for a license, or if a person's license is revoked, do you want to require the person to relinquish the license within a certain period of time? For example, you could require the sheriff to notify the person of the revocation or ineligibility and require relinquishment within a specified number of days thereafter. If you want such a requirement, do you want a penalty for a person who fails to relinquish the license on time? *Immed. Notify (in person) / or certified mail*

7. In response to item 8 in Don's memo, I am trying to move all of the criteria for ineligibility (such as those listed in sub. (14) (a)) into sub. (3). I can do so, but only if I eliminate the "immediately preceding the date on which he or she submits an application" language that appears in several places in that subsection. The three- and five-year windows will still be part of those criteria, but they won't be linked to the application date. Instead, a person's eligibility under these criteria will be assessed looking back from the date of the assessment. Assuming that makes sense, is that okay?
2 X years from date of issuance

8. In our meeting, we did not address the question of how the sheriff is to learn of any of the circumstances under which he or she must revoke or suspend a license under sub. (14). A sheriff may be able to learn of pending criminal cases and their disposition through circuit court or DOJ databases; but if the burden is on the sheriff to learn of these developments, he or she may never do so unless the bill requires periodic checks on all licensees. I am also unsure of whether the circuit court would have reliable information available to a sheriff regarding commitments under ch. 51 or 880. (I have asked Bob Nelson, the lawyer in our office who drafts legislation regarding the courts, for information on that issue.)

I can think of two ways to avoid these problems, but each potential solution poses other problems. First, you may want to rely on the licensee to tell the sheriff that he or she should have the license revoked or suspended because one of the listed events has occurred. The problems with that approach are pretty obvious. Second, you may want to have the courts tell sheriffs whenever they have a case that would lead to a license suspension or revocation. Aside from the

give clerks access to records

burden that it would impose on courts, that approach would require the courts to be notified of the who has a license. Otherwise, the courts would have to tell the sheriff about every felony case, every ch. 51 or 880 commitment case, every case under s. 346.63... on the off-chance that the defendant or respondent in the case has a license.

Any thoughts about how you want to handle this issue?

9. If a person whose license is suspended under s. 175.50 (14) (am) is released but not charged, is the suspension automatically lifted? Do you want to omit the reference to arrests altogether? After all, once the person is in police custody, he or she will not be carrying a weapon. On the other hand, a person may be arrested and released but still be charged later.

yes

10. Under s. 175.50 (14) (am), the sheriff must restore a license if a criminal case that requires suspension of a license is dismissed. But in some instances, a case is dismissed after a person is found incompetent to stand trial under s. 971.14 but without the person being committed (or at least before the person is committed) under ch. 51 or 55. I assume that you do not want those individuals to be eligible for a license. Therefore, assuming it's okay with you, I will add a provision to subs. (3) and (14) making a person ineligible if he or she has been determined incompetent under s. 971.14. But do you want to limit those provisions to cases in which a person is charged with an offense that would make the person ineligible for a license if he or she were convicted? Also, do you want those incompetency determinations to count only if they have occurred within the last three years?

treat incompetency as NGI

11. Based on our belief that the bill did not contain any penalties for making false statements on an application, you decided that we should include in the bill a penalty for a person who does so that would be comparable to the penalty in 1999 AB 664, last session's straw purchase bill. Those penalties were a fine of at least \$500 but not more than \$10,000 and up to 6 months imprisonment. But penalties are already provided by virtue of the oath requirement under s. 175.50 (6). As a result of that provision, intentionally making a false statement on the application is punishable, as a Class D felony, by a fine of up to \$10,000 (but with no minimum fine) and a term of imprisonment of up to 10 years (with a maximum term of confinement of 5 years). Do you want to simply keep the penalties as they are? Keep them but add a provision mandating a minimum fine of \$500?

Feel free to respond to these questions piecemeal. In addition, if you would like to meet to discuss any of them, please let me know.

Mike Dsida
Legislative Attorney
michael.dsida@legis.state.wi.us
266-9867

Same as current
gun form penalty

Dave
2-6881

Did straw buyers
create an
exception in
in statute prohibiting
making false stmt???

AB 664

No

HR 492 IH

106th CONGRESS

1st Session

H. R. 492

To amend title 18, United States Code, to provide a national standard in accordance with which nonresidents of a State may carry certain concealed firearms in the State, and to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

IN THE HOUSE OF REPRESENTATIVES

February 2, 1999

Mr. STEARNS (for himself, Mr. SMITH of Washington, Mr. HALL of Texas, Mr. BACHUS, Mr. HOLDEN, Mr. NETHERCUTT, Mr. YOUNG of Alaska, Mrs. EMERSON, Mr. HOSTETTLER, Mr. GREEN of Texas, Mr. CRAMER, Mr. COMBEST, Mr. RAHALL, and Mr. BARCIA) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide a national standard in accordance with which nonresidents of a State may carry certain concealed firearms in the State, and to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NATIONAL STANDARD FOR THE CARRYING OF CERTAIN CONCEALED FIREARMS BY NONRESIDENTS.

(a) IN GENERAL- Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

'Sec. 926B. National standard for the carrying of certain concealed firearms by nonresidents

'(a) Notwithstanding any provision of the law of any State or political subdivision thereof, a person who is not prohibited by Federal law from possessing, transporting, shipping, or receiving a firearm and is carrying a valid license or permit which is issued by a State and which permits the person to carry a concealed firearm (other than a machinegun or destructive device) may carry in another State a concealed firearm (other than a machinegun or destructive device) that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

'(b)(1) If such other State issues licenses or permits to carry concealed firearms, the person may carry a concealed firearm in the State under the same restrictions which apply to the carrying of a concealed firearm by a person to whom the State has issued such a license or permit.

'(2) If such other State does not issue licenses or permits to carry concealed firearms, the person may not, in the State, carry a concealed firearm in a police station, in a public detention facility, in a courthouse, in a public polling place, at a meeting of a State, county, or municipal governing body, in a school, at a professional or school athletic event not related to firearms, in a portion of an establishment licensed by the State to dispense alcoholic beverages for consumption on the premises, or inside the sterile or passenger area of an airport, except to the extent expressly permitted by State law.'

(b) CLERICAL AMENDMENT- The table of sections for such chapter is amended by inserting after the item relating to section 926A the following:

'926B. National standard for the carrying of certain concealed firearms by nonresidents.'

SEC. 2. EXEMPTION OF QUALIFIED CURRENT AND FORMER LAW ENFORCEMENT OFFICERS FROM

STATE LAWS PROHIBITING THE CARRYING OF CONCEALED HANDGUNS.

(a) IN GENERAL- Chapter 44 of title 18, United States Code, is amended by inserting after section 926B, as added by section 1(a) of this Act, the following:

'Sec. 926C. Carrying of concealed handguns by qualified current and former law enforcement officers

'(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer or a qualified former law enforcement officer and who is carrying appropriate written identification of such status may carry a concealed handgun.

'(b) As used in this section:

'(1) The term 'qualified law enforcement officer' means an officer, agent, or employee of a public agency who--

'(A) is a law enforcement officer;

'(B) is authorized by the agency to carry a firearm in the course of duty;

'(C) is not the subject of any disciplinary action by the agency; and

'(D) meets such requirements as have been established by the agency with respect to firearms.

'(2) The term 'qualified former law enforcement officer' means an individual who--

'(A) retired from service with a public agency as a law enforcement officer, other than for reasons of mental disability;

'(B) immediately before such retirement, was a qualified law enforcement officer;

'(C) has a nonforfeitable right to benefits under the retirement plan of the agency;

'(D) meets such requirements as have been established by the State in which the individual resides with respect to training in the use of firearms; and

'(E) is not prohibited by Federal law from receiving a firearm.

'(3) The term 'law enforcement officer' means an individual authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law, and includes corrections, probation, parole, and judicial officers.

'(4) The term 'appropriate written identification' means, with respect to an individual, a document which--

'(A) was issued to the individual by the public agency with which the individual serves or served as a law enforcement officer; and

'(B) identifies the holder of the document as a current or former officer, agent, or employee of the agency.'

(b) CLERICAL AMENDMENT- The table of sections for such chapter is amended by inserting after the item added by section 1 (b) of this Act the following:

'926C. Carrying of concealed handguns by qualified current and former law enforcement officers.'

(c) EFFECTIVE DATE- The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

LEVEL 1 - GROUP 1 - 5 OF 9 CASES

UNITED STATES of America, Appellee, v. Clarence Carfield Daniel BUFFALOE, Appellant
No. 71-1309
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
449 F.2d 779; 1971 U.S. App. LEXIS 7637

October 12, 1971

DISPOSITION: [**1]

Affirmed.

CORE TERMS: adjudicated, mental institution, mental defective, firearms, discharged

JUDGES: Haynsworth, Chief Judge, and Butzner and Russell, Circuit Judges.

OPINIONBY: PER CURIAM

OPINION: [*780] Clarence Carfield Daniel Buffaloe appeals his conviction for violation of 18 U.S.C. § 922 by making a false statement in connection with the purchase of firearms. Buffaloe, on two occasions, purchased pistols stating that he had never been adjudicated a mental defective or committed to a mental institution.

The government's proof established that Buffaloe had been tried in the Circuit Court of Dinwiddie County, Virginia, for maiming, found not guilty by reason of in-

sanity, and "committed to Central State Hospital as a criminally insane person." Approximately 16 months later, he was discharged from the hospital as not then insane or feebleminded.

We agree with the district judge that Buffaloe was adjudicated and committed within the meaning of 18 U.S.C. § 922 (d) (4), which prohibits the sale of firearms to a person who "has been adjudicated a mental defective or has been committed to any mental institution."

We also conclude that the statute is not unconstitutional as to Buffaloe because 16 months later he[**2] was discharged from the hospital. Finally, there is ample evidence to support the finding that Buffaloe willfully and knowingly made the false statements.

Deeming oral argument unnecessary, we affirm the judgment of the district court.

Affirmed.

Cite as Galioto v. Department of Treasury, 602 F.Supp. 682 (D.N.J. 1985)

Anthony J. Galioto, Plaintiff,

v.

The Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Defendant.

No. Civ. A. 84-2045.

United States District Court, D. New Jersey.

Feb. 7, 1985.

Bianchi & Casale by Michael A. Casale, Nutley, N.J., for plaintiff.

W. Hunt Dumont, U.S. Atty. by Peter R. Ginsberg, Asst. U.S. Atty., Newark, N.J., for defendant.

OPINION

SAROKIN, District Judge.

INTRODUCTION

In a society which persists and insists in permitting its citizens to own and possess weapons, it becomes necessary to determine who may and who may not acquire them. At issue in this matter is a statute reminiscent of the Dark Ages, which permits a person convicted of a crime to purchase a gun under certain circumstances, but denies that same right to a person once committed for mental illness no matter what the circumstances. Apparently one who has been convicted of a crime can be relieved of the stigma arising from such a conviction, but a commitment for mental illness renders one permanently disqualified. The statute thus implies that mental illness is incurable, and that those persons with a history of mental illness who have never committed a crime are deemed more likely to commit one in the future than those persons who have actually done so in the past. If persons with criminal records are permitted to purchase and possess weapons after meeting certain standards, certainly persons who have conquered past mental illness are entitled to the same consideration and rights. To impose a perpetual and permanent ban against anyone who has ever been committed for mental illness, no matter how ancient the commitment or how complete the cure, is to elevate superstition over science and unsupported fear over equal protection, and due process. Accordingly, the court finds this provision of the subject statute to be unconstitutional.

The instant motion has been brought by defendant to dismiss plaintiff's complaint or, in the alternative, for summary judgment. A party moving for summary judgment cannot prevail unless there exists no genuine issue of material fact and the party is entitled to judgment as a matter of law. *Sunshine Books, Ltd. v. Temple University*, 697 F.2d 90, 95 (3d Cir. 1982). When the court has determined upon undisputed facts that the non-moving party, rather than the movant, is entitled to judgment as a matter of law, "it is

Varated & remanded

106 SCF

2686

well within the district court's discretion to enter summary judgment for the non-moving party." Selected Risks Ins. Co. v. Bruno, 555 F.Supp. 590 (M.D.Pa. 1982) rev'd on other grounds, 718 F.2d 67 (3d Cir. 1983); see also 6 Moore's Federal Practice, n 56. 12 (2d ed. 1984). Such is the case here. The defendant Bureau of Alcohol, Tobacco, and Firearms (Bureau), asks the court to grant summary judgment in its favor on the grounds that the plaintiff has no entitlement to relief under 18 U.S.C. section 925(c), pursuant to which the plaintiff sues. Instead, the court finds that section 925(c) and the related statutory provisions in 18 U.S.C. section 921 et seq, are invalid as infringements upon the plaintiffs right to due process as guaranteed by the fifth amendment to the United States Constitution.

FACTS

Plaintiff Anthony Galioto is a 57-year-old longstanding resident of West Orange, New Jersey. Galioto, served in the Armed Forces from 1951 to 1953, was honorably discharged, and has since held a position as an engineer with the New York and New Jersey Port Authority. Plaintiffs Memorandum of Law, Exh. D. In 1971, having had no prior history of mental illness, Galioto suffered an acute mental breakdown and voluntarily entered Fair Oaks Hospital in Summit, New Jersey. Plaintiff's Mem., Exh. B. He was diagnosed as having suffered an acute schizophrenic episode with paranoid features. Galioto remained hospitalized for twenty-three days from May 11 to June 4, 1971.

During Galioto's hospital stay, when Galioto expressed his intention to leave, his physician, Dr. R.G. Alvarez, sought to have him committed. On May 31, 1971, the Essex County Juvenile and Domestic Relations Court entered a final order of commitment. Galioto was released five days later, after Dr. Alvarez determined that Galioto's condition had improved. There is no evidence that Galioto was ever again hospitalized for mental illness.

Ten years after this hospitalization, Galioto applied to the Superior Court of New Jersey, Essex County, Law Division, for an order granting him a firearms purchase identification card pursuant to New Jersey Statute Annotated 2C:58-3(b), which order was granted on April 27, 1981. Thereafter, in October, 1982, plaintiff attempted to purchase a firearm at Ray's Sport Shop in North Plainfield, New Jersey. Ray's Sport Shop refused to sell any firearm to plaintiff when he responded "yes" to a question on a standard Bureau questionnaire asking: "Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?" 18 U.S.C. section 922(d)(4) makes it unlawful for a licensed dealer in firearms "to sell ... any firearm ... to any person knowing or having reasonable cause to believe that such person ... has been adjudicated as a mental defective or has been committed to any mental institution." [footnote 1]

A few days after said refusal, Galioto applied to the defendant Bureau in Washington, D.C., for a release from firearms disability pursuant to 18 U.S.C. section 925(c). Papers submitted by plaintiff included a certification from Dr. Alvarez, the physician who had sought Galioto's commitment in 1971, to the effect that Galioto was no longer suffering from any mental disability that would interfere with his handling of firearms. Section 925(c), under which Galioto sought relief from his firearm

disability, provides in pertinent part:

A person who has been convicted of a crime punishable for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition ... of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding such conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. [footnote 2]

There is no equivalent provision establishing a mechanism by which a former mental patient can seek relief from the firearms disabilities imposed upon him by federal law. By letter dated April 13, 1984, the Director of the Bureau of Alcohol, Tobacco, and Firearms, Stephen E. Higgins, denied plaintiff's application for relief from firearms disability, asserting that Galioto was "subject to Federal firearms disability because of his commitment." Exhibit A to Complaint.

The Bureau argues in support of its motion that it was powerless to release Galioto from disability under section 925(c), because that section allows for a release from disability only for those disabled due to criminal convictions, not those disabled as a result of past commitment to a mental institution. Sections 922(d)(4) and (h)(4), according to the Bureau, create a permanent and irreversible disability for anyone ever committed to a mental institution, without regard to the length of the commitment, the length of the interval between the commitment and the proposed firearms purchase, the source or severity of the original illness, the improvement of the person subject to the disability, the evolution of medical knowledge about the illness for which the former patient was committed, or the propriety and correctness of the commitment in the first instance. [footnote 3]

DISCUSSION

I. Issues of Fact

Plaintiff has contended, in defense of this motion, that there remains a disputed issue of fact which ought to preclude summary judgment. He argues that the Director's decision to deny plaintiff relief rested on two factual determinations: "(1) that plaintiff had been committed to a mental institution and (2) that plaintiff was discharged on a determination other than a finding that he was competent." Plaintiff's Mem. at 3; also Exh. A to Complaint. Plaintiff argues that the Director would or should have released plaintiff from his disability had he found that plaintiff's commitment was "factually erroneous," that is, that plaintiff "was not mentally ill at the time of his commitment or alternatively that he was subsequently discharged based on a finding of mental competence." Plaintiff's Mem. at 5. Plaintiff does not argue that his commitment was, in fact, "erroneous," but notes that it was of short duration. The Bureau maintains, on the other hand, that the fact of plaintiff's commitment alone is enough to disable him

permanently, whether or not that commitment was erroneous. It notes in any event that plaintiff was prescribed medication upon his discharge, indicating that he was not wholly "competent" at that time.

The court finds no issue of fact raised here that should preclude summary judgment in favor of the plaintiff. The Bureau has taken the position that it is powerless under sections 922 and 925 to release plaintiff from his disability even if it were shown as a matter of fact that plaintiff's commitment was indeed erroneous, or for any other reason. This interpretation is entitled to some, albeit limited, deference as an indication of the intended "meaning" of the statute. *Columbia Gas Transmission Corp. v. F.P.C.*, 530 F.2d 1056, 1059 (D.C.Cir. 1976) (deference given to agency's determination of meaning of statute in light of agency expertise); *Erickson Air Crane Co. of Washington, Inc. v. United States*, 731 F.2d 810, 814 (Fed.Cir. 1984). ("legal interpretations by tribunals having expertise are helpful [to reviewing court]"). Moreover, the Bureau presents a plausible argument that the statute is to be read literally, relying on *Dickerson v. New Banner Institute*, 460 U.S. 103, 103 S.Ct 986, 74 L.Ed.2d 845 (1983) (state expunction of conviction did not relieve plaintiff of firearms disability under literal terms of 18 U.S.C. sections 921 et seq., imposing disability based on fact of conviction), and that section 925 simply does not give it authority to relieve plaintiff of his disability, whatever the circumstances surrounding his commitment or thereafter. In general, a court should avoid reaching a constitutional question when an issue can be resolved as a matter of statutory interpretation. See, e.g., *United States v. Security Industrial Bank*, 459 U.S. 70, 103 S.Ct. 407, 411, 74 L.Ed.2d 235 (1982); *Railroad Comm'n v. Pullman*, 312 U.S. 496, 61 S.Ct 643, 85 L.Ed. 971 (1941). Here, however, where the statutory interpretation of the agency is well-founded and where the plaintiff has not submitted evidence to demonstrate that he comes within the exception to the statute which he urges, it is not necessary to prolong these proceedings in anticipation of further proofs in order to avoid confronting the patent constitutional defect in section 921, et seq. The purpose of summary judgment is "to eliminate a trial in cases in which it is unnecessary and would only cause delay and expense." *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976), cert. denied, 429 U.S. 1038, 97 S.Ct 732, 50 L.Ed.2d 748 (1977).

2. Issues of Law-The Statute's Infirmity Under the Fifth Amendment

It is well settled that the due process clause of the fifth amendment includes an equal protection component. See, e.g., *Nat'l Black Police Ass'n, Inc. v. Velde*, 712 F.2d 569, 580 (D.C.Cir. 1983), cert. denied, -- U.S. --, 104 S.Ct. 2180, 80 L.Ed.2d 562 (1984). Federal government action violates the equal protection component of the due process clause when it treats similarly situated groups differently without a substantial or compelling government interest, if the groups are suspect or "quasi-suspect" classes entitled to enhanced scrutiny, or a fundamental right is involved, or if it acts without a rational basis, where the groups are not suspect classes and no fundamental right is implicated. *Plyler v. Doe*, 457 U.S. 202, 216-18, 102 S.Ct 2382, 2394-95, 72 L.Ed.2d 786 (1982). A legislative classification is treated as "suspect" when it is

more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective. Legislation predicated on such prejudice is easily recognized as incompatible with the constitutional understanding that each person is to be judged individually and is entitled to equal justice under the law.

Id. at 216-17 n. 14, 102 S.Ct at 2394 n. 14. Certain groups, although not "suspect," are deserving of a higher level of scrutiny than is accorded most legislative classifications. Differential treatment of these groups must be justified by a "substantial" state interest, because the groups have been historically "subjected to unique disabilities on the basis of stereotyped characteristics not truly corresponding to the attributes of [their] members." *J. W. v. City of Tacoma*, Wash., 720 F.2d 1126, 1129 (9th Cir. 1983). The Supreme Court has extended such enhanced scrutiny thus far to classifications by sex, *Craig v. Boren*, 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976), by legitimacy of birth, *Lalli v. Lalli*, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (1978), and by lawfulness of presence within the United States, *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). See also *United States v. Cohen*, 733 F.2d 128 (D.C.Cir. 1984).

This court concludes that persons with histories of mental illness are a quasi-suspect class deserving of intensified "intermediate" scrutiny; that is, any statute treating them differentially must be related to a "substantial" governmental interest. Even if persons with histories of mental illness are not a quasi-suspect class deserving of heightened scrutiny, the provisions of 18 U.S.C. section 921 et seq. are simply not rational to the extent that they treat former mental patients differently vis a vis convicted criminals, in that they permanently deprive former mental patients of the opportunity to demonstrate changed circumstances which warrant the removal of the disqualification. The court determines that they violate not only plaintiff's right to equal protection, but his right to substantive due process as well.

A. Former Mental Patients as a Quasi-Suspect Class

The Supreme Court has expressly reserved judgment on the question of whether or not the mentally ill are deserving of heightened scrutiny. *Schweiker v. Wilson*, 450 U.S. 221, 229, 231 n. 13, 101 S.Ct. 1074, 1080, 1081 n. 13, 67 L.Ed.2d 186 (1981). [footnote 4] The Ninth Circuit has found former mental patients to be a "quasi-suspect" class entitled to "intermediate" scrutiny, however. *J. W. v. City of Tacoma*, 720 F.2d 1126 (9th Cir. 1983). In *City of Tacoma*, the Ninth Circuit recognized that "constitutional concerns are heightened by any classification scheme singling out former mental patients for differential treatment because of the possibility that the scheme will implement "inaccurate and stereotypic fears" about former mental patients. Id. at 1130-31.

The Third Circuit has not spoken directly on this issue. In its recent decision, *Cospito v. Heckler*, 742 F.2d 72 (3d Cir. 1984), the court applied a "rational basis" test in analyzing the claims of a group of mental patients who had lost certain federal benefits when the psychiatric hospital in which they were being treated lost its accreditation. The patients contended that

"psychiatric hospitals will lose federal benefits more readily than a general hospital if deaccredited by JCAH [an accrediting agency], since such accreditation apparently does not affect in any way a general hospital's participation in Medicare or Medicaid . . . whereas a psychiatric hospital must either be JCAH accredited, or else certified under the 'distinct part' survey in order to qualify," and that this amounted to discrimination against the mentally ill. *Id.* at 83. In applying only minimal scrutiny, the Third Circuit carefully noted the Supreme Court's reservation of "the question of whether legislation expressly classifying mental patients as a discrete group must be examined under any enhanced standard of scrutiny," *Id.* n. 19 (emphasis supplied), however. This court concludes from this note that the Third Circuit, like the Supreme Court, has reserved judgment on the question of what level of scrutiny to apply to legislation that explicitly singles out mental patients or those with a history of psychiatric hospitalizations for differential treatment. In the opinion of this court, the Third Circuit would not automatically apply a rational basis test if presented with these facts, particularly in light of the Ninth Circuit's holding in *Tacoma*, *supra* (striking down zoning regulation that treated group homes for former mental patients differently than other group homes). [footnote 5] This court is persuaded by the Ninth Circuit's holding that former mental patients do constitute a quasi-suspect class for fourteenth amendment purposes, but the court does not rest its decision on that ground.

B. Application of the Rational Basis Test

The question of whether or not persons with a history of mental illness should be afforded enhanced scrutiny when singled out for differential treatment is not critical in this constitutional challenge to 18 U.S.C. section 921 et seq., because, even under a rational basis test, this statute is defective under both equal protection and substantive due process theories. [footnote 6]

The court first notes its agreement with plaintiff's observation that the Supreme Court has not already decided this question in the dicta from *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 103 S.Ct 986, 74 L.Ed.2d 845 (1983), which is emphasized by defendant. In that case, holding that a state court's expunction of a criminal conviction would not automatically release a convict of his firearm disability under 18 U.S.C. section 921 et seq., the Court stated that

[t]he imposition, by sections 922(g)(4) and (h)(4), of continuing disability on a person who "has been" adjudicated a mental defective or committed to a mental institution is particularly instructive. A person adjudicated as a mental defective may later be adjudged competent, and a person committed to a mental institution may later be deemed cured and released. Yet Congress made no exception for subsequent curative events. The past adjudication or commitment disqualifies. Congress obviously felt that such a person, though unfortunate, was too much of a risk to be allowed firearms privileges.... In the face of this fact, we cannot believe that Congress intended to have a person convicted of a firearms felony under state law become eligible for firearms automatically because of a state expunction for whatever

reason.

Id. 103 S.Ct. at 993. In this passage, the Court referred to section 922's explicit treatment of persons with histories of psychiatric commitments simply in order to support its statutory interpretation of the import of an expunction under section 921 et seq. Possible constitutional infirmities in collateral clauses of the statute were not the focus of the Court. Significantly, as plaintiff has noted, the Court took special notice of the fact that "Congress carefully crafted a procedure for removing ... disabilities [of convicts] in appropriate cases," id. 103 S.Ct at 995, and cited section 925(c), the very relief statute which the plaintiff has tried unsuccessfully to have applied to him. Arguably, the Court felt free to dwell solely on questions of statutory interpretation because of this "escape clause" in the statutory sections with which it was concerned. It is the absence of this procedure for escape from disability for former mental patients, particularly in light of its availability for convicts, that creates the constitutional infirmity with which we are concerned here. [footnote 7]

The failure of the statute to provide former mental patients with the opportunity to contest their firearm disability is irrational in two ways that offend the due process and equal protection components of the fifth amendment. First, the statute offends the equal protection rights of former mental patients by treating them differently than others similarly situated, viz. ex-convicts, without any logical justification for doing so. Second, the statute offends the due process rights of these individuals because it deprives them permanently and without any rational basis of the opportunity to demonstrate that they are no longer, or never were, incapable of handling firearms safely.

1. Equal Protection

Sub-sections (d)(4) and (h)(4) prohibit sales of firearms to, or purchases of firearms by, any person

- (1) who is under indictment for, or who has been convicted in any court of, a crime punishable for a term exceeding one year;
- (2) who is a fugitive from justice;
- (3) who is an unlawful user of or addicted to marijuana or any depressant or stimulant drug ... or narcotic drug; or
- (4) who has been adjudicated as a mental defective or who has been committed to any mental institution.

Of these, only ex-convicts and former psychiatric patients are classed according to a past occurrence in their lives which might raise a presumption that they would be incapable of handling firearms safely in the future. All of the other classes of individuals are subject to present infirmities which are obviously direct indications that they might not be trustworthy with weapons. The statutory scheme allows the subject of a past conviction to show his reformation, in section 925, but does not allow the same opportunity to the subjects of a past commitment proceeding. Thus, out of all of the categories of individuals disabled from purchasing firearms, only the former mental patients are permanently disabled on the basis of a past event that may or may not be an indicator of their present ability to handle firearms,

with no opportunity to establish that, in fact, they are now capable of safe handling. [footnote 8]

There is no rational basis for thus singling out mental patients for permanent disabled status, particularly as compared to convicts. While, as noted below, this court objects to presumptively barring any individual based on a past event from the opportunity to prove that he or she should be released from disability, rational analysis suggests that, if anything, the bar would be more logically applied to convicts than to former mental patients, rather than vice versa. First, the bar has a punitive aspect which may be appropriate for one who has been duly convicted of a crime, but not for an innocent former mental patient. See Plyler v. Doe, supra, 457 U.S. at 220, 102 S.Ct at 2396 ("legal burdens should bear some relationship to individual responsibility or wrongdoing"). Second, individuals who are convicts have demonstrated that they are capable of criminal activity by actually committing the crime for which they were convicted, c.f., Jones v. United States, 463 U.S. 354, 103 S.Ct. 3043, 3049, 77 L.Ed.2d 694 (1983) ("[t]he fact that a person has been found, beyond a reasonable doubt, to have committed a criminal act certainly indicates dangerousness"); former mental patients have not, by virtue of that status, indicated anything more than that they at one time were adjudged to have a propensity for disruptive activity. [footnote 9] Third, the committed patient who is released, as was Galimoto, shortly after his commitment, may not have the same incentive to appeal the commitment as a convicted felon, so the propriety of the initial commitment may never be fully explored. The initial commitment proceeding is likely to be much more emergent than a criminal proceeding as well, if the proceeding is begun only upon a patient's seventy-two hour notice of intention to leave, pursuant to New Jersey Statute Annotated 30:4-46 (hospital must discharge voluntarily admitted patient within seventy-two hours of request to leave absent commitment). More over, the commitment proceeding is likely to have fewer procedural safeguards (e.g., no right to a jury, N.J.Stat. Ann. 30:4-42; "clear and convincing" burden of proof rather than "beyond a reasonable doubt"). This last point is particularly disturbing in light of the studies cited by plaintiff, Mem. at 12, to the effect that commitment proceedings are replete with erroneous factual findings.

In sum, permanent disability is more appropriately accorded to convicts, if anyone, than to former mental patients. The only "rational" reason for failing to provide persons with psychiatric histories the opportunity to contest their disability must be based on some "archaic and stereotypic notions", Tacoma, 720 F.2d at 1129, citing Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 723, 102 S.Ct. 3331, 3335, 73 L.Ed.2d 1090 (1982), that mental illness is always, in every instance, permanent and incurable. This ignores expanding knowledge about the causes of mental illnesses, their reversibility and treatment.

2. Substantive Due Process

The statute is unconstitutional not only because it treats former mental patients differently from and inferior to convicts, but also because it presumptively denies former mental patients the opportunity to establish that they no longer present the danger against which the statute was intended to guard. The statute in

effect creates an irrebuttable presumption that one who has been committed, no matter the circumstances, is forever mentally ill and dangerous. An irrebuttable presumption violates the due process rights of the individual against whom it is applied unless it is "at least rationally related to a legitimate state objective." *Maimed v. Thornburgh*, 621 F.2d 565, 575, 578 (3d Cir.), cert. denied, 449 U.S. 955, 101 S.Ct. 361, 66 L.Ed.2d 219 (1980); see also *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) (unconstitutional to presume that all unwed fathers are unfit as parents); *Gumtankin v. Costanzo*, 556 F.2d 184 (3d Cir. 1977) (unconstitutional to presume blind teacher not competent to teach English in public schools). This court does not question that the regulation of purchases and sales of firearms for the safety of the public is a legitimate, indeed substantial, state objective. But the application of an irrebuttable presumption against ownership of firearms by former mental patients is not a rational means of achieving that objective. Cf. *Hetherington v. Sears, Roebuck & Co.*, 652 F.2d 1152 (3d Cir. 1981) ("[w]hile it may be true that [the state] could ban the sale of all deadly weapons, it does not follow that the state, having abrogated its power to effect a total ban," can regulate sale of weapons in an irrational manner).

The statute in question is irrational because, without any good faith extrinsic justification, such as administrative cost, it relies on psychiatric evidence introduced in one proceeding to impose a burden on an individual, and then refuses to accept the same evidence when the individual seeks to have the burden removed. At the outset, the court notes that the government has never questioned in this litigation the feasibility of affording relief proceedings to former mental patients. Indeed, given that the statutory scheme under examination here allows for relief from disability in cases involving convicts, the government cannot in good faith contend that its refusal to allow relief in the case of former mental patients is based on a concern over the expense of the relief procedure or its administrative feasibility. Neither does the relief procedure contemplated here implicate the concerns of repose and economy underlying the judicial principles of res judicata and collateral estoppel. The relief proceeding is not aimed at relitigating the issues litigated at the previous commitment hearing, but focuses on present circumstances, and on an ongoing civil disability independent of the original commitment.

Absent any rationale of economy or efficiency, the court can find no rationale for the statute but an archaic, stigmatizing, unreasoning fear of the mentally ill. As noted previously, "[l]egislation predicated on such prejudice is easily recognized as incompatible with the constitutional understanding that each person is to be judged individually." *Plyler*, 457 U.S. at 216 n. 14, 102 S.Ct. at 2394 n. 14. In plaintiff Galioto's case, the very physician who certified he should be committed, Dr. Alvarez, has now certified that Galioto is competent to handle a firearm. Indeed, the state courts that committed Galioto have now issued him a firearm identification card. Even if these events should not automatically relieve Galioto of his disability, cf. *Dickerson*, supra, they indicate that Congress' concerns in creating the disability for certain higher risk firearm purchasers no longer obtain in Galioto's case. The statute, however, permanently forecloses Galioto from challenging that disability.

Even the very evidence, namely, psychiatric opinion, which was

responsible for the stigmatic label in the first instance, cannot erase this mark. The court appreciates the "fallibility of psychiatric diagnosis", *Addington v. Texas*, 441 U.S. 418, 429, 99 S.Ct. 1804, 1811, 60 L.Ed.2d 323 (1979), and the fact that "some in the psychiatric community are of the view that clinical predictions as to whether a person would or would not commit violent acts in the future are 'fundamentally of very low reliability' and that psychiatrists possess no special qualifications for making such forecasts." *Estelle v. Smith*, 451 U.S. 454, 472, 101 S.Ct. 1866, 1878, 68 L.Ed.2d 359 (1981) (citations omitted). But the shortcomings of psychiatry cannot excuse the failure to afford a former mental patient a hearing on his current mental competence for the purpose of overcoming a civil disability, where the government has been satisfied to rely on psychiatric evidence in imposing the disability in the first instance. That failure amounts to a denial of due process.

CONCLUSION

The court does not today find it irrational to prohibit former mental patients generally from the purchase of firearms. The court finds rather that such a general prohibition is irrational and unconstitutional, if it does not include some provision for the granting of relief from disability to former mental patients in appropriate cases. As the defendant has noted, this court does not have the power to "create a review procedure for people in plaintiff's category," Defendant's Reply Mem. at 9, because "[t]hat would be a legislative function." The court can only declare those provisions of 18 U.S.C. section 921 et seq. which have been used to deprive plaintiff of his ability to purchase a firearm, without affording him any opportunity to contest that disability, to be void as violative of the fifth amendment of the United States Constitution.

The court does not mean to suggest by this opinion that all former sufferers of mental illness should be permitted to own firearms. But, rather, if Congress has determined that there are circumstances under which former criminals can own and possess weapons and a means is provided to establish such entitlement, former mental patients are entitled to no less. To hold otherwise is to implicitly declare that mental illness is incurable and that all those who have once suffered from it forever remain a danger to society. Such a conclusion is repugnant to our principles and is contradicted by the multitude of such persons who now live among us without incident. The anguish caused by mental illness is great enough without the imprimatur of a lifetime stigma embossed by congressional action.

Because the holding of the court in this matter will create a void in an area which clearly requires governmental control and regulation, the court, on its own motion, will stay the effective date of its order for a period of 120 days, so as to afford to Congress an opportunity to correct the constitutional infirmities found to exist in the present legislation and to accord to former mental patients the rights, dignity and due process to which they are entitled.

FOOTNOTES

1. Another subsection of section 922, section 922(h)(4), makes it

unlawful For "any person ... who has been adjudicated as a mental defective or who has been committed to any mental institution ... to receive any firearm ... which has been shipped or transported in interstate or foreign commerce."

2. Firearm disabilities equivalent to those imposed on persons who have been adjudicated mentally defective or committed to a mental institution are imposed on persons who have "been convicted in any court of ... a crime punishable by imprisonment For a term exceeding one year." sections 922(d)(1) and 922(h)(1).

3. The court has serious doubt whether an applicant could collaterally attack such a commitment in this type of a proceeding, even if appropriate means were provided to seek relief.

4. The Court has recently granted certiorari on the question of whether the mentally retarded are a "quasi-suspect" class entitled to enhanced scrutiny. *City of Cleburne v. Clebume Living Center*, -- U.S. --, 105 S.Ct. 427, 83 L.Ed.2d 354 (1984); see also "Subject Matter Summary of Cases Recently Filed." 53 U.S.L.W. 3343-44 (Nov. 6, 1984).

5. Prior to *Schweiker*, in which the Supreme Court expressly reserved judgment on the standard of review for classifications of the mentally ill as a discrete group, the Third Circuit applied a rational basis test in evaluating the constitutionality of a state statute setting differential time limits for benefits for hospitalization in mental as opposed to general hospitals. See *Doe v. Colaurri*, 592 F.2d 704 (3d Cir. 1979). The court relied on the Supreme Court's summary affirmance in *Legion v. Weinberger*, 414 U.S. 1058, 94 S.Ct. 564, 38 L.Ed.2d 465 (1973), *aff'g* *Legion v. Richardson*, 354 F.Supp. 456 (S.D.N.Y. 1973) (three-judge court), in which the court below employed a rational basis test to uphold a limitation on the number of days of Medicaid and Medicare coverage for psychiatric as opposed to general hospitalizations for patients over 65. The explicit reservation of judgment in *Schweiker*, noted in *Cospito*, indicates that none of these cases supports the proposition that express classifications of individuals according to their history of psychiatric treatment are inevitably subject only to a rational basis analysis.

6. The parties have applied only a rational basis analysis.

7. Defendant also cites a 1983 decision from the District of South Carolina as having considered this issue. *United States v. Jones*, 569 F.Supp. 395 (D.S.C. 1983). Again, this court must note its agreement with the plaintiff that the *Jones* court did not address the procedural infirmity this court finds in the statute. In *Jones*, the defendant, a former mental patient, was not seeking to have her disability removed so that she could purchase a firearm; she was instead under indictment for having purchased a firearm without any release from the statutory disability, a purchase she had accomplished by falsifying information about her prior hospitalizations. Presented with those facts, the *Jones* court found that it was not irrational "to prohibit persons within the category of 18 U.S.C. section 922(d)(4) from purchasing and/or receiving firearms." 569 F.Supp. at 399. This court does not disagree with that conclusion. But to conclude that it is rational to prohibit former mental patients in general from purchasing or receiving firearms is not to conclude that it is rational to deny individual

former mental patients the opportunity to seek relief from this general disability with a showing that they are responsible enough to handle a firearm safely and legally, particularly when such an opportunity is afforded ex-convicts.

8. Section 925(c) does exclude convicts whose past convictions were for firearms-related offenses from its relief provisions, but such past convictions might rationally be considered good indicators of a potential for future firearms abuse, in contrast to a mere general finding of mental illness in the past.

9. An individual may be committed in New Jersey if "there is believed to exist in the patient a diagnosed mental illness of such degree and character that the person, if discharged, will probably imperil life, person, or property." N.J. Stat. Ann. 30:4-48. Thus, one without violent tendencies toward people may be committed on the belief that he will likely "imperil ... property."

No need for dis. death b/c of fed'l law prot'ion

Dsida, Michael

From: Bruhn, Mike
Sent: Tuesday, February 20, 2001 3:07 PM
To: Dsida, Michael
Subject: RE: concealed carry

Mike,

Gundy and I talked about this, and we believe the answer is yes.

Mike Bruhn
Rep. Gunderson's office

-----Original Message-----

From: Dsida, Michael
Sent: Monday, February 19, 2001 2:17 PM
To: Bruhn, Mike
Subject: concealed carry

If someone is convicted of making a false statement in a license application, should the person be barred from ever being licensed subsequently?



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-38354

JEO: [unclear]:km

1086/P1

D-Note
2001 BILL
1999 BILL

[Handwritten initials and marks]

[Handwritten notes]

[Handwritten signature]

[Handwritten signature]

Add [unclear] ch. 20 added

[Handwritten signature]

[Handwritten signature]

Regen

1 AN ACT to amend 25.29 (1) (a), 165.82 (2), 941.23 and 941.235 (2); and to create
2 20.370 (5) (cx), 20.455 (2) (gp), 29.595, 59.25 (3) (u), 167.31 (4) (am), 175.50,
3 440.26 (3r), 941.295 (2) (bm) and 948.605 (2) (b) 4m. of the statutes; relating
4 to: licenses to carry a concealed weapon, granting rule-making authority,
5 making appropriations, and providing @ penalty. ies

Analysis by the Legislative Reference Bureau

Currently, no person other than a peace officer may carry a concealed and dangerous weapon. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than nine months or both. In addition, current law prohibits, with certain exceptions, being armed with a firearm while in a public building, in or on the grounds of a school or within 1,000 feet of the grounds of a school. Current law also prohibits, with certain exceptions, going armed with a handgun on any premises (such as a tavern) that has a license or permit to sell alcohol beverages for consumption on those premises. A person who violates these prohibitions may be fined not more than \$10,000 or imprisoned for not more than nine months or both, except that a person who goes armed in a public building may be fined not more than \$1,000 or imprisoned for not more than 90 days or both.

This bill creates a procedure by which a person may apply to a county sheriff for a license to carry a concealed weapon. Such a license authorizes a person to carry a concealed weapon anywhere in this state except in particular places specified under the bill. These places include police stations, sheriffs' offices, state patrol

specified

[Handwritten signature]

BILL

stations, prisons and jails, any premises (such as a tavern) that has a license or permit to sell alcohol beverages for consumption on those premises, a school administration building, an airport, and any place in which the carrying of a weapon is prohibited by federal law. A person who is licensed to carry a concealed weapon and who carries a concealed weapon in a place where the license does not authorize him or her to do so may be fined not more than \$1,000 or imprisoned for not more than 90 days or both.

Under the bill, a county sheriff must issue a license to carry a concealed weapon to a person who meets the qualifications established in the bill for the license unless the county board of the sheriff's county decides by a two-thirds vote to authorize the sheriff not to issue concealed weapons licenses. The bill also allows two or more sheriffs to enter into cooperative agreements under which the sheriffs may jointly issue licenses to carry a concealed weapon. *or exercise their other responsibilities under the bill* ✓

The bill specifies the requirements that a person must satisfy in order to qualify for a license to carry a concealed weapon. Included among the requirements that a person must satisfy are the following: 1) he or she must be at least 21 years old; 2) he or she must not be prohibited from possessing a firearm due to a felony conviction, a juvenile delinquency adjudication, an order issued in a civil mental commitment case, or any other order prohibiting the person from possessing a firearm; 3) he or she must have successfully completed one of several specified firearms training or safety courses; 4) he or she must not have been subject to a finding of incompetency, drug dependency, or chronic alcohol use or involuntarily committed for treatment of mental illness during the ^{preceding five} ~~three~~ year period preceding the date of his or her application for the license. In addition, the bill requires a sheriff to conduct a background check of a person who applies for a license to carry a concealed weapon to determine whether the person is prohibited from possessing a firearm due to a felony conviction, a juvenile delinquency adjudication, an order issued in a civil mental commitment case, or any other order prohibiting the person from possessing a firearm. The background check requirement does not apply to a person applying for a license if the person is a law enforcement officer, a correctional officer, a probation and parole agent, or a person holding a current certification from the law enforcement standards board.

In addition, the bill does all of the following:

1. Allows a sheriff to issue an emergency license to an individual who is in imminent danger of death.
2. Provides that a license to carry a concealed weapon is valid for five years and establishes a renewal procedure that includes a background check of the person renewing the license.
3. Requires a sheriff to suspend or revoke a license to carry a concealed weapon under certain circumstances. Among the grounds for suspending or revoking a license are conviction of a felony or certain misdemeanors, a finding of incompetency, drug dependency or chronic alcohol use, or an involuntary commitment for treatment of mental illness. A person whose license is suspended or revoked by the sheriff may appeal the sheriff's action to circuit court for review by a judge.

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ANAL INS SANTO ✓
ANAL INS BANKS ✓

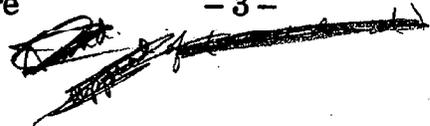
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BILL



5 ~~4~~ Specifies the information that must be on a license to carry a concealed weapon and an application for such a license, and requires the department of justice (DOJ) to design the form of the license and the license application form. ^{and renewal}

6 ~~5~~ Requires the sheriff to provide information to DOJ concerning a person licensed to carry a concealed weapon, and requires DOJ to keep a computerized list of persons licensed to carry a concealed weapon. The list kept by DOJ is available only to law enforcement agencies in certain specified circumstances. ^{and to clerks of court}

8 ~~3~~ Requires a person who applies for a license to carry a concealed weapon to pay a shooting range improvement fee, which is to be used by the department of natural resources to provide grants for the construction and improvement of shooting ranges.

9 ~~2~~ Requires a person who applies for a license to carry a concealed weapon to pay a law enforcement excellence fund fee, which is to be used by the sheriff to improve law enforcement services in his or her county.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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PWF

PWF

SECTION 1. 20.370 (5) (cx) ^x of the statutes is created to read:

20.370 (5) (cx) *Recreation aids — grants for shooting ranges.* All moneys received from the shooting range improvement fee under s. 175.50 (7) (bp) [✓] and (15) (b) 4. c. [✓] for the purpose of making grants and administering the grant program under s. 29.595. [✓]

SECTION 2. 20.455 (2) (gp) ^x of the statutes is created to read:

20.455 (2) (gp) *Concealed weapons licenses background check.* All moneys received as fee payments under s. 175.50 (7) (bh) [✓] and (15) (b) 4. b. [✓] to provide services under s. 175.50. [✓]

SECTION 3. 25.29 (1) (a) ^x of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

25.29 (1) (a) Except as provided in ss. 25.293 and 25.295, all moneys accruing to the state for or in behalf of the department under chs. 26, 27, 28, 29 and 350,

BILL

1 subchs. I and VI of ch. 77 and ss. 23.09 to 23.31, 23.325 to 23.42, 23.50 to 23.99, 30.50
 2 to 30.55, 70.58, 71.10 (5) ~~and~~, 71.30 (10) and 175.50 (7) (bp) and (15) (b) 4. c., including
 3 grants received from the federal government or any of its agencies except as
 4 otherwise provided by law.

5 SECTION 4. 29.595^x of the statutes is created to read:

6 **29.595 Grants for shooting ranges.** (1) The department may award grants
 7 to persons for construction or improvement of shooting ranges. A grant awarded
 8 under this section shall be paid from the appropriation account under s. 20.370 (5)
 9 (cx).[✓]

10 (2) A grant awarded under this section may be for up to 50% of the cost of the
 11 construction or improvement of the shooting range. A grant awarded under this
 12 section may not be used to pay for any of the following:

13 (a) The construction of clubhouses and facilities that are not essential to the
 14 operation of the shooting range.

15 (b) The operation and maintenance of the shooting range.

16 (3) In order to receive a grant under this section,[✓] the person creating or
 17 improving a shooting range shall agree to provide, for a fee of not more than \$20, a
 18 firearm safety course that will qualify an individual to satisfy the requirements
 19 under s. 175.50 (3) (h)[✓] for a license to carry a concealed weapon.

20 (4) In determining whether to make a grant under this section, the department
 21 shall consider the potential of the project to meet the needs of firearm safety courses
 22 in the area served by the shooting range relative to the proposed cost of the
 23 construction or improvement.

24 (5) The department shall promulgate rules establishing a procedure for
 25 applying for grants under this section.

PWF

BILL

1 SECTION 5. 59.25 (3) (u) ^X of the statutes is created to read:

2 59.25 (3) (u) 1. Subject to the terms of an agreement under s. [✓]175.50 (2) (c),
3 deposit all moneys received under s. 175.50 (7) (bd), [✓](13) [✓]and [✓](15) (b) 4. a. [✓]and [✓](d) 1.
4 in the general fund of the county.

5 2. Forward all moneys received under s. 175.50 (7) (bh) [✓]and (15) (b) 4. b. [✓]to the
6 state treasurer for payment of firearms restrictions record searches conducted under
7 s. 175.50 (9g) [✓]at the request of the county's sheriff.

8 3. Forward all moneys received under s. 175.50 (7) (bp) [✓]and [✓](15) (b) 4. c. to the
9 state treasurer for deposit in the conservation fund to be credited to the
10 appropriation account under s. 20.370 (5) (cx) [✓].

11 4. Subject to the terms of an agreement under s. [✓]175.50 (2) (c), deposit all
12 moneys received under s. 175.50 (7) (bt) [✓]and (15) (b) 4. d. [✓]in the law enforcement
13 excellence fund established under s. 175.50 (20) [✓]and make payments from the fund
14 for the purposes of s. 175.50 (20) (b) [✓].

15 SECTION 6. 165.82 (2) ^X of the statutes is amended to read:

16 165.82 (2) Except as provided in s. ss. 175.35 and [✓]175.50, the department of
17 justice shall not impose fees for criminal history searches for purposes related to
18 criminal justice.

19 SECTION 7. 167.31 (4) (am) ^X of the statutes is created to read:

20 167.31 (4) (am) Subsections (2) and (3) do not apply to a person who holds a
21 valid license to carry a concealed weapon issued under s. 175.50.

22 SECTION 8. 175.50 ^X of the statutes is created to read:

23 175.50 License to carry concealed weapon. (1) DEFINITIONS. In this
24 section:

25 (a) "Department" means the department of justice.

Pw/F

*Refs
all the
ways*

Insert 5/20

*Insert
5/25*

*or an out-of-state
license, as defined
in s. 175.50 (1)(g)*

BILL

1 (b) "Firearms restrictions record search" has the meaning given in s. 175.35 (1)

2 (at).

3 (c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

4 (d) "Licensee" means an individual who has been granted a license to carry a
5 concealed weapon under this section.

6 (e) "Misdemeanor crime of violence" means a misdemeanor violation of chs.
7 940, 941 or 948 or of s. 947.013 or a violation of s. 947.01.

8 (f) "Weapon" means a handgun, as defined in s. 175.35 (1) (b), an electric
9 weapon, as defined in s. 941.295 (4), a tear gas gun, a knife other than a switchblade
10 knife under s. 941.24, or a billy club. "Weapon" does not include a machine gun, as
11 defined in s. 941.27 (1), a short-barreled rifle, as defined in s. 941.28 (1) (b), or a
12 short-barreled shotgun, as defined in s. 941.28 (1) (c).

13 (2) ISSUANCE OF LICENSE. (a) Except as provided in pars. (b) and (c), a sheriff
14 shall issue licenses to carry a concealed weapon to an individual who meets the
15 qualifications specified in subs. (3) and (4) and who completes the application process
16 specified in sub. (7). A license to carry a concealed weapon issued by a sheriff under
17 this section shall meet the requirements specified in sub. (2m).

18 (b) A sheriff is not required to issue licenses to carry a concealed weapon under
19 this section if, before the first day of the 4th month beginning after the effective of
20 this paragraph [revisor inserts date], all of the following occur:

21 1. The sheriff requests the county board of the sheriff's county to authorize him
22 or her to decline to issue licenses to carry a concealed weapon under this section.

23 2. After receiving a request from the sheriff under subd. 1., the county board
24 of the sheriff's county grants the sheriff's request by a two-thirds vote of all the
25 members of the board.

BILL

INS 7/1

1 (c) Any 2 or more sheriffs may by agreement jointly ~~issue licenses to carry a~~
2 ~~concealed weapon~~ under this section. An agreement for joint issuance of licenses to
3 carry a concealed weapon under this section may be entered into at any time and
4 shall satisfy all of the following criteria:

- 5 1. The agreement shall be in writing.
- 6 2. The agreement shall be approved by the county board of the county of each
- 7 sheriff who is a party to the agreement.

8 3. The agreement shall specify how costs incurred and moneys received under
9 this section shall be apportioned among the sheriffs who are a party to the agreement
10 and their respective counties.

11 4. The agreement shall designate one county to be identified as the county of
12 issuance for purposes of the license document information required under sub. (2m)
13 (c) 7. and 8. and for purposes of appeal under sub. (14) *for purposes of notification*
under sub. (14)(d) 2.,

14 5. If a sheriff who is party to an agreement has issued licenses under this
15 section before entering into the agreement, the agreement shall provide for the
16 renewal of any licenses that were issued by that sheriff before he or she entered into
17 the agreement.

CS OR AUTHORIZATION

18 (2g) CARRYING A CONCEALED WEAPON; CARRYING AND DISPLAY OF LICENSE. (a) A
19 licensee may carry a concealed weapon anywhere in this state except as provided
20 under sub. (16). *and an out-of-state licensee shall carry his or her*
out-of-state authorization

21 (b) A licensee shall carry his or her license at all times during which he or she
22 is carrying a concealed weapon.

23 (c) If he or she is carrying a concealed weapon, a licensee shall display his or
24 her license to a law enforcement officer upon the request of the law enforcement
25 officer. *and an out-of-state licensee*
shall display his or her
out-of-state authorization

or an out-of-state licensee

NS ✓
7/7

BILL

1 (2m) LICENSE DOCUMENT; CONTENT OF LICENSE. (a) Subject to pars. (b), (c) and
2 (d), the department shall design the license document for licenses issued ^{and renewed} under this
3 section. The department shall complete the design of the license document no later
4 than the first day of the 4th month beginning after the effective date of this
5 paragraph [revisor inserts date], and shall distribute the design for the license
6 document to any sheriff who issues licenses under sub. (2) (a) or (c) for the sheriff to
7 use for licenses that he or she issues under this section.

8 (am) The department shall establish a unique code number for each county of
9 this state for use as a prefix to the identification number required under par. (c) 8.

10 (b) A license issued under this section shall be a single document, with the
11 information specified in par. (c) appearing on one side.

12 (c) One side of the license document shall include all of the following:

- 13 1. The full name, date of birth, and residence address of the licensee.
14 2. A color photograph of the licensee.
15 3. A physical description of the licensee, including gender, height, weight and
16 hair and eye color.
17 4. The date on which the license was issued.
18 5. The date on which the license expires.
19 6. The name of this state.
20 7. The name of the county of the sheriff who issues the license or, if the license
21 is issued by 2 or more sheriffs acting jointly under sub. (2) (c), the name of the county
22 designated under the agreement.

23 8. A unique identification number for each licensee that begins with the code
24 number for the county established by the department under par. (am).

BILL

1 (d) A license document issued under this section shall be, to the maximum
2 extent possible, tamper proof and shall be produced using the same or similar
3 equipment used by the department of transportation to produce an operator's license
4 under s. 343.17.

5 (3) QUALIFICATIONS A PERSON MUST HAVE TO GET A LICENSE. An individual is
6 eligible for a license under this section if ~~he or she~~ satisfies all of the following: ^{apply}

7 (a) The individual is at least 21 years of age.

8 (b) ~~The individual is a resident of the United States~~

9 (c) The individual does not suffer from a physical disability that prevents him
10 or her from safely handling a weapon.

11 ^{INcal 9/10} (d) The individual is not prohibited from possessing a firearm under s. 941.29.

12 (e) During the ~~3~~ ^{3 years} year period immediately preceding ~~the date on which he or~~
13 ~~she submits an application under sub. (7)~~, the individual has not been civilly
14 committed under s. 51.20 for being drug dependent.

15 (f) During the ~~3~~ ^{3 years} year period immediately preceding ~~the date on which he or she~~
16 ~~submits an application under sub. (7)~~, the individual has not been convicted for any
17 violation, or for the solicitation, conspiracy or attempt to commit any violation, of ch.
18 961 or of a law of another state that is comparable to any provision of ch. 961.

19 (g) The individual does not chronically and habitually use alcohol beverages or
20 other substances to the extent that his or her normal faculties are impaired. A person
21 is presumed chronically and habitually to use alcohol beverages or other substances
22 to the extent that his or her normal faculties are impaired if, within the ~~3~~ ^{3 years} year period
23 immediately preceding ~~the date on which he or she submits an application under sub.~~

24 (7), any of the following applies:

Adopted by the Department

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when s. 14)

BILL

1 1. The individual has been committed for involuntary treatment under s. 51.45
2 (13). ✓

3 2. The individual has been convicted of a violation of s. 941.20 (1) (b). ✓

Account has found

4 3. The individual ^{to have committed} ~~has been convicted~~ 2 or more ~~times~~ ^{times} of a violation of s. 346.63,
5 of a local ordinance in conformity with s. 346.63, of a law of another state that is
6 comparable to s. 346.63 or of a law of a federally recognized American Indian tribe
7 or band in conformity with or comparable to s. 346.63.

drunken driving offenses

8 (4) The individual has done one of the following:

9 2. Successfully completed a National Rifle Association firearm training or
10 firearm safety course. ✓

11 3. Successfully completed a firearm training or firearm safety course or class
12 conducted by an instructor certified either by the state in which the course was
13 conducted or by the National Rifle Association.

14 4. Successfully completed a firearm safety or firearm training course or class
15 that is available to the general public and that is offered by a law enforcement agency,
16 a private or public school, institution or organization or a firearm training school, if
17 the course or class uses instructors certified by the National Rifle Association or the
18 department or if the curriculum meets the minimum requirements of the law
19 enforcement standards board.

20 5. Successfully completed a firearm safety or firearm training course or class
21 offered for law enforcement officers, correctional officers, special deputies, private
22 detectives licensed under s. 440.26, or other security or law enforcement personnel. ✓

23 6. Participated in organized shooting competitions or military training that
24 gave the applicant experience with firearms that the sheriff determines is
25 substantially equivalent to any course or class specified in subs. 2. to 5. ✓

BILL

1 (9) PROCESSING OF APPLICATION. (a) On receiving an application submitted
2 under sub. (7),[✓] a sheriff shall do all of the following:

3 1. Submit the fingerprint card of the applicant to the[✓] department for submittal
4 to the federal bureau of investigation or the automated fingerprint identification
5 system for the purposes of verifying the identity of the person fingerprinted and
6 obtaining records of his or her criminal arrest and conviction. If the applicant's
7 fingerprint card is not sufficiently legible for the federal bureau of investigation to
8 use in verifying the applicant's identity and obtaining his or her arrest or conviction
9 record, the sheriff shall require the applicant to submit an additional fingerprint
10 card.

11 2. Request the department to conduct a firearms restrictions record search, as
12 provided under sub. (9g).[✓]

13 (b) Subject to par. (c),[✓] within 21 days after receiving an application under sub.
14 (7) a sheriff shall do one of the following:

15 1. Issue the license.

16 2. Deny the application if the applicant fails to qualify under the criteria
17 specified in subs. (3) and (4).[✓] If the sheriff denies the application, he or she shall
18 inform the applicant in writing, stating the ground for denial.

19 (c) Except as provided in sub. (9r),[✓] a sheriff may not issue a license until 7 days,
20 subject to extension under sub. (9g) (b) 3. c.,[✓] have elapsed from the time that the
21 sheriff has received a confirmation number regarding the firearms restrictions
22 record search under sub. (9g) (b) 1.[✓] from the department ^{unless the department has notified} and the sheriff has not been
23 notified that the applicant is not qualified for a license under sub. (3) (d), (f), (g) 2.
24 or 3. ^(m) (E) or (S). ⁽⁷⁾

and

BILL

2091 INS 13/1 ✓

1 (i) A statement of the penalties for violating s. 946.31 ✓

2 (6) OATH. ✓ An applicant shall swear under oath that the information that he or
3 she provides in an application submitted under sub. (7) ✓ and any document submitted
4 with the application is true and complete to the best of his or her knowledge.

5 (7) SUBMISSION OF APPLICATION. ✓ An applicant for a license under this ✓ section
6 shall submit all of the following to the sheriff to whom he or she is applying for a
7 license:

8 (a) An application in the form prescribed under sub. (5) ✓ that has been sworn
9 to as required under sub. (6). ✓

10 (bd) A license fee set by the sheriff issuing the license that does not exceed
11 either the cost to the sheriff of issuing a license to an individual under this section,
12 including the cost of equipment purchase or rental, or \$75, whichever is less.

13 (bh) The fee for a firearms restrictions record search specified in sub. (9g) (c). ✓

14 (bp) A shooting range improvement fee of \$15. ✓

15 (bt) A law enforcement excellence fund fee of \$15. ✓

16 (c) A fingerprint card bearing an index finger fingerprint of the applicant taken
17 by the sheriff to whom the application is submitted.

18 (d) A photocopy of a certificate or other evidence showing the applicant's
19 qualifications under sub. (3) (f). (h) ✓

20 (e) A full-face photograph of the applicant taken within the 30-day period ✓
21 immediately preceding the date of the applicant's application.

22 (8) FINGERPRINTING BY SHERIFF. ✓ A sheriff shall provide fingerprinting service
23 at no additional charge to an applicant for a license or for renewal of a license under
24 this section.

or to a person to whom the sheriff issues a license under sub. (9-).
sheriff

BILL

SECTION 8

1 probation in connection with the crimes 3 or more years before the date on which the
2 individual submits an application under sub. (2) ^{and renewal forms} ~~the~~ ^{CS} ~~form~~ use by

3 ~~(5) Form~~ APPLICATION. The department shall design an application form for
4 use by individuals who apply for a license under this section. The department shall ^{and a renewal form for individuals applying for renewal of a license under sub. (15)}

5 complete the design of the application form no later than the first day of the 4th
6 month beginning after the effective date of this subsection ... [revisor inserts date],

7 and shall distribute the design ^S for ^{both} ~~the~~ ^S application form ^S to any sheriff who issues
8 licenses under sub. (2) (a) or (c) for use in making ^{the} application forms ^{and the} for license ^{renewal forms} ~~under~~

9 ^{described in} this section. The ~~application~~ ^S form ^S designed by the department shall include all of the
10 following: ^{under this subsection}

- 11 (a) The name and address of the applicant.
- 12 (b) The date of birth of the applicant.
- 13 (c) The applicant's race, gender, height, weight, and hair and eye color.
- 14 (d) The applicant's social security number.
- 15 (e) A statement that the applicant is eligible for a license under the
16 requirements specified in subs. (3) ~~and (4)~~.
- 17 (f) A statement explaining the privilege of self-defense [✓] and defense of others
18 under s. 939.48, [✓] with a place for the applicant to sign his or her name to indicate that
19 he or she has read and understands the statement.
- 20 (g) A statement that the applicant has received a copy of this section and
21 understands the requirements of this section.
- 22 (h) A statement that the application is being made under oath and that an
23 applicant may be prosecuted ^{for violating s. 946.32} if he or she gives a false answer
24 to any question on the application or submits a falsified document with the
25 application.

BILL

1 7. Participated in military firearms training that gave the applicant experience
 2 with firearms that the sheriff determines is substantially equivalent to any course
 3 or class specified in subs. 2. to 5., if the applicant is serving in the U.S. armed forces
 4 or has received a discharge from the armed forces under conditions other than
 5 dishonorable.

6 (i) (j) The individual has not been found incompetent under ch. 880 or, if the
 7 individual has been found incompetent under ch. 880, he or she was subsequently
 8 found to be competent and, on the date that he or she submits an application under
 9 sub. (17) at least 5 years have elapsed from the date that he or she was found to be
 10 competent.

11 (k) The individual has not been involuntarily committed for treatment under
 12 s. 51.20 due to mental illness or a developmental disability or, if the individual has
 13 been involuntarily committed for treatment under s. 51.20 due to mental illness or
 14 a developmental disability, he or she ^{shows, through} ~~presents~~ evidence from a psychiatrist licensed
 15 in this state that he or she has not been disabled due to mental illness or a
 16 developmental disability for at least 5 years.

17 (l) The individual has not been charged with a felony or a misdemeanor crime
 18 of violence for which the prosecution was suspended under a deferred prosecution
 19 agreement unless 3 years have elapsed since the charge was dismissed.

20 (m) The individual has not ^{previously} submitted an application for a license under this
 21 section to ^{any} ~~any~~ county and had the application denied. ^{insert 11/21}

22 (4) MISDEMEANOR CONVICTIONS; DENIAL OF LICENSE. A sheriff may deny a license
 23 to an individual who has been found guilty of one or more misdemeanor crimes of
 24 violence unless the individual has been discharged from all sentences or periods of

(g) The individual has not had a license that was issued under this section revoked.

Insert 11/16

Insert 11/19

Insert 11/24

BILL

1 (9g) FIREARMS RESTRICTIONS RECORD SEARCHES. (a) A sheriff shall request the
2 department to conduct a firearms restrictions record search by calling the
3 department, using a toll-free telephone number provided by the department, and
4 providing the department with the name, date of birth, gender, race and social
5 security number of the applicant.

6 (b) On receiving a request under par. (a), the department shall conduct a
7 firearms restrictions record search using the following procedure:

8 1. The department shall provide the sheriff with a confirmation number
9 confirming the receipt of the information under par. (a).

10 2. The department shall conduct the firearms restrictions record search
11 regarding an applicant for a license under this section. In conducting a search under
12 this subdivision, the department shall use the transaction information for
13 management of enforcement system and the national crime information center
14 system.

15 3. The department shall notify the sheriff, either during the initial telephone
16 call or as soon thereafter as practicable, of the results of the firearms restrictions
17 record search as follows:

18 a. If the search indicates that the applicant does not qualify for a license under
19 sub. (3) (d), (f), (g) 2. or 3. ^(m) or ⁽ⁿ⁾ ~~(3)~~ or ~~(4)~~, the department shall provide the sheriff with
20 a unique nonapproval number. The department shall disclose to the sheriff the
21 reason the applicant does not qualify for a license under sub. (3) (d), (f), (g) 2. or 3.

22 ~~(3)~~ or ~~(4)~~.

23 b. If the search indicates that the applicant is qualified for a license under sub.
24 (3) (d), (f), (g) 2. or 3. ^(m) or ⁽ⁿ⁾ ~~(3)~~ or ~~(4)~~, the department shall provide the sheriff with a
25 unique approval number.

and

BILL

1 c. If the search indicates a criminal charge without a recorded disposition, the
 2 deadline under sub. (9) (c) is extended to the end of the 3rd complete working day
 3 commencing after the day on which the ^{department learns of that charge} ~~finding is made~~. The department shall notify
 4 the sheriff of the extension as soon as practicable. During the extended period, the
 5 department shall make every reasonable effort to determine the disposition of the
 6 charge and notify the sheriff of the results as soon as practicable.

7 (bm) The department shall conduct the search under par. (b) immediately if,
 8 when requesting the search under par. (a), the sheriff informs the department that
 9 the search is for an applicant for an emergency license under sub. (9r).

10 (c) The department shall charge a sheriff a fee of \$8 for each firearms
 11 restrictions record search that the sheriff requests under par. (a), except that the
 12 department shall waive the fee if, when requesting the search, the sheriff informs
 13 the department that the fee is being waived under sub. (9r) (d). The sheriff shall
 14 collect the fee from the applicant unless the fee is waived under sub. (9r) (d).

15 (d) A sheriff shall maintain the original record of all completed application
 16 forms and a record of all confirmation numbers and corresponding approval or
 17 nonapproval numbers that he or she receives regarding firearms restrictions record
 18 searches under this subsection. The sheriff shall mail a duplicate copy of each
 19 completed application form to the department.

20 (e) 1. ~~Except as provided in subd. 2 and as necessary to administer this section,~~ ^{NC} ~~the~~ ~~department~~ ~~shall~~ ~~do~~ ~~all~~ ~~of~~ ~~the~~ ~~following:~~ ~~FF~~

21 ~~the department shall do all of the following:~~
 22 ~~(a) Deny access to any record kept under this section.~~ ^{or any information contained therein} ~~except as provided~~ ~~in sub. (11)(c)~~

23 ~~(b)~~ Check each duplicate application form received under par. (d) against the
 24 information recorded by the department regarding the corresponding request for a
 25 firearms restrictions record search under this subsection. If the department

BILL

1 previously provided a unique approval number regarding the request and nothing
 2 in the duplicate completed application form indicates that the applicant is not
 3 qualified for a license under sub. (3) (d), (f), (g) 2. or 3. ^{or (h) or (i)} ^{except as provided in subd. 2.} the department
 4 shall destroy all records regarding that firearms restrictions record search within 30
 5 days after receiving the duplicate form. INS 17/5 ✓

6 2. Notwithstanding subd. 1, the department may maintain records necessary
 7 to administer this subsection and, for a period of not more than 3^h years after the
 8 department issues a unique approval number, a log of dates of requests for firearms
 9 restrictions record searches under this subsection together with confirmation
 10 numbers and unique approval and nonapproval numbers corresponding to those
 11 dates.

12 (9r) EMERGENCY LICENSE. (a) A sheriff may issue a license under this section
 13 to an individual who does not satisfy the requirements under sub. (3) (h) if the sheriff
 14 determines that the individual is in imminent danger of death. INS 17/14 ✓

15 (b) If a sheriff ~~decides to~~ issue a license under par. (a), he or she shall notify the
 16 department and request an immediate firearms restrictions record search under
 17 sub. (9g). ~~INS 17/14~~ and 3. ✓

18 (c) 1. Except as provided in subd. 2, a license issued under par. (a) is valid for
 19 120 days from the date on which it is issued and may not be renewed.

20 ^{1/1 sent 17/20} 2. A license issued under par. (a) is valid for the period specified under sub. (15)
 21 (a) and may be renewed under sub. (15) (b) if ~~all~~ ^{any} of the following apply: NO #

22 1. The individual satisfies the requirement under sub. (3) (h) no later than 120
 23 days from the date on which the license is issued. (1) ← ?

24 2. A background check under sub. (9g) does not indicate that the person fails
 25 to meet any of the qualifications under sub. (3) (d), (f), (g) 2. or 3. or (h) or (i).

1/1 sent
17/23

BILL

1 (d) Notwithstanding sub. (7) (bd), (bh), (bp) and (bt), a sheriff may waive the
 2 fees required under sub. (7) (bd), (bh), (bp) and (bt) for an individual who is applying
 3 for a license under par. (a) if requiring the individual to pay the fees creates a
 4 hardship for the individual.

5 (10) EXEMPTION FROM BACKGROUND CHECK. Notwithstanding sub. (9) (a), a
 6 sheriff shall issue a license under this section to any of the following individuals
 7 without requesting the background checks required under sub. (9) (a):

8 (a) A law enforcement officer.

9 (b) A correctional officer.

10 (c) A probation and parole agent.

11 (d) A person who holds a current certification from the law enforcement
 12 standards board under s. 165.85 (3) (c).

13 (11) ~~LICENSEE~~ ^{(c) information} (a) A sheriff who issues licenses to carry a concealed
 14 weapon under this section shall, within 5 days after issuing a license, notify the
 15 department that he or she has issued a license under this section and provide the
 16 department with the information specified in sub. (2m) (c) concerning the individual
 17 to whom the license was issued.

18 (am) The department shall maintain a computerized record listing the names
 19 of all individuals who have been issued a license under this section along with the
 20 information concerning each individual that is provided to the department by a
 21 sheriff under par. (a).

22 (b) Notwithstanding s. 19.35 and except as provided in par. (c), the department
 23 may not make the computerized record under par. (am) or any information from that
 24 computerized record available to any person.

BILL

and any sheriff issuing licenses under this section

licensee

1 (c) The department shall provide information concerning a specific individual
2 ~~listed on the computerized list under part (a)~~ to a law enforcement agency if the law
3 enforcement agency is requesting the information for any of the following purposes:

4 1. To confirm that a license produced by ~~the~~^{an} individual at the request of a law
5 enforcement officer is valid.

6 2. To confirm that the individual holds a valid license under this section, if the
7 individual is carrying a concealed weapon but is not carrying a license issued under
8 this section and claims to hold a valid license issued under this section.

9 (12) UPDATED INFORMATION. No later than 30 days after changing his or her
10 address, an individual licensed under this section shall inform the sheriff who issued
11 the license of his or her new address. The sheriff shall provide the individual's new
12 address to the department for inclusion in the list under sub. (11) (am).

13 (13) LOST OR DESTROYED LICENSE. No later than 30 days after losing his or her
14 license or after his or her license is destroyed, an individual licensed under this
15 section shall submit to the sheriff who issued the license a notarized statement that
16 his or her license has been lost or destroyed. The sheriff shall issue a replacement
17 license upon receiving the notarized statement and a replacement license fee of \$15.

18 (14) LICENSE DENIAL/DISCIPLINE. (a) A sheriff shall deny an application for a
19 license under this section or suspend or revoke a license that he or she issued under
20 this section if the applicant or licensee does any of the following:

- 21 3. No longer meets all of the criteria specified in subs (3) and 4.
- 22 4. Is convicted of a felony or a misdemeanor crime of violence.
- 23 5. Is convicted of any violation, or any solicitation, conspiracy or attempt to
24 commit a violation, of ch. 961 or of a law of another state that is comparable to any
25 provision of ch. 961.

4. The licensee is found incompetent under s. 97.19.

*NS ✓
9/8*

NO 4

NO 4

*Not ruled
if of 944
(3) of 944*

This + p 11

[Handwritten signature]

BILL

1 ~~6. Is involuntarily committed for treatment under s. 51.20.~~

2 ~~7. Is involuntarily committed for treatment as a chronic alcoholic under s.~~
3 ~~51.45.~~

4 ~~8. Is convicted of a 2nd violation of s. 346.63, of a law of another state that is~~
5 ~~comparable to a violation of s. 346.63 or of a law of a federally recognized American~~
6 ~~Indian tribe or band that is comparable to s. 346.63, within 3 years of a previous~~
7 ~~conviction. For purposes of this subdivision, the first violation of s. 346.63, of a law~~
8 ~~of another state that is comparable to a violation of s. 346.63 or of a law of a federally~~
9 ~~recognized American Indian tribe or band that is comparable to s. 346.63, may have~~
10 ~~occurred before the date on which the individual submitted his or her application for~~
11 ~~a license under this section.~~

drinker
driving
offense

12 ~~9. Is found incompetent under ch. 880.~~

upon conviction,

13 (am) 1. If a licensee is arrested or charged with a crime that would disqualify
14 him or her from having a license under this section, the sheriff shall suspend the
15 licensee's license until judgment is entered in the case. If the charge is dismissed or
16 the licensee is acquitted, the sheriff shall restore the licensee's license. ~~Who person~~
17 ~~is convicted, the sheriff shall revoke the licensee's license.~~

unless the person no longer
meets all of the criteria
specified in sub. (3)

18 2. If an applicant for a license under this section is arrested or charged with a
19 crime that would disqualify him or her from having a license under this section, the
20 sheriff shall deny the application. Notwithstanding sub. (3) (m), if the charge is
21 dismissed or the applicant is acquitted, the applicant may reapply for a license.

22 (c) 2. A person aggrieved by any action by a sheriff under this section may
23 appeal directly to the circuit court of the sheriff's county or, if applicable, to the circuit
24 court of the county of issuance designated under sub. (2) (c).

INS 20/21

denying, revoking, or suspending a license

BILL

1 (b) ~~It~~ To begin an appeal under this ~~paragraph~~ ^{subsection}, the aggrieved person shall file a
 2 petition for review with the clerk of the applicable circuit court within 30 days after
 3 the date of the sheriff's action or, if applicable, within 30 days after the date of the
 4 notice provided to the person under sub. (9) (b) 2. The petition shall state the
 5 substance of the sheriff's action that the person is appealing from and the grounds
 6 upon which the person believes the sheriff's action to be improper. The petition may
 7 include a copy of any records or documents that are relevant to the grounds upon
 8 which the person believes the sheriff's action to be improper.

9 (c) ~~It~~ A copy of the petition shall be served upon the sheriff either personally or
 10 by registered or certified mail within 5 days after the person files his or her petition
 11 under ^{para (b)} ~~subd. 2~~.

12 (d) ~~It~~ The sheriff shall file an answer within 15 days after being served with the
 13 petition under ^{para (c)} ~~subd. 2~~. The answer shall include a brief statement of the actions
 14 taken by the sheriff, and a copy of any documents or records on which the sheriff
 15 based his or her action shall be included with the answer when filed.

16 (e) ~~It~~ The court shall review the petition, answer and any records or documents
 17 submitted with the petition or answer. The review under this ^{paragraph} ~~subdivision~~ shall be
 18 conducted by the court without a jury and shall be confined to the petition, answer
 19 and any records or documents submitted with the petition or answer, except that in
 20 cases of alleged irregularities in procedure by the sheriff the court may take
 21 testimony that the court determines is appropriate. ^(NO)

22 ~~It~~ The court shall affirm the sheriff's action unless the court finds any of the
 23 following:

24 ¹ That the sheriff failed to follow procedure prescribed under this ^{section}.

BILL

SECTION 8

1 ~~2~~ That the sheriff erroneously interpreted a provision of law and a correct
2 interpretation compels a different action.

3 ~~3~~ That the sheriff's action depends on a finding of fact that is not supported
4 by substantial evidence in the record.

5 ~~g~~ The court's decision shall provide whatever relief is appropriate regardless
6 of the original form of the petition.

7 (15) LICENSE EXPIRATION AND RENEWAL. (a) Except as provided in sub. (9r) (c)
8 1., a license issued under this section is valid for a period of 5 years after the date on
9 which the license is issued unless the license is suspended or revoked under sub. (14).

10 (b) At least 90 days before the expiration date of a license issued under this
11 section, the sheriff who issued the license shall mail to the licensee a ~~written~~
12 of expiration and a form for renewing the license. The sheriff shall renew the license
13 if, before the date the license expires, the licensee does all of the following:

14 1. Submits a renewal application on the form provided by the sheriff.

15 2. Submits a notarized affidavit ^{swearing under oath} stating that he or she remains qualified under
16 sub. (3) and (4).

the information provided under subd. 1. is true and complete to the best of his or her knowledge and that

17 4. Pays all of the following:

18 a. A fee set by the sheriff that does not exceed the cost to a sheriff of renewing
19 a license issued under this section, including the cost of equipment purchase or
20 rental.

21 b. The fee for a firearms restrictions record search specified in sub. (9g) (c).

22 c. A shooting range improvement fee of \$15.

23 d. A law enforcement excellence fund fee of \$15.

NO 4. The Department shall design a form notice of expiration and shall distribute the form to any sheriff who issues licenses under sub. (2)(a) or (c) for use under this paragraph.

BILL

1 (c) The sheriff shall request the department to conduct a firearms restrictions
2 record search of a licensee as provided under sub. (9g) before renewing the licensee's
3 license under par. (b).

4 (d) 1. Except as provided in subd. 2., if a licensee submits a renewal application
5 under par. (b) after the expiration date of the license he or she shall be assessed a late
6 fee of \$15.

7 2. If a licensee does not submit a renewal application under par. (b) before 6
8 months after the date ^{on which} the license expires, the license shall permanently expire. A
9 licensee whose license has permanently expired may be issued a new license if he or
10 she applies for a license as provided under sub. (7).

11 (16) PROHIBITED ACTIVITY. (a) ^{Neither a} ~~any~~ licensee ^{or an out-of-state licensee} may carry a concealed weapon in any
12 of the following places:

13 1. A place that has been declared a nuisance under ch. 823.

14 2. A police station, sheriff's office or state patrol station. This subdivision ^{does}
15 not prohibit a peace officer who is acting within the scope of his or her employment
16 from carrying a concealed weapon in a police station, sheriff's office or state patrol
17 station.

18 3. A prison, jail, house of correction or secured correctional facility.

19 4. A courthouse, except that a judge who is a licensee may carry a concealed
20 weapon in a courthouse in which he or she is presiding in court or may permit in
21 writing any other licensee to carry a concealed weapon in a courthouse in which he
22 or she is presiding in court.

23 5. A place at which a school, college or professional athletic event is taking
24 place, unless the event is related to firearms and the licensee is a participant in the
25 event.

or out-of-state licensee

BILL

1 ~~6~~ 6. A school administration building.

2 ~~7~~ 7. Any premises for which a Class "B" or "Class B" license or permit has been
3 issued under ch. 125, except as provided under s. 941.237.

4 ~~8~~ 8. An airport, unless the weapon is encased for shipment as baggage to be
5 transported by aircraft.

6 ~~9~~ 9. A place in which the carrying of a weapon is prohibited under s. 948.61.

7 ~~10~~ 10. A place in which the carrying of a weapon is prohibited by federal law.

8 (c) A licensee may not carry a concealed weapon if he or she is prohibited from
9 possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c).

10 (17) PENALTIES. (a) A licensee who violates sub. (2g) (b) may be required to
11 forfeit not more than \$25.

12 (b) A licensee who violates sub. (16) may be fined not more than \$1,000 or
13 imprisoned for not more than 90 days or both.

✓
1/15
24/13

14 (19) STATISTICAL REPORT. (a) By February 1 of each year, a sheriff who is issuing
15 or renewing licenses under this section shall submit a statistical report to the
16 department indicating the number of licenses applied for, issued, denied, suspended
17 and revoked under this section during the previous calendar year. For the licenses
18 denied, the report shall indicate the reasons for the denials and the part of the
19 application process during which the reasons for denial were discovered. For the
20 licenses suspended or revoked, the report shall indicate the reasons for the
21 suspensions and revocations.

22 (b) By March 1 of each year, the department shall submit a statistical report
23 to the legislature under s. 13.172 (2) and to the governor that is compiled from the
24 reports submitted under par. (a) and that indicates the number of licenses applied
25 for, issued, denied, suspended and revoked under this section during the previous

BILL

1 calendar year. For the licenses denied, the report shall indicate the reasons for the
2 denials and the part of the application process in which the reasons for denial were
3 discovered. For the licenses suspended or revoked, the report shall indicate the
4 reasons for the suspensions and revocations.

5 (20) LAW ENFORCEMENT EXCELLENCE FUND. (a) If a county's sheriff issues licenses
6 on his or her own under sub. (2) (a) or through an agreement under sub. (2) (c), the
7 county board shall establish a law enforcement excellence fund. All money collected
8 by a sheriff under subs. (7) (bt) and (15) (b) 4. d. shall be deposited in accordance with
9 s. 59.25 (3) (u) 4. in the law enforcement excellence fund established under this
10 subsection.

11 (b) A law enforcement excellence fund established under this subsection shall
12 be used to improve law enforcement services in the county and may not be used to
13 supplant or replace other funds otherwise available to the sheriff.

14 SECTION 9. 440.26 (3r) of the statutes is created to read:

15 440.26 (3r) CARRYING OF CONCEALED WEAPONS BY PRIVATE DETECTIVE. An
16 individual who is licensed as a private detective under this section and who is
17 licensed under s. 175.50 to carry a concealed weapon may carry a concealed weapon
18 as permitted under s. 175.50, including while he or she acting as a private detective.

19 SECTION 10. 941.23 of the statutes is amended to read:

20 941.23 Carrying concealed weapon. Any person except a peace officer, a
21 person licensed under s. 175.50 or a person licensed to carry a concealed weapon in
22 another state who goes armed with a concealed and dangerous weapon is guilty of
23 a Class A misdemeanor.

24 SECTION 11. 941.235 (2) of the statutes is amended to read:

Fix component
PWF
20

INS 25/23 ✓

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BILL

*or authorized under the law
of another state*

PWF

1 941.235 (2) This section does not apply to peace officers or armed forces or
2 military personnel who go armed in the line of duty, to any individual licensed under
3 s. 175.50 *to carry a concealed weapon who is carrying a concealed weapon as*
4 permitted under s. 175.50, or to any person duly authorized by the chief of police of
5 any city, village or town, the chief of the capitol police or the sheriff of any county to
6 possess a firearm in any building under sub. (1).

7 **SECTION 12.** 941.295 (2) (bm) ^X of the statutes is created to read:

8 941.295 (2) (bm) Any person licensed to carry a concealed weapon under s.
9 175.50 *or authorized under the law of another state to carry a concealed
weapon in that state*

10 **SECTION 13.** 948.605 (2) (b) 4m. ^X of the statutes is created to read:

11 948.605 (2) (b) 4m. By an individual licensed under s. 175.50 [✓] *to carry a*
12 *concealed weapon who is carrying a concealed weapon as permitted under s. 175.50;*

13 (END)

INS 26/9[✓]

*or authorized under the
law of another state*

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1086/P1
MGD:.....

1 analysis INSERT kessinger

2 ~~§~~ he or she must be eligible to possess a firearm under federal law; 3) ~~NO~~
analysis INSERT beckert ~~§~~

3 ~~§~~ 4) he or she must not have been convicted of an offense relating to controlled
substances during the preceding three [✓]years; 5) he or she must not have been
convicted of one of a set of specified misdemeanors involving violence or serving a
sentence for committing such a misdemeanor within the preceding three years; 6) ~~NO~~
analysis INSERT williams

4 ~~§~~ found not guilty of a crime by reason of mental disease or mental defect,
analysis INSERT santo

5 ~~§~~ ; 8) he or she must not have been committed for the treatment of drug
dependency during the preceding three years; and 9) he or she must not chronically
or habitually use alcohol or other substances to the extent that his or her normal
faculties are impaired.

analysis INSERT banks

6 ~~§~~ , a misdemeanor crime of violence, or a controlled substance offense, has been
adjudicated delinquent, or is subject to ~~NO~~ ~~§~~

analysis INSERT spangler

7 ~~§~~ if the licensee no longer meets all of the requirements for licensure.

~~§~~ 4. Provides that a person whose application for a license is denied or ~~NO~~ ~~§~~
analysis INSERT hundley

8 ~~§~~ 7. Requires the clerk of each court to notify the sheriff of court proceedings that
would require revocation of a license.

analysis INSERT qualls

9 ~~§~~ 10. Treats a license or permit issued by another state in the same manner as
a license issued under this bill. [✓]

INSERT 5/20

10 ~~NO~~ ~~§~~ (2) [✓](a), (b), and (c) and (3) (a) and (b) [✓]do not apply to the placement, possession,
11 transportation, or loading of a firearm by ~~NO~~ ~~§~~

12 INSERT 5/25

13 (am) "Drunken driving offense" [✓]means any of the following:

14 1. A violation of s. 346.63 [✓] or a local ordinance in conformity with that [✓]section.

1 2. A violation of a law of a federally recognized American Indian tribe or band
2 in this state in conformity with s. 346.63.

3 3. A violation of the law of another jurisdiction, as defined in s. 340.01 (41m),
4 that prohibits use of a motor vehicle while intoxicated, while under the influence of
5 a controlled substance, a controlled substance analog, or a combination thereof, with
6 an excess or specified range of alcohol concentration, or ^{while} under the influence of any
7 drug to a degree that renders the person incapable of safely driving, as those or
8 substantially similar terms are used in that jurisdiction's laws.

9 **INSERT 6/7**

10 (f) "Out-of-state authorization" means a permit or a license issued by another
11 state documenting that a person is authorized under the law of that state to carry
12 a concealed weapon in that state.

13 (g) "Out-of-state licensee" means a person ^{who has been issued an out-of-}
~~authorized under the law of another~~
14 state ~~to carry a concealed weapon in that state.~~ ^{authorization}

15 **INSERT 7/1**

16 ~~§~~ ^{NO} exercise powers granted to them and discharge duties imposed on them

17 **INSERT 7/7**

18 ~~§~~ 2m. The agreement shall specify how the powers and duties that are the subject
19 of the agreement are to be allocated among the sheriffs that are parties to the
20 agreement.

21 **INSERT 9/10**

22 ~~§~~ (c) The individual is not prohibited under federal law from possessing a firearm
23 that has been transported in interstate or foreign commerce.

24 **INSERT 11/16**

1 (k) The individual has not been found incompetent under s. 971.14 or, if the
2 individual has been found incompetent under s. 971.14, one of the following applies:

3 1. He or she was subsequently found to be competent and at least 5 years have
4 elapsed from the date that he or she was found to be competent.

5 2. He or she was not subsequently found to be competent and he or she shows,
6 through evidence from a psychiatrist licensed in this state, that he or she has not
7 been disabled due to mental illness or a developmental disability for at least 5 years.

8 (L) The individual has not been found not guilty by reason of mental
9 disease or defect under s. 971.17 or, if the individual has been found not guilty by
10 reason of mental disease or defect under s. 971.17, he or she presents evidence from
11 a psychiatrist licensed in this state that he or she has not been disabled due to mental
12 illness or a developmental disability for at least 5 years.

13 (m) Within the preceding 3 years, the individual was ^{not} convicted of a
14 misdemeanor crime of violence or was ^{not} serving a sentence, on probation, or subject
15 to a dispositional order under ch. 938 for committing a misdemeanor crime of
16 violence.

17 INSERT 11/19

18 (o) There is no criminal case pending in which the person is charged with a
19 crime that, upon conviction, would disqualify him or her from having a license under
20 this section.

21 INSERT 11/21

22 ~~NO~~ ^{NO}, unless each reason for the denial is no longer applicable because of changed
23 circumstances

24 INSERT 11/24

1 ~~§~~ unless each reason for the revocation is no longer applicable because of changed
2 circumstances.

3 INSERT 12/2

4 ¶ (r) The individual has not been convicted of a violation of sub. (17) (c).

5 INSERT 13/1

6 ~~§~~ for giving a false answer to any question on the application or submitting a
7 falsified document with the application ✓

8 INSERT 17/5

9 ~~§~~ If the department previously provided a unique approval number regarding the
10 request and the duplicate completed application form indicates that the applicant is
11 not qualified for a license under sub. (3) (d), (f), (g) 2. or 3., (m), or (n), ✓ the department
12 shall immediately notify the sheriff who issued the license, and the sheriff shall
13 revoke the license.

14 INSERT 17/14

15 ~~§~~ and if the individual submits a fingerprint card that is taken by the sheriff and
16 that bears the individual's index finger fingerprint ✓

17 INSERT 17/20

18 ~~§~~ If the department does not notify the sheriff that the individual does not qualify
19 for a license under sub. (3) (d), (f), (g) 2. or 3., (m), or (n), ✓

20 INSERT 17/23

21 ¶ 3. If the department notifies the sheriff that an individual to whom the sheriff
22 has issued a license under par. (a) ✓ does not qualify for a license under sub. (3) (d), (f),
23 (g) 2. or 3., (m), or (n), ✓ the sheriff shall revoke the license.

24 INSERT 19/8



INS 19/8

1 3. To investigate whether a licensee intentionally falsely swore under sub. (6)
2 or (15) (b) 2.

3 (d) 1. In this paragraph, "clerk" means the clerk of the circuit court or, if it has
4 enacted a law or an ordinance in conformity with s. 346.63, the clerk of the court for
5 a federally recognized American Indian tribe or band in this state, a city, a village,
6 or a town.

7 2. The department shall make the names of all licensees and the name of the
8 county in which each licensee was licensed available to each clerk. If any of the
9 following occur^s with respect to a licensee, the clerk shall immediately notify the
10 sheriff of the county in which the license was issued of the occurrence:

11 a. The individual is charged with a felony, a misdemeanor crime of violence, a
12 violation of ch. 961, the solicitation, conspiracy, or attempt to commit any violation
13 of ch. 961, a violation of s. 941.20 (1) (b), or any other crime that, upon conviction,
14 would disqualify the individual from having a license under this section.

15 b. The individual is charged with a drunken driving offense, if a court has found
16 the individual to have committed one or more drunken driving offense within the
17 preceding 3 years.

18 c. The individual is convicted of any crime or found by a court to have committed
19 any offense described in subd. 2. a. or b.

20 d. Prosecution of a felony or a misdemeanor crime of violence for which the
21 individual is charged is suspended under a deferred prosecution agreement.

22 e. The individual is found incompetent under s. 971.14.

23 f. The individual is found not guilty of any crime by reason of mental disease
24 or mental defect under s. 971.17.



INS 19/8 CONT

1 g. The individual is involuntarily committed for treatment under s. 51.20 or
2 51.45.

3 h. The individual is found incompetent under ch. 880.

4 INSERT 20/21

5 (b) 1. If a sheriff revokes or suspends a license under this section, the revocation
6 or suspension shall take effect immediately.

7 2. Upon revoking or suspending an individual's license, the sheriff shall
8 immediately attempt to inform the individual in person. If an individual is notified
9 of the revocation or suspension in person, the individual shall immediately
10 relinquish the license document to the sheriff. If the sheriff is unable to inform the
11 individual in person, the sheriff shall send the individual notice of the revocation or
12 suspension by certified mail within one day after the revocation or suspension.
13 Within 7 days after receiving the notice, the individual whose license has been
14 revoked or suspended shall deliver the license document personally or by certified
15 mail to the sheriff.

16 (14m) APPEALS. (NO)

17 INSERT 24/13

18 (c) Any person who intentionally falsely swears under sub. (6) or (15) (b) 2. shall
19 be fined not less than \$500 nor more than \$10,000 and may be imprisoned for not
20 more than 9 months.

21 (d) Any person required under sub. (14) (b) 2. to relinquish or deliver a license
22 document to a sheriff who intentionally violates the requirements of that subdivision
23 shall be fined not less than \$500 nor more than \$10,000 and may be imprisoned for
24 not more than 9 months.

1 (18) ACCESS TO RECORDS. Records created or kept under this section by the
2 department, a sheriff, or a clerk, as defined in sub. (11)(d) 1., other than reports
3 created under sub. (19) or records created under sub. (20), are not subject to access
4 under s. 19.35.

5 **INSERT 25/23**

6 **SECTION 1.** 941.23 (2) of the statutes is created to read:

7 941.23 (2) A person formerly licensed under s. 175.50 whose license has been
8 revoked or suspended under s. 175.50 (14) may not assert his or her refusal to accept
9 or failure to receive a notice of revocation or suspension mailed under s. 175.50 (14)
10 (b) 2. as a defense to prosecution under sub. (1), regardless of whether the person has
11 complied with s. 175.50 (12).

12 **INSERT 26/9**

13 **SECTION 2.** 946.32 (3) of the statutes is created to read:

14 946.32 (3) This section does not apply to offenses that may be prosecuted under
15 s. 175.50 (17) (c).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LKS
11-1086/P1dn
MGD:.....
Jld

Mike:

1. Based on our discussion in our first meeting, I included reciprocity provisions under which a person licensed to carry a concealed weapon in another state may carry a concealed weapon here. The person is also required to carry his or her permit or license. In Vermont, however, there is no licensing or permit system. All persons in Vermont authorized to carry a weapon are authorized to carry it concealed. But from what I have seen, no other state permits Vermont residents to carry concealed weapons within its borders unless the person obtains a concealed carry permit or license under that state's law. I have followed that approach in this bill. If you would like to treat Vermont residents differently, please let me know.

2. Under *U.S. v. Buffalo*, 449 F. 2d 779 (4th Cir., 1971), if a court finds a person not guilty by reason of mental disease or defect (NGI) and commits the person to a mental health facility, the person is ineligible to possess a firearm under federal law. 18 U.S.C. § 925 (c). But under s. 971.17 (3), the court is not required to place a person found NGI in a mental health facility. It may permit the person to receive treatment for his or her mental disease or defect in the community. Therefore, even though most individuals found NGI will be covered by the federal law prohibition, I have added a separate prohibition to the bill, in keeping with our discussion of this issue, for the people who aren't covered by federal law. See s. 175.50(3) (L). As you can see, I have structured it so that it follows the same approach used for commitments for mental illness under s. 51.20. Please let me know if that is okay. I also made the NGI provision apply to NGI findings in all cases, not just felonies and misdemeanor crimes of violence. Is that okay?

3. Under s. 175.50 (11) (c) 2., the clerk of each circuit court and the clerk of a tribal or municipal court, if the tribe or municipality has the requisite drunk driving law or ordinance, is required to notify the sheriff if a licensee has committed a second drunk driving offense. The circuit court clerks should have information about a person's drunk driving record in other circuit courts, but they will not have information about cases in tribal or municipal courts, and vice versa. In addition, none of the courts will have information about out-of-state violations. In view of that, you may want to have the clerks notify the sheriff any time a court has found a person to have committed a drunk driving violation and leave it to the sheriff to determine whether the person has any prior violations. That approach, however, does not account for violations that may

have occurred before the person gets his or her license. That problem can be addressed — at least in part — by requiring an applicant to report any violations that occurred in the three years that precede the person's application.

* 4. As Don Dyke noted, 1999 AB[↓]605 contained two separate provisions restricting access to records — s. 175.50 (9g) (e) 1. a. and (11) (b). I have combined those provisions and placed them, along with new provisions relating to access to records created by sheriffs and court clerks, in a new sub. (19). Please review those changes to ensure that they are consistent with your intent. ⑧

5. Please note that s. 16.47 (2) provides that, before the passage of the budget bill, neither house may pass a bill that increases the cost of state government by more than \$10,000 annually unless the governor, the joint committee on finance or, in some cases, the committee on organization of either house recommends passing the bill as an emergency appropriation. Of course, s. 16.47 (2), is a rule of legislative procedure; thus, the legislature determines the extent to which it is enforced.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1086/P1dn
MGD:jld:pg

March 15, 2001

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Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

TO DO:

- Wisconsin residency (Wait till I hear from Mike)

- No list to clerk

Just have clerk
✓ whenever a person is
w/ DOS

- May only v if person is
charged w/ crime
convicted...
institutionalized...

~~Para~~ (Need to pull clerk
~~and~~ records access stuff
or keep in?)

Otherwise must do it

Add penalty for false stmt for emerg license (+ authorize release
of info for investigation of violation)

pull out SSN

9/5

X

Rq. Wisc. residency to get permit

Include penalties in analysis

Para (f) was skipped on ~~the~~ last yrs draft p. 21 Change (g) to (e)
???? ↑

X - refs re DQ's (see p.1)

/

eg. ^{eg} ~~16.7.31(4)(ar)~~ Exception re ~~illegal~~ ^{eg} weapons in car or boat extended to
out of state ~~permitted~~ licensee

175.50(2)(c)2m. - Rq. sheriffs asking itly to specify how powers/duties to be split

STET

(25) Rq. party of state (referred to carry license/permit

Rq. DOJ to design lic renewal form

(26) Rq. DOJ to design ~~required~~ ~~required~~ ~~documents~~

(3) [(b)] - Eliminated residency requirement SHOULD WE HAVE? YES

Don's memo refers to illegal aliens. What about non-residents who are here legally?

(c) - ~~Disqual.~~ Disqual. based on DQ under fed'l law

[(i) 7.] - ~~Disch.~~ Disch. discharge prov'n not needed bc of

(k) - DQ based on incompetency to stand trial

(L) - " " NGI

(m) - " " misd. crime of violence (moved from sub. (4)) ^{was permissive}

(o) - " " ~~the~~ pending crim case

(q) " " prior revocation

(r) " " false stmts on appl'n

(8) Fingerprint ^{emerg.} ~~temporary~~ license

(9g)(c) Rq. revocation if ^{duplicate} ~~provided~~ info ⇒ ineligibility

(9r) ^{(e)2} Rq. revocation of emerg. license if inelig.

Consolidate record access, make ~~inapp.~~ Pub records

rgmt in app. to sheriffs, clerks... + permit disclosure to investigate ~~relations~~ of false stmts

(11)(d) Clerk gets list of licenses, notifies DOS
of convictions, NBI's, drunk drive offense...

(14)^(a) Clarify revocation - if person no longer elig, .rg revoke
be

(b) Procedure for revocation (notice)

(17) Change penalties for false stmt from 946.32
to 500 ~~to~~ 10000 fine + 19 mos. impris

↑
Current gun form

↑
Class D

SSN ??

Penalty in analysis

Appeals par. (f) was skipped.

Court determination alone ok 431 US 105

97 1723

Not all activities \Rightarrow liberty 408 569-70, 575 92 2705, 08

Specific criteria for suspension \Rightarrow Property 443 55 99 2642

Options

Rq licensee to notify Sheriff ;

Make license valid only until ~~conviction~~ conviction

comparable offense - Sheriff makes decision

Dsida, Michael

From: Bruhn, Mike
Sent: Friday, October 12, 2001 10:55 AM
To: Dsida, Michael
Subject: RE: Concealed carry license suspension/revocation

That makes sense and alternative one makes sense to me.

-----Original Message-----

From: Dsida, Michael
Sent: Friday, October 12, 2001 10:38 AM
To: Bruhn, Mike
Subject: Concealed carry license suspension/revocation

After spending some time researching this, I realized that, at least in some circumstances, the license can't automatically become invalid, because it may not be clear if the federal or out-of-state offense is similar enough to Wisconsin law to require suspension or revocation. For the same reason, it may not make sense to require the licensee to report only those offenses to the sheriff. Here's what I propose as an alternative -- have the licensee report all federal and out-of-state offenses to the sheriff and let the sheriff determine what should happen to the license.

If that makes sense, here are a couple of alternatives for the penalties: 1) have the penalty for carrying a concealed weapon without a license apply to the person for failing to report that he or she has been charged with any crime under federal law or the law of another state; or 2) have that penalty apply only if the court determines that the charge that the person didn't report would warrant suspension or revocation and have either a lesser penalty or no penalty apply to the failure to report other offenses.

I hope this makes sense. Feel free to call me if you want to discuss this.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Dsida, Michael

From: Bruhn, Mike
Sent: Tuesday, October 16, 2001 11:24 AM
To: Dsida, Michael
Subject: RE: Concealed carry bill

- 1) yes, 2 separate instances
- 2) yes, same county. Yes, in counties with co-operative agreements, either sheriff may discharge the duty.
- 3) leave it to the counties that are parties to such agreements to decide how to best address that issue.
- 4) Yes, okay.
- 5) Sheriff B would be able to issue them after sheriff A leaves.
- 6) Yes, that is ok.
- 7) Yes, they each must establish the excellence fund.

-----Original Message-----

From: Dsida, Michael
Sent: Tuesday, October 16, 2001 10:36 AM
To: Bruhn, Mike
Subject: Concealed carry bill

Reviewing a draft after letting it sit for a while always leads to more questions. These should be my last, though.

1. The drunken driving provision (11/6) require 2 convictions, but it doesn't say whether there have to have been 2 separate incidents. Should it? (A person can be convicted of: (a) OWI and operating with a prohibited alcohol concentration for the same conduct (although the person can only be sentenced for one of them) or (b) one of the offenses listed in (a) and causing injury to someone while drunk driving.)
2. Under the P1 draft, if a sheriff revokes an individual's license, the sheriff must attempt to notify the individual in person. Do you want to limit that to cases in which the individual is residing in the sheriff's county? If so, you might also want to consider whether, in cases in which counties have cooperative agreements under sub. (2) (c) (7/24), either sheriff can discharge that duty.
3. The cooperative agreement provisions do not specifically cover emergency licenses. If a county is a party to an agreement, does its sheriff retain the right to issue emergency licenses, or do you want to leave it to the counties that are parties to such agreements to decide how to best address that issue?
4. I assume that a county's ^{authorization not} ~~refusal~~ to issue licenses also applies to the emergency licenses. Is that okay?
5. Does the county board's 2/3 vote prohibit the sheriff from issuing licenses? The draft only says that the sheriff is not required to issue them. I am thinking of the case where Sheriff A doesn't want to issue the licenses and the board agrees. After Sheriff A retires, Sheriff B wants to issue them.

Also, I assume that you want to permit a county to change its mind. How does it do so? *by 2/3 vote*

6. Under sub. (16) (c), a license has no effect if a court has prohibited a licensee from carrying a weapon. ((26/23). For consistency's sake, I have added provisions that require the license to be suspended in those cases. Is that okay?
7. I assume that if counties issue licenses together under sub. (2) (c), they each must establish a law enforcement excellence fund (28/7). If that is the case, I need to tinker with the subsection dealing with that fund, since it does not make that point clear.

Mike Dsida
Legislative Reference Bureau
608/266-9867
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