



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 141 [2015 Assembly Bill 13]	Return of Seized Firearms
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BACKGROUND

Process for Applying for the Return of Property Seized by Law Enforcement

If property is seized by law enforcement either pursuant to a search warrant or without a search warrant, any person claiming the right to possession of the property may apply for its return to the court located in the county where the property was seized or where the search warrant was returned. The court must hold a hearing to hear all claims to the seized property's ownership. The court must also order notice to the district attorney (DA) and all persons who have or may have an interest in the property.

The court, in general, must order that the property be returned to the person who has proven the right to possession to the court's satisfaction and certain conditions are satisfied. Under prior law, a court was generally required to order the return if either of the following apply: (1) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or (2) all **proceedings** in which the seized property might be required have been completed. However, if the property is not required for evidence or use in further investigation, and the property is not contraband, a dangerous weapon, or ammunition, then the property may be returned by an officer to the person from whom it was seized without the requirement of a hearing.

Under prior law, if the property was either a dangerous weapon¹ or ammunition, then the seized property could be returned to the rightful owner if the owner had no knowledge of

¹ A "dangerous weapon" means "any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood;

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

and gave no consent to the commission of the crime. Also, dangerous weapons and ammunition could not be returned to any person who committed a crime involving the use of the dangerous weapon or ammunition.

Court Access to Information Regarding Who is Prohibited From Possessing a Firearm Under Certain Court Orders

The statutes specify when a judge, court commissioner, law enforcement agency, or a law enforcement officer is required to request information from the Department of Justice (DOJ) as to whether an individual is prohibited from possessing a firearm pursuant a civil commitment, involuntary commitment, guardianship, or protective services or protective placement. Likewise, the statutes require DOJ to provide this information to the judge, court commissioner, law enforcement agency, or law enforcement officer upon such request. Prior law did not, however, specifically require a court or court commissioner to make a request for this information when determining whether to return a firearm that was seized by law enforcement, nor did it specifically require DOJ to provide such information.

2015 WISCONSIN ACT 141

Wisconsin Act 141 (the Act) does the following:

- With respect to when a court must order the return of seized property other than contraband, a dangerous weapon, or ammunition, clarifies that the court must order the return of such property if the person has proven in a hearing that he or she has the right to possession and either of the following apply: (1) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or (2) all **proceedings and investigations** in which it might be required have been completed.
- Requires that, if a person claiming the right to possession of a seized firearm that has not been returned, the court must order a hearing to occur within 20 days after the person applies for the return for a determination as to whether the person has the right to possession and whether the firearm must be returned. The Act requires the court to order within five days of the completion of the hearing, using a form developed by the director of state courts, that the firearm be returned if all of the following apply:
 - Either: (1) the firearm is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or (2) all proceedings and investigations in which the evidence might be required have been completed.
 - The person is not prohibited from possessing a firearm under state or federal law as determined by using information provided under the process of requesting information from DOJ as to whether the person is prohibited from possessing a

any electric weapon, as defined in s. 941.295 (1c) (a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.” [s. 939.22 (10), Stats.]

firearm as a result of a civil commitment, involuntary commitment, guardianship action, or protective services or protective placement.

- One of the following has occurred:
 - The DA has affirmatively declined to file charges in connection with the seizure against the person.
 - All charges filed in connection with the seizure against the person have been dismissed.
 - Ten months have passed since the seizure and no charges have been filed against the person.
 - The trial court has reached final disposition for all charges in connection with the seizure and the person has not been adjudged guilty, or not guilty by reason of mental disease or defect, of a crime in connection with the seizure.
 - The person has established that he or she had no prior knowledge of and gave no consent to the commission of the activity that led to the seizure.
- Before determining whether to return a seized firearm, requires a court or court commissioner to request information from DOJ as to whether an individual is prohibited from possessing a firearm pursuant to a civil commitment, involuntary commitment, guardianship, or protective services or protective placement. The Act also does both of the following with respect to this requested information:
 - Authorizes a law enforcement agency or a law enforcement officer to aid the court in making a determination regarding the return of a seized firearm by requesting this information from DOJ.
 - Requires DOJ to provide the information to a requesting court, court commissioner, law enforcement agency, or law enforcement officer.

Effective date: This Act went into effect on February 6, 2016.

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