



1999 ASSEMBLY BILL 699

February 1, 2000 - Introduced by Representatives LA FAVE, KAUFERT, MUSSER, STONE, ZIEGELBAUER and RYBA, cosponsored by Senator WIRCH. Referred to Committee on Criminal Justice.

1 **AN ACT to amend** 938.396 (2) (d); and **to create** 938.3415, 941.291, 971.17 (1h)
2 and 973.0335 of the statutes; **relating to:** possession of body armor by persons
3 convicted of or adjudicated delinquent for a felony offense and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person may not possess a firearm if he or she is a felony offender. A person is a felony offender if any of the following applies: 1) he or she has been found guilty of a felony; 2) he or she has been adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult; or 3) he or she has been found not guilty of a felony by reason of mental disease, defect or illness. If a felony offender violates the prohibition against possessing a firearm, he or she may be fined not more than \$10,000 or imprisoned for not more than five years or both for a first offense and may be fined not more than \$10,000 or imprisoned for not more than ten years or both for a second or subsequent offense.

Current law also provides that a felony offender may have the right to possess a firearm restored under certain circumstances. For instance, if a person found guilty of a felony is pardoned he or she may again possess a firearm unless the pardon provides that the person may not possess a firearm. A person adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult may again possess a firearm if a court determines that the person is not likely to act in a manner dangerous to public safety. Finally, a person who has been found not guilty of a felony by reason of insanity or mental disease, defect or illness may

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again possess a firearm if a court determines that the person is no longer insane or no longer has a mental disease, defect or illness and that the person is not likely to act in a manner dangerous to public safety.

This bill prohibits a felony offender from possessing body armor, which is defined as any garment that is designed, redesigned or adapted to prevent bullets from penetrating through the garment. A felony offender who violates the prohibition against possessing body armor may be fined not more than \$10,000 or imprisoned for not more than five years or both for a first offense and may be fined not more than \$10,000 or imprisoned for not more than ten years or both for a second or subsequent offense.

The bill also allows a felony offender to request a court for an exemption from the prohibition against possessing body armor if all of the following apply: 1) the offender has a reasonable need to possess body armor to ensure his or her personal safety, to earn a livelihood or as a condition of employment; and 2) the offender is likely to use the body armor in a safe and lawful manner. A felony offender seeking an exemption must file a motion in the circuit court for the county in which the person will be possessing the body armor. The offender must provide a copy of the motion to the district attorney for that county, who must in turn make a reasonable attempt to contact local law enforcement agencies to inform them that the offender has made a request for an exemption and to solicit from the agencies any information that may be relevant to whether the exemption should be granted. The court may grant a complete exemption to the prohibition or may provide a partial exemption that allows the offender to possess body armor under certain specified circumstances or in certain locations or both. An exemption to the prohibition granted by a court is valid only in the county in which that court is located; thus, if a felony offender is seeking an exemption to possess body armor in more than one county, he or she will have to file a motion for an exemption in each applicable county.

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

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

1 **SECTION 1.** 938.3415 of the statutes is created to read:
2 **938.3415 Delinquency adjudication; restriction on body armor**
3 **possession.** Whenever a court adjudicates a juvenile delinquent for an act
4 committed on or after the effective date of this section [revisor inserts date], that
5 if committed by an adult in this state would be a felony, the court shall inform the
6 juvenile of the requirements and penalties under s. 941.291.

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1 **SECTION 2.** 938.396 (2) (d) of the statutes is amended to read:

2 938.396 (2) (d) Upon request of a court of criminal jurisdiction or a district
3 attorney to review court records for the purpose of setting bail under ch. 969,
4 impeaching a witness under s. 906.09 ~~or~~, investigating and determining whether a
5 person has possessed a firearm in violation of s. 941.29 (2) or body armor in violation
6 of s. 941.291 (2) or upon request of a court of civil jurisdiction or the attorney for a
7 party to a proceeding in that court to review court records for the purpose of
8 impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction
9 under this chapter and ch. 48 shall open for inspection by authorized representatives
10 of the requester the records of the court relating to any juvenile who has been the
11 subject of a proceeding under this chapter.

12 **SECTION 3.** 941.291 of the statutes is created to read:

13 **941.291 Possession of body armor. (1) DEFINITION.** In this section, “body
14 armor” means any garment that is designed, redesigned or adapted to prevent
15 bullets from penetrating through the garment.

16 **(2) PROHIBITION.** Except as provided in sub. (4), no person may possess body
17 armor if any of the following applies to the person:

18 (a) The person has been convicted of a felony in this state.

19 (b) The person has been convicted of a crime elsewhere that would be a felony
20 if committed in this state.

21 (c) The person has been adjudicated delinquent for an act committed on or after
22 the effective date of this paragraph [revisor inserts date], that if committed by an
23 adult in this state would be a felony.

24 (d) The person has been found not guilty of a felony in this state by reason of
25 mental disease or defect.

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1 (e) The person has been found not guilty of or not responsible for a crime
2 elsewhere that would be a felony in this state by reason of insanity or mental disease,
3 defect or illness.

4 **(3) PENALTY.** (a) Whoever violates sub. (2) is guilty of a Class E felony.

5 (b) Whoever violates sub. (2) after being convicted of violating sub. (2) is guilty
6 of a Class D felony.

7 **(4) EXEMPTION.** (a) A person who is prohibited from possessing body armor
8 under sub. (2) may request a complete or partial exemption from the prohibition if
9 all of the following apply:

10 1. The person has a reasonable need to possess body armor to ensure his or her
11 personal safety, to earn a livelihood or as a condition of employment.

12 2. The person is likely to use the body armor in a safe and lawful manner.

13 (b) A person seeking a complete or partial exemption from the prohibition
14 under sub. (2) shall request the exemption by filing a written motion in the circuit
15 court for the county in which the person will possess the body armor. A person who
16 files a motion under this paragraph shall send a copy of the motion to the district
17 attorney for the county in which the motion is filed. The district attorney shall make
18 a reasonable attempt to contact the county sheriff and, if applicable, the chief of
19 police of a city, village or town in the county in which the person will possess the body
20 armor for the purpose of informing the sheriff and the chief of police that the person
21 has made a request for an exemption and to solicit from the sheriff and chief of police
22 any information that may be relevant to whether the criteria specified in sub. (4) (a)
23 1. and 2.

24 (c) A court deciding whether to grant a request for an exemption made under
25 par. (b) may deny the request for an exemption, grant a complete exemption from the

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1 prohibition or grant a partial exemption by allowing possession of body armor only
2 under certain specified circumstances or in certain locations, or both. In deciding
3 whether a person satisfies the criteria specified in par. (a) 1. and 2. and, if so, whether
4 to grant an exemption, the court shall consider the person's character, including the
5 person's criminal record, the totality of the person's circumstances and any relevant
6 evidence of the person's character and circumstances, including any relevant
7 evidence submitted by the district attorney who received the copy of the motion
8 under par. (b).

9 (d) If a court grants a request for an exemption under par. (c), the court shall
10 issue a written order of exemption to the person who requested the exemption. The
11 exemption is valid only in the county in which the court is located. If the exemption
12 is a partial exemption, the order shall specify the circumstances under which the
13 person may possess body armor, the locations in which the person may possess body
14 armor or, if applicable, both. The person granted the exemption shall carry a copy
15 of the order of exemption at all times during which he or she is in possession of body
16 armor. The clerk of the circuit court shall send a copy of the order of exemption to
17 the county sheriff and, if applicable, to the chief of police of a city, village or town in
18 the county in which the person will possess the body armor.

19 **SECTION 4.** 971.17 (1h) of the statutes is created to read:

20 971.17 (1h) If the defendant under sub. (1) is found not guilty of a felony by
21 reason of mental disease or defect, the court shall inform the defendant of the
22 requirements and penalties under s. 941.291.

23 **SECTION 5.** 973.0335 of the statutes is created to read:

24 **973.0335 Sentencing; restriction on possession of body armor.**

25 Whenever a court imposes a sentence or places a defendant on probation for a felony

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1 conviction, the court shall inform the defendant of the requirements and penalties
2 under s. 941.291.

3 **SECTION 6. Initial applicability.**

4 (1) POSSESSION OF BODY ARMOR. The treatment of section 941.291 of the statutes
5 first applies to the possession of body armor that occurs on the effective date of this
6 subsection, but does not preclude the counting of an act that was committed before
7 the effective date of this subsection for purposes of determining whether a person has
8 been convicted of a felony that makes him or her subject to section 941.291 of the
9 statutes.

10 (2) INFORMATION AT COMMITMENT HEARINGS. The treatment of section 971.17 (1h)
11 of the statutes first applies to commitment hearings that occur on the effective date
12 of this subsection.

13 (3) INFORMATION AT SENTENCING. The treatment of section 973.0335 of the
14 statutes first applies to sentencing proceedings that occur on the effective date of this
15 subsection.

16 (END)