

1999 DRAFTING REQUEST

Bill

Received: **01/06/1999**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **David Travis (608) 266-5340**

By/Representing: **Bill Graf**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Possession of firearms by persons convicted of certain misdemeanors

Instructions:

See Attached

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>
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/1	olsenje 06/03/1999	ygeller 06/05/1999	jfrantze 06/06/1999	_____	lrb_docadmin 06/07/1999		
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FE Sent For:

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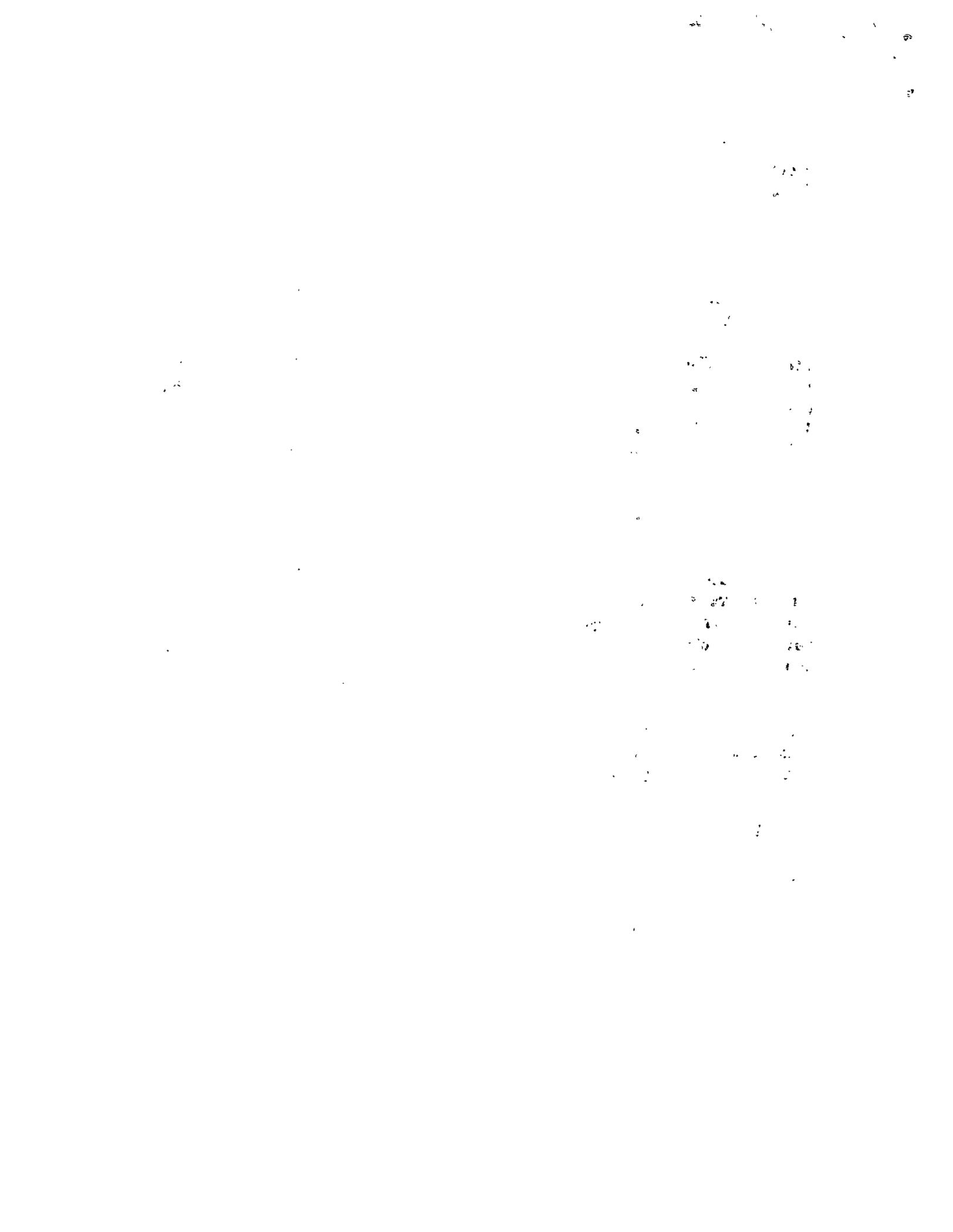
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 2/26 jg (under Typed)
 2/26 jg (under Proofed)
 2/26 jg (under Submitted)

FE Sent For:

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Submit "1P" drafts

JED



1626

To: Jefren E. Olsen, Legislative Attorney
From: Dave Travis
Re: Misdemeanor Firearms Legislation
Date: January 6, 1998

Jefren:

Per our discussion, I would like you to start drafting legislation regarding denying firearms to certain misdemeanants.

Pending the LRB search for Class B and C misdemeanants and those outside the criminal code, I would like the following Class A misdemeanors from your Dec. 29, 1998 memo covered:

- 1 10 19 85
- 3 11 20 94
- 4 12 23 95
- 8 13 30 96
- 18 74 97

Persons convicted of these Class A misdemeanors would receive a mandatory lifetime ban on the possession of a firearm, however after 5 years the person could petition the court for permission to possess long guns. Such permission could be granted only if the person were free of any felony or misdemeanor convictions during this period and no felony or misdemeanor charges were pending against him or her during this period. Granting of the petition would be at the judge's discretion regardless of petitioner's status.

Possession of a firearm during the prohibited period would constitute a Class B misdemeanor. Legal or illegal possession of a firearm during the commission of a subsequent felony would be a Class E felony, and during the commission of a misdemeanor would be a Class A misdemeanor

I anticipate that when the LRB analysis of further crimes is completed, more may be added to the list.

Dave

1

3 from Class B
12 from Class C



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION (608) 266-3561
LEGAL FAX (608) 264-8522
REFERENCE SECTION (608) 266-0341
REFERENCE FAX (608) 266-5648

MEMORANDUM

To: Interested persons

From: Jefren E. Olsen, Legislative Attorney, (608) 266-8906

Subject: Class A misdemeanors in the Wisconsin Criminal Code (chapters 939 to 951)

Date: December 29, 1998

What this list contains: The following is a list of Class A misdemeanors contained in the Wisconsin criminal code, which is comprised of chapters 939 to 951 of the Wisconsin Statutes. The penalty for a Class A misdemeanor is a fine of not more than \$10,000 or imprisonment for not more than 9 months or both. *Section 939.51 (3) (a), stats.*

The list is in ascending order of statutory citation. The list gives a common name for or short description of the Class A misdemeanor and the statutory citation for the Class A misdemeanor. The list does not generally provide a detailed recital of the elements of the Class A misdemeanor (that is, what a prosecutor must prove to secure a conviction against someone charged with the Class A misdemeanor). To find out what those elements are, you will have to look at the cited statute.

What this list does NOT contain: The following list does not include any Class B or C misdemeanor (the 2 other misdemeanor classifications in the criminal code), nor does it include any misdemeanor contained in a statutory provision that is outside the criminal code.

When this list was last updated: The following list was updated on the date indicated above and is current through the end of the 1997-98 legislative session (that is, through 1997 Wisconsin Act 338). Thus, any Class A misdemeanor created by any later act of the legislature is not included. Likewise, if the penalty provided for an existing Class A misdemeanor has been changed by any later act of the legislature, that change is not reflected in this list.

Note: The current printed version of the Wisconsin Statutes will not reflect any changes made in a statute by 1997 Wisconsin Acts 1 through 338 and will not include any Class A misdemeanor created by 1997 Wisconsin Acts 1 through 338. Thus, to see the most current version of a Class A misdemeanor affected or created by an act of the 1997-98 legislature, you will have to look at the 1997 Act referred to in the list as affecting or creating the specific Class A misdemeanor.

The following crimes are Class A misdemeanors:

1. Attempting to commit battery to a law enforcement officer, fire fighter, probation or parole agent or aftercare agent. *Section 939.32 (1) (b), stats.*

2. Violating a condition of lifetime supervision. *Section 939.615 (7) (b) 1., stats. (as created by 1997 Wisconsin Act 275).*

✓ 3. Simple battery (causing bodily harm to another by an act done to cause bodily harm). *Section 940.19 (1), stats.*

✓ 4. Simple battery to an unborn child (causing bodily harm to an unborn child by an act done to cause bodily harm to the unborn child, the pregnant woman or another). *Section 940.195 (1), stats. (as created by 1997 Wisconsin Act 295).*

5. Failure to report suspected sexual exploitation by a therapist. *Section 940.22 (3) (d), stats.*

6. Unauthorized release of confidential information concerning sexual exploitation by a therapist. *Section 940.22 (4) (d), stats.*

7. Fourth degree sexual assault. *Section 940.225 (3m), stats.*

✓ 8. Recklessly or negligently subjecting a vulnerable adult to maltreatment under circumstances causing or likely to cause bodily harm. *Section 940.285 (2) (b) 4., stats. (as affected by 1997 Wisconsin Act 180).*

9. Intentional failure by a law enforcement officer to render first aid to a person in custody, if bodily harm results from the failure; knowingly permitting such a failure. *Section 940.291 (1) and (2), stats.*

✓ 10. Recklessly or negligently abusing or neglecting a patient or resident of certain facilities under circumstances causing or likely to cause bodily harm. *Section 940.295 (3) (b) 4., stats. (as affected by 1997 Wisconsin Act 180).*

✓ 11. Stalking. *Section 940.32 (2), stats.*

✓ 12. Intimidation of a witness. *Section 940.42, stats.*

✓ 13. Intimidation of a victim. *Section 940.44, stats.*

14. Endangering safety by negligent operation of a vehicle. *Section 941.01 (1), stats.*

15. Negligent handling of burning material. *Section 941.10 (1), stats.*

16. Interfering or tampering with, or removing without authorization, a fire extinguisher, fire hose or other fire fighting equipment. *Section 941.12 (2), stats.*

17. Giving a false fire alarm. *Section 941.13, stats.*

✓ 18. Endangering safety by negligent handling of a dangerous weapon, by handling or going armed with a firearm while intoxicated, by pointing a firearm at another or by discharging a firearm within 100 yards of a dwelling. *Section 941.20 (1), stats.*

✓ 19. Carrying a concealed weapon. *Section 941.23, stats.*

✓ 20. Carrying a handgun on premises where alcohol beverages may be sold and consumed. *Section 941.237 (2), stats.*

21. Manufacture, transportation, sale or possession of a switchblade knife. *Section 941.24 (1), stats.*

22. Unauthorized possession, noncommercial transportation or use of a container for tear gas or similar substance. *Section 941.26 (2) (c), stats.*

✓ 23. Intentionally using a pepper spray device to cause bodily harm or bodily discomfort to another. *Section 941.26 (4) (b), stats.*

24. Intentionally offering a pepper spray device for sale in a place where customers have direct access to the device. *Section 941.26 (4) (h), stats.*

25. Intentionally selling a pepper spray device that does not meet safety rules promulgated by the department of justice. *Section 941.26 (4) (i) 1., stats.*

26. Intentionally selling a pepper spray device without providing the purchaser with proper labelling, safety instructions or packaging. *Section 941.26 (4) (j) 1., stats.*

27. Possession of a pepper spray device by a person convicted of a felony. *Section 941.26 (4) (L), stats.*

28. Unlawful possession or inhalation of nitrous oxide. *Section 941.315 (2), stats. (as created by 1997 Wisconsin Act 336).*

29. Obstructing emergency medical personnel who are performing duties relating to an emergency or rescue. *Section 941.37 (2), stats.*

✓ 30. Violating a court order to refrain from contacting a criminal gang member. *Section 941.38 (3), stats.*

31. Criminal defamation. *Section 942.01 (1), stats.*

32. Giving false information for publication with intent to injure another. *Section 942.03, stats.*

33. Unauthorized opening of a letter or package; publishing the contents of a letter or package opened without authorization. *Section 942.05, stats.*

34. Criminal invasion of privacy. *Section 942.08, stats. (as created by 1997 Wisconsin Act 271).*

35. Simple criminal damage to physical property of another. *Section 943.01 (1), stats.*

36. Simple graffiti damage. *Section 943.017 (1), stats.*

37. Criminal damage to railroad property (including shooting a firearm at a train). *Section 943.07 (1) and (2), stats.*

38. Entry into a locked vehicle with intent to steal. *Section 943.11, stats.*

39. Entry into a locked coin box; possession of tools for breaking into a locked coin box. *Section 943.125 (1) and (2), stats.*

40. Criminal trespass to a dwelling. *Section 943.14, stats.*

41. Entry onto a construction site or a locked and enclosed building, dwelling or room. *Section 943.15 (1), stats.*
42. Theft (if the value of the property does not exceed \$1,000). *Section 943.20 (3) (a), stats.*
43. Transfer of recorded sounds for unlawful use (2nd offense). *Section 943.207 (3) (a), stats.*
44. Fraud on hotel or restaurant keeper or taxicab operator (if the value of the good or service does not exceed \$1,000). *Section 943.21 (3) (a), stats.*
45. Absconding without paying rent. *Section 943.215 (1), stats.*
46. Riding as a passenger in a vehicle knowing that the vehicle is being operated without the owner's consent. *Section 943.23 (4m), stats.*
47. Intentionally removing a part of a vehicle (other than a major part) without the owner's consent. *Section 943.23 (5), stats.*
48. Issuance of worthless check of not more than \$1,000. *Section 943.24 (1), stats.*
49. Removing or damaging encumbered real property (if the security is impaired by not more than \$1,000). *Section 943.26 (1), stats.*
50. Receiving stolen property (if the value of the property does not exceed \$1,000). *Section 943.34 (1) (a), stats.*
51. Alteration of property identification marks. *Section 943.37, stats.*
52. Misdemeanor forgery. *Section 943.38 (3), stats.*
53. Fraudulent computer data alteration. *Section 943.392, stats.*
54. Fraudulent insurance and employe benefit program claims (if the value of the claim or benefit does not exceed \$1,000). *Section 943.395 (2) (a), stats.*
55. Certain financial transaction card crimes. *Section 943.41 (8) (a) and (c), stats.*
56. Retail theft (if the value of the merchandise does not exceed \$1,000). *Section 943.50 (4) (a), stats. (as affected by 1997 Wisconsin Act 262).*
57. Theft of library material (if the value of the material does not exceed \$1,000). *Section 943.61 (5) (a), stats.*
58. Unlawful receipt of payments to obtain loan for another (if the value of the payment does not exceed \$500). *Section 943.62 (4) (a), stats.*
59. Certain computer crime. *Section 943.70 (2) (b) 1. and (3) (b) 1., stats.*
60. Unauthorized release of animals (2nd offense). *Section 943.75 (2), stats.*
61. Fornication (having sexual intercourse in public). *Section 944.15, stats.*
62. Sexual gratification. *Section 944.17, stats.*

63. Lewd and lascivious behavior. *Section 944.20, stats.*
64. Violations relating to obscene materials or performances (if the person has a prior obscenity conviction). *Section 944.21 (5) (b), stats.*
65. Prostitution. *Section 944.30, stats.*
66. Patronizing prostitutes. *Section 944.31, stats.*
67. Pandering. *Section 944.33 (1), stats.*
68. Permitting premises to be used for commercial gambling. *Section 945.04, stats.*
69. Gambling by participants in a contest. *Section 945.07, stats.*
70. Acceptance of a bribe by a participant in a contest. *Section 945.08 (2), stats.*
71. Improper use of the flag. *Section 946.06, stats.*
72. Using corrupt means to influence legislation. *Section 946.17, stats.*
73. Misdemeanor false swearing. *Section 946.32 (2), stats.*
74. Resisting or obstructing an officer. *Section 946.41 (1), stats.*
75. Misdemeanor escape. *Section 946.42 (2), stats.*
76. Misdemeanor failure to report to jail. *Section 946.425 (1m) (a) and (1r) (b), stats.*
77. Encouraging violation of probation, parole or extended supervision. *Section 946.46, stats. (as affected by 1997 Wisconsin Act 283).*
78. Misdemeanor bail jumping. *Section 946.49 (1) (a), stats.*
79. Violation of a juvenile court's nonsecure custody order. *Section 946.495, stats. (as created by 1997 Wisconsin Act 328).*
80. Absconding after being adjudicated delinquent for a Class A misdemeanor. *Section 946.50 (6), stats.*
81. Compounding crime. *Section 946.67 (1), stats.*
82. Impersonating a peace officer. *Section 946.70 (1), stats.*
83. Aiding escape from a mental health institution. *Section 946.74 (1), stats.*
84. Denial of a person's right to counsel. *Section 946.75, stats.*
85. Harassment (if accompanied by threat that places victim in reasonable fear of death or great bodily harm or if the actor is subject to an order or injunction prohibiting contact with the victim). *Section 947.013 (1r), stats.*
86. Failing or refusing to withdraw from an unlawful assembly. *Section 947.06 (3), stats.*
87. Sexual intercourse with a child age 16 or older. *Section 948.09, stats.*

88. Exposing genitals or pubic area of a child or to a child. *Section 948.10 (1), stats.*
89. Possession of material harmful to a child with intent to transfer the material to a child. *Section 948.11 (2) (b), stats.*
90. Neglect of a child. *Section 948.21 (1), stats.*
91. Failure to support a child (for less than 120 consecutive days). *Section 948.22 (3), stats.*
92. Contributing to the delinquency of a child. *Section 948.40 (4), stats.*
93. Hazing that results or is likely to result in bodily harm. *Section 948.51 (3), stats.*
- ✓ 94. Recklessly leaving a loaded firearm within reach or access of a child (if the child obtains the firearm and discharges it and the discharge causes bodily harm or death). *Section 948.55 (2), stats.*
- ✓ 95. Possession of a dangerous weapon by a person under age 18. *Section 948.60 (2) (a), stats.*
- ✓ 96. Possession of a firearm in a school zone. *Section 948.605 (2) (a), stats.*
- ✓ 97. Possession of a dangerous weapon other than a firearm on school premises. *Section 948.61 (2) (a), stats.*
98. Receiving property from a child without parental consent. *Section 948.63, stats.*
99. Intentional or negligent violation of various crimes against animals. *Section 951.18 (1), stats.*
100. Being a spectator at an animal fight; owning or training an animal during 5-year period after being convicted of instigating animal fights. *Section 951.18 (2), stats.*
101. Intentionally or negligently harassing a police or fire animal. *Section 951.18 (2m), stats. (as affected by 1997 Wisconsin Act 27).*



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P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION (608) 266-3561
LEGAL FAX (608) 264-8522

REFERENCE SECTION (608) 266-0341
REFERENCE FAX (608) 266-5648

MEMORANDUM

To: Interested persons

From: Jefren E. Olsen, Legislative Attorney, (608) 266-8906

Subject: Class B and C misdemeanors in the Wisconsin Criminal Code (chs. 939 to 951)

Date: January 9, 1999

What this list contains: The following is a list of Class B and C misdemeanors contained in the Wisconsin criminal code, which is comprised of chapters 939 to 951 of the Wisconsin Statutes. The penalty for a these classifications of misdemeanor is specified at the beginning of the list for the classification.

The list is in ascending order of statutory citation. The list gives a common name for or short description of the misdemeanor and the statutory citation for the misdemeanor. The list does not generally provide a detailed recital of the elements of the misdemeanor (that is, what a prosecutor must prove to secure a conviction against someone charged with the misdemeanor). To find out what those elements are, you will have to look at the cited statute.

What this list does NOT contain: The following list does not include any Class A misdemeanor (the other misdemeanor classification in the criminal code), nor does it include any misdemeanor contained in a statutory provision that is outside the criminal code.

When this list was last updated: The following list was updated on the date indicated above and is current through the end of the 1997-98 legislative session (that is, through 1997 Wisconsin Act 338). Thus, any Class B or C misdemeanor created by any later act of the legislature is not included. Likewise, if the penalty provided for an existing Class B or C misdemeanor has been changed by any later act of the legislature, that change is not reflected in this list.

Note: The current printed version of the Wisconsin Statutes will not reflect any changes made in a statute by 1997 Wisconsin Acts 1 through 338 and will not include any Class B or C misdemeanor created by 1997 Wisconsin Acts 1 through 338. Thus, to see the most current version of a Class B or C misdemeanor affected or created by an act of the 1997-98 legislature, you will have to look at the 1997 Act referred to in the list as affecting or creating the specific misdemeanor.

Class B Misdemeanors

The penalty for a Class B misdemeanor is a fine of not more than \$1,000 or imprisonment for not more than 90 days or both. *Section 939.51 (3) (b), stats.* The following crimes are Class B misdemeanors:

1. Abuse of vulnerable adults (under circumstances not causing and not likely to cause bodily harm). *Section 940.285 (2) (b) 5., stats. (as affected by 1997 Wisconsin Act 180).*
2. Abuse of patients and residents of certain facilities (under circumstances not causing and not likely to cause bodily harm). *Section 940.295 (3) (b) 5., stats. (as affected by 1997 Wisconsin Act 180).*
- ✓ 3. Carrying a firearm in a public building. *Section 941.235 (1), stats.*
4. Requiring or administering a polygraph or similar purported honesty test without consent of the subject of the test. *Section 942.06, stats.*
5. Requiring, administering or disclosing results of a genetic test without consent. *Section 942.07, stats.*
6. Criminal damage to railroads (by throwing or otherwise propelling certain objects at a railroad train or by throwing or depositing debris or waste on railroad track which could cause injury or accident). *Section 943.07 (3) and (4), stats.*
7. Criminal trespass to a medical facility. *Section 943.145 (2), stats.*
8. Transfer of recorded sounds for unlawful use (1st offense); sale of unlawfully transferred recorded sounds. *Section 943.207 (3) (a) and (b), stats.*
9. Theft of telecommunications service (2nd or subsequent offense that is not for commercial advantage or financial gain). *Section 943.45 (3) (b), stats.*
10. Theft of commercial mobile service (2nd or subsequent offense that is not for commercial advantage or financial gain). *Section 943.455 (4) (b), stats.*
11. Theft of cable television service (2nd or subsequent offense that is not for commercial advantage or financial gain). *Section 943.46 (4) (b), stats.*
12. Theft of satellite cable programming (2nd or subsequent offense that is not for commercial advantage or financial gain). *Section 943.47 (3) (b), stats.*
13. Solicitation of drinks of alcohol beverages. *Section 944.36, stats.*
14. Unlawful gambling. *Section 945.02, stats.*
15. Collecting of claims by judicial officer. *Section 946.16, stats.*
16. Negligently allowing escape. *Section 946.45 (1), stats.*
17. Tampering with public notices. *Section 946.72 (2), stats.*

18. Disorderly conduct. *Section 947.01, stats.*
19. Making threatening, abusive or intimidating telephone calls. *Section 947.012 (1), stats.*
20. Using a computerized communication system to send threatening, abusive or intimidating messages. *Section 947.0125 (2), stats.*
21. Strip search of a pupil by a school official, employe or agent. *Section 948.50 (3), stats.*

Class C Misdemeanors

The penalty for a Class C misdemeanor is a fine of not more than \$500 or imprisonment for not more than 30 days or both. *Section 939.51 (3) (c), stats.* The following crimes are Class C misdemeanors:

1. Violation of duty to aid victim or report crime. *Section 940.34, stats.*
2. Interfering with accessibility to a fire hydrant. *Section 941.12 (3), stats.*
3. Fraudulent tapping of electric wires or gas or water meters or pipes. *Section 941.36, stats.*
4. Unauthorized release of animals (1st offense). *Section 943.75 (2), stats.*
5. Making lewd, obscene or indecent drawings. *Section 944.23, stats.*
6. Working on a public construction contract at less than the prevailing wage rate. *Section 946.15 (2) and (4), stats. (as affected by 1997 Wisconsin Act 3).*
7. Refusing to aid a peace officer. *Section 946.40 (1), stats.*
8. Violating a law governing a state or county institution. *Section 946.73, stats.*
9. Vagrancy. *Section 947.02, stats.*
10. Drinking in a common carrier. *Section 947.04 (1), stats.*
11. Contributing to truancy. *Section 948.45 (1), stats.*
12. Leaving or storing a loaded firearm within reach or easy access of a child (if the child obtains the firearm and possesses it in a public place). *Section 948.55 (3), stats.*

Criminal Law; Firearm Owners' Protection Act; Firearms; Section 941.29(5)(a), Stats., has been invalidated by congressional action. Pardons granted after November 15, 1986, will give recipients the right to receive, possess or transport in commerce firearms unless the pardon expressly provides otherwise. OAG 6-89

February 20, 1989

TOMMY G. THOMPSON, *Governor*

You have requested my opinion on the impact of the Firearm Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449 (1986), on Wisconsin law prohibiting the possession of a firearm by a convicted felon. Sec. 941.29, Stats. You specifically ask:

1. Is section 941.29(5)(a), Stats., a valid section?
2. Do those pardons granted by this [your] office since September 16, 1986,¹ which do not expressly authorize the recipient to receive, possess or transport in commerce firearms, nonetheless give such recipients that right?
3. Do those pardons granted by [your office] since September 16, 1986, which do expressly authorize the recipient to receive, possess or transport in commerce firearms, give such recipients that right?

In my opinion, section 941.29(5)(a) has been invalidated by congressional action. It is also my opinion that any pardon granted by your office since November 15, 1986, will give the recipient the right to receive, possess or transport in commerce firearms *unless* the pardon "expressly provides that the person may not ship, transport, possess, or receive firearms." 18 U.S.C. § 921(a)(20) (Supp. 1988).

¹You have identified September 16, 1986, as the date on which 18 U.S.C. app. § 1203 (1986) was repealed in favor of 18 U.S.C. § 921(a)(20) (1988). 18 U.S.C. § 921(a)(20) became effective November 15, 1986. 18 U.S.C. § 921 note (Supp. 1987).

Section 941.29 criminalizes possession of a firearm by persons convicted of a felony in Wisconsin, or convicted of a crime elsewhere that would be a felony if committed in Wisconsin. Section 941.29(5) relieves from the state firearm disability a person who:

- (a) Has received a pardon with respect to the crime or felony specified in sub. (1) and has been expressly authorized to possess a firearm under 18 USC app. 1203; or
- (b) Has obtained relief from disabilities under 18 USC 925(c).

18 U.S.C. app. § 1203 relieved from the federal firearms disability "any person who has been pardoned by . . . the chief executive of a State and has expressly been authorized by the . . . chief executive . . . to receive, possess, or transport in commerce a firearm." By invoking this particular section of federal law, the Wisconsin Legislature required a convicted felon to present a Governor's Pardon specifically authorizing him to receive, possess or transport firearms in order to be relieved from the state firearms disability under section 941.29(5)(a).

On May 19, 1986, Congress enacted the Firearm Owners' Protection Act (hereinafter FOPA). FOPA repealed 18 U.S.C. app. § 1203 and amended 18 U.S.C. § 922(g) (1988) to include the federal firearm possession offense. Convicted felons are still prohibited by federal law from possessing firearms; 18 U.S.C. § 921(a)(20) was amended to include the following language:

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

This subsection became effective November 15, 1986. 18 U.S.C. § 921 note (Supp. 1987).

As you indicate in your letter, the intent of current federal law is to presume that a pardoned felon may possess firearms. FOPA "is designed to relieve the nation's sportsmen and firearm owners and dealers from unnecessary burdens under the Gun Control Act of 1968. . . . [it] [l]imits the forfeiture of firearms to only those involved in or intended to be involved in felony violations of the law." H.R. Rep. No. 495, 99th Cong., 2d Sess. 5, *reprinted in* 1986 U.S. Code Cong. & Admin. News 1327-28. There is no doubt Congress was aware of the potential impact of FOPA on existing state laws. One commentator involved in the drafting of the legislation indicated:

There was no difference of opinion between the parties on the advisability of consolidating all "prohibited persons" classes into a single provision. Some difference did arise over the exception for persons pardoned or whose convictions had been expunged. This was resolved by adding a proviso that the exception did not apply where the pardon or expungement order provided that the recipient might not own firearms.

Hardy, *The Firearm Owners' Protection Act: A Historical and Legal Perspective*, 17 *Cumb. L. Rev.* 585, 614-15 (1987) (footnotes omitted). Congress explicitly recognized that the revisions contained in FOPA may have a "secondary effect" on state laws. *Id.* at 587 n.11. 18 U.S.C. § 927 (1976) provides that:

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

One such secondary effect is the apparent invalidation of section 941.29(5)(a). Where the purpose of a federal statute cannot be accomplished or is otherwise frustrated by the presence of a state statute, the state statute is superseded by the federal authority to the extent of the conflict. *See Fidelity Federal Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). To the extent that a state law actually conflicts with the federal law, the state law is nullified. *Oefinger v. Zimmerman*, 601 F. Supp. 405, 411 (W.D. Penn. 1984). This may occur in cases when state law becomes an "obstacle to the accomplishment and execution of the full purposes and objectives of the federal enactment." *Id.* at 411-12.

Section 941.29(5)(a) requires that the pardon expressly restore the felon's right to receive, possess or transport in commerce firearms. This requirement no longer exists in federal law. 18 U.S.C. § 921(a)(20). To the extent that the state law frustrates both the specific language and intent of FOPA, the state statute is superseded by the federal law.

Statutes valid when enacted may also become unenforceable because of changes in the conditions to which the statutes apply. *See Chastleton Corporation v. Sinclair*, 264 U.S. 543 (1924). Here, the factual justification and basis for section 941.29(5)(a)—the requirement of 18 U.S.C. app. § 1203 that pardons expressly restore the right to receive, possess or transport in commerce firearms—no longer exists. 18 U.S.C. § 921(a)(20) has no such requirement. The house report on the history of FOPA indicates that it "expanded the class of persons eligible for relief from the disabilities imposed under the [Gun Control] Act. It benefits persons who have been convicted of a crime . . . [and] have been subsequently determined to have reformed." H.R. Rep. No. 495, 99th Cong., 2d Sess. 5, *reprinted in* 1986 U.S. Code Cong. & Admin. News 1327, 1331. The factual changes created by FOPA effectively render section 941.29(5)(a) unenforceable.

Two Wisconsin commentators suggest an interim interpretation of the state disability provision:

Section 941.29 of the Wisconsin Statutes does not apply to the convicted felon who has obtained relief from the Secretary of the Treasury as described above. See Wis. Stat. § 941.29(5)(b) (1985-86). The more difficult issue is whether one who receives a pardon is exempted under § 941.29(5)(a). The latter references the now repealed 18 U.S.C. app. 1203. Before that repeal, the effect of § 941.29(5)(a) was to relieve a convicted felon of the state firearms disability if he were pardoned of the offense and if the pardoning executive expressly authorized the person to possess a firearm. Pending corrective action by the Wisconsin legislature, an interpretation of § 941.29(5)(a) that seemingly effectuates legislative intent is one that exempts the pardoned felon but only if express executive authorization to possess a firearm has been given.

1 Hammer and Donohoo, *Substantive Criminal Law in Wisconsin* 460 (1988).

I also conclude that pardons granted by your office since November 15, 1986, that do not expressly authorize the recipient to receive, possess or transport in commerce firearms will nonetheless give the recipient that right, unless the pardon "expressly provides that the person may not ship, transport, possess, or receive firearms." 18 U.S.C. § 921(a)(20). Pardons granted since November 15, 1986, which expressly authorize the recipient to receive, possess or transport in commerce firearms will give the recipient that right. *Id.* The period of time between the passage of FOPA and the effective date of this particular subsection was undoubtedly provided to give states the opportunity to evaluate their existing legislation and practices in light of revised federal law.

DJH:GPW

Attorney General; County Board; Superfund Amendments And Reauthorization Act Of 1986; A local emergency planning committee created by the county board pursuant to section 59.07(146), Stats., is in many respects treated as other county committees. The county board has the authority to appropriate funds for the committee and the county's relationship to the committee is the same as the county's relationship to the other county bodies created under section 59.07, with the exception that the county must be consistent with the authority exercised by the state emergency response commission. The county corporation counsel should provide legal advice and assistance to the LEPC. If the LEPC or its members are sued, the attorney general represents them; and the state would pay the judgment if the requirements of section 895.46 have been satisfied. OAG 7-89

February 20, 1989

ROBERT G. OTT, *Acting Corporation Counsel*
Milwaukee County

You have asked questions concerning the level of financial responsibility the county has with respect to a local emergency planning committee (LEPC) created pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 1986 U.S. Code Cong. & Admin. News (100 Stat.) 1613, 1728 and 1987 Wisconsin Act 342.

The two laws provide for the creation of a state emergency response commission and LEPCs as part of a program established to provide the public with information on the hazardous chemicals in their communities. The program requires each owner and operator of a facility at which a hazardous chemical is produced, used or stored above threshold quantities to supply information about each hazardous chemical to state and local officials who make the information available to the public. H.R. Rep. No. 253(I), 99th Cong., 2d Sess. 59, *reprinted in* 1986 U.S. Code Cong. & Admin. News 2835, 2841.



Soon

D. Noble

JG

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen cat

1 AN ACT ...; relating to: possession of a firearm by persons convicted of certain
2 misdemeanors and providing a penalty. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of the draft.

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

3 SECTION 1. 941.29 (1) of the statutes is renumbered 941.29 (1m). ✓

4 SECTION 2. 941.29 (1d) of the statutes is created to read:

5 941.29 (1d) In this section:

6 (a) "Handgun" has the meaning given in s. 175.35 (1) (b). ✓

7 (b) "Serious misdemeanor" means an attempt to commit a violation of s. 940.20

8 (2) or (2m) ✓ or a violation, or the solicitation, conspiracy or attempt to commit a

9 violation, of s. 940.29 (1), 940.195 (1), 940.285 (2) (b) 4., 940.295 (3) (b) 4., 940.32 (2), ✓

①

1 940.42, 940.44, 941.20 (1), 941.23, 941.235 (1), 941.237 (2), 941.26 (4) (b), 941.38 (3),
 2 946.41 (1), 947.013 (1r), 948.55 (2) or (3), 948.60 (2) (a), 948.605 (2) (a) or 948.61 (2)
 3 (a).

4 SECTION 3. 941.29 (1m) (h), (i), (j) and (k) of the statutes are created to read:

5 941.29 (1m) (h) Convicted of a serious misdemeanor in this state.

6 (i) Convicted of a crime elsewhere that would be a serious misdemeanor if
 7 committed in this state.

8 (j) Found not guilty of a serious misdemeanor in this state by reason of mental
 9 disease or defect.

10 (k) Found not guilty of or not responsible for a crime elsewhere that would be
 11 a serious misdemeanor in this state by reason of insanity or mental disease, defect
 12 or illness.

13 SECTION 4. 941.29 (2) (intro.) of the statutes is amended to read:

14 941.29 (2) (intro.) A person specified in sub. (1) (1m) is guilty of a Class E felony
 15 if he or she possesses a firearm under any of the following circumstances:

16 History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

16 SECTION 5. 941.29 (2) (a) of the statutes is amended to read:

17 941.29 (2) (a) The person possesses a firearm subsequent to the conviction for
 18 the felony or other crime, as specified in sub. (1) (1m) (a) or (b).

19 History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

19 SECTION 6. 941.29 (2) (b) of the statutes is amended to read:

20 941.29 (2) (b) The person possesses a firearm subsequent to the adjudication,
 21 as specified in sub. (1) (1m) (bm).

22 History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

22 SECTION 7. 941.29 (2) (c) of the statutes is amended to read:

1 941.29 (2) (c) The person possesses a firearm subsequent to the finding of not
2 guilty or not responsible by reason of insanity or mental disease, defect or illness, as
3 specified in sub. (1) (1m) (c) or (d).

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

4 **SECTION 8.** 941.29 (2) (d) of the statutes is amended to read:

5 941.29 (2) (d) The person possesses a firearm while subject to the court order,
6 as specified in sub. (1) (1m) (e) or (g).

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

7 **SECTION 9.** 941.29 (2) (e) of the statutes is amended to read:

8 941.29 (2) (e) The person possesses a firearm while the injunction, as specified
9 in sub. (1) (1m) (f), is in effect.

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

10 **SECTION 10.** 941.29 (2g) of the statutes is created to read:

11 941.29 (2g) A person specified in sub. (1m) is guilty of a Class B misdemeanor
12 if he or she possesses a firearm under any of the following circumstances:

13 (a) Subsequent to the conviction for the serious misdemeanor or other crime,
14 as specified in sub. (1m) (h) or (i).

15 (b) Subsequent to the finding of not guilty or not responsible by reason of
16 insanity or mental disease, defect or illness, as specified in sub. (1m) (j) or (k).

17 **SECTION 11.** 941.29 (2m) of the statutes is renumbered 941.29 (2m) (a) and
18 amended to read:

19 941.29 (2m) (a) Whoever violates ~~this section~~ sub. (2) after being convicted
20 ~~under this section~~ of a violation of sub. (2) is guilty of a Class D felony.

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

21 **SECTION 12.** 941.29 (2m) (b) of the statutes is created to read:

22 941.29 (2m) (b) Whoever violates sub. (2g) after being convicted of a violation
23 of sub. (2g) is guilty of a Class A misdemeanor.

1 **SECTION 13.** 941.29 (5) (intro.) of the statutes is amended to read:

2 941.29 (5) (intro.) This section does not apply to any person specified in sub.

3 ~~(1)~~ (1m) who:

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

4 **SECTION 14.** 941.29 (5) (a) of the statutes is amended to read:

5 941.29 (5) (a) Has received a pardon with respect to the crime or felony specified

6 in sub. ~~(1)~~ and has been (1m), unless the pardon expressly authorized to provides that

7 the person may not possess a firearm under 18 USC app. 1203; or

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

8 **SECTION 15.** 941.29 (8) of the statutes is amended to read:

9 941.29 (8) This section does not apply to any person specified in sub. ~~(1)~~ (1m)

10 (bm) if a court subsequently determines that the person is not likely to act in a

11 manner dangerous to public safety. In any action or proceeding regarding this

12 determination, the person has the burden of proving by a preponderance of the

13 evidence that he or she is not likely to act in a manner dangerous to public safety.

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

14 **SECTION 16.** 941.29 (9) of the statutes is amended to read:

15 941.29 (9) This section does not apply to a person specified in sub. ~~(1)~~ (1m) [✓](e)

16 if the prohibition under s. 51.20 (13) (cv) 1. has been canceled under s. 51.20 (13) (cv)

17 2. or (16) (gm).

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

18 **SECTION 17.** 941.29 (10) (intro.) of the statutes is amended to read:

19 941.29 (10) (intro.) The prohibition against firearm possession under this

20 section does not apply to a person specified in sub. ~~(1)~~ (1m) [✓](f) if the person satisfies

21 any of the following:

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417.

22 **SECTION 18.** 941.29 (11) of the statutes is created to read:

1 941.29 (11) (a) This section does not apply to possession of a firearm other than
2 a handgun by a person specified in sub. (1m) (h) or (i) if a court grants permission to
3 the person under par. (c) to possess a firearm other than a handgun.

4 (b) A person specified in sub. (1m) (h) or (i) may file a petition requesting
5 permission to possess a firearm other than a handgun. A petition under this
6 paragraph shall be filed in the court in which the person was convicted or, if the
7 person was convicted outside this state, in the circuit court for the county in which
8 the person resides. The petition may not be filed earlier than 5 years after the date
9 on which the person was convicted of a serious misdemeanor or of a crime that would
10 be a serious misdemeanor if committed in this state. A person may not file a petition
11 under this paragraph if he or she has been convicted of or charged with a crime that
12 was committed after the conviction for the serious misdemeanor or crime that would
13 be a serious misdemeanor if committed in this state.

14 (c) A court may grant a petition filed under par. (b) if it determines that the
15 person is not likely to act in a manner dangerous to public safety. In any action or
16 proceeding regarding this determination, the person has the burden of proving by a
17 preponderance of the evidence that he or she is not likely to act in a manner
18 dangerous to public safety.

19 **SECTION 19.** 971.17 (1g) of the statutes is amended to read:

20 971.17 (1g) If the defendant under sub. (1) is found not guilty of a felony by
21 reason of mental disease or defect or not guilty of a serious misdemeanor, as defined
22 in s. 941.29 (1d) (b), by reason of mental disease or defect, the court shall inform the
23 defendant of the requirements and penalties under s. 941.29.

History: 1975 c. 430; 1977 c. 353, 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 W (2d) xiii (1987); 1987 a. 394, 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 W (2d) xvii (1990), 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448, 1997 a. 35, 130, 181, 252, 275.

24 **SECTION 20.** 973.033 of the statutes is amended to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1626/P1dn

JEO:.....

Representative Travis:

Please note the following when reviewing this draft:

1. In addition to covering a conviction in this state for one of the specified "serious misdemeanors", the draft also covers: a) convictions in another state or under federal law for a crime that would be a serious misdemeanor if committed in this state; and b) acquittals of serious misdemeanors by reason of mental disease or defect. Compare s. 941.29 (1) (a), (b), (c) and (d), stats. Is that your intent? Conversely, the draft does *not* include juvenile delinquency adjudications for serious misdemeanors. Compare s. 941.29 (1) (bm), stats. Do you want to cover such adjudications?

2. Federal law prohibits a person convicted of a "misdemeanor crime of domestic violence" from possessing a firearm. 18 USC 922 (g) (9). A "misdemeanor crime of domestic violence" is a misdemeanor that has, "as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." 18 USC 921 (1) (33) (A) (ii). Do you want to cover similar crimes in this draft? (I would have to make substantial changes in the federal language to make it consistent with current Wisconsin statutes concerning domestic violence.)

3. Under s. 941.29 (2m), stats., a person who is convicted of a second or subsequent violation of s. 941.29, stats., is guilty of a Class D felony. This draft provides that a person prohibited from possessing a firearm due to a serious misdemeanor offense is guilty of a Class A misdemeanor for a second or subsequent offense. Is that okay?

4. The drafting instructions requested creating new crimes for a person who is prohibited from possessing a firearm but who then possesses a firearm during the commission of a crime. While such new crimes can be created, this draft does not do so because I was unsure whether those crimes were meant to replace s. 939.63, stats., which provides penalty enhancers for possessing a firearm or other dangerous weapon during the commission of a crime. If you do not intend to replace s. 939.63, stats., how do you want that statute and the new crimes interact?

5. The draft provides that a person may petition a court for permission to possess certain firearms after at least five years have elapsed since the person's conviction for

a serious misdemeanor. See proposed s. 941.29 (11). If the person was found not guilty of a serious misdemeanor by reason of mental disease or defect, however, they could be authorized to possess *any* firearm again under s. 941.29 (7), stats. Is that okay or do you want all serious misdemeanor cases dealt with under proposed s. 941.29 (11)?

6. Note that proposed s. 941.29 (11) refers to "a firearm other than a handgun". Your drafting instructions referred to "long guns", but that term is not used in the statutes and would I think need to be more specifically defined (for instance, a barrel length of at least 16 or 18 inches; compare s. 941.28 (1) (b) and (c), stats.). One problem with referring to "a firearm other than a handgun" is that the phrase would appear to include, for instance, assault weapons (to the extent they are otherwise legal). Do you intend to limit proposed s. 941.29 (11) to weapons used for certain purposes, such as rifles or shotguns used for hunting or target practice? If so, we may have to create a definition that more clearly specifies what weapons you intend to cover.

7. If a person files a petition under proposed s. 941.29 (11) and the judge denies the petition, should the person be able to file another petition sometime in the future? Or does a person get only one kick at the cat?

8. This draft amends s. 941.29 (5) (a), stats., to take into account the repeal of 18 USC app. 1203, which had the effect of invalidating s. 941.29 (5) (a), stats. See 78 *Opinions of the Attorney General* 22 (1989). Before the change in federal law, a person could possess a firearm under s. 941.29 (5) (a), stats., if he or she was granted a pardon that expressly authorized him or her to possess a firearm. In 1986 Congress repealed 18 USC app. 1203 and instead provided that a pardon authorized a person to possess a firearm *unless* the pardon expressly provided that the person could *not* possess a firearm. 18 USC 921 (a) (20).

While it is not necessary to achieve your intent, this draft changes s. 941.29 (5) (a), stats., to parallel federal law. You could instead decide to repeal s. 941.29 (5) (a), stats., altogether or to leave it alone (though something should be done with it a some point, given that it is essentially a nullity now).

Note that if the treatment remains in the draft, the change in s. 941.29 (5) (a), stats., will apply to pardons granted on or after the effective date of the draft. Pardons granted between the change in federal law in 1986 and the effective date of the draft will give the pardoned person the right to possess a firearm *unless* the pardon expressly provides otherwise. 78 *Opinions of the Attorney General* at 26.

9. Please review the initial applicability provision carefully to make sure that it does what you want it to do. It provides that a person is prohibited from possessing a firearm under the draft even if he or she was convicted *before* the effective date of the draft. Is that your intent? Note that this approach does not create retroactive punishment in violation of the *ex post facto* clause. See *State v. Thiel*, 188 Wis. 2d 695 (1994). You could, however, as a matter of policy decide that the prohibition should apply only to persons who commit serious misdemeanors on or after the effective date of the draft.

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1626/P1dn
JEO:jlg:km

February 26, 1999

Representative Travis:

Please note the following when reviewing this draft:

1. In addition to covering a conviction in this state for one of the specified "serious misdemeanors", the draft also covers: a) convictions in another state or under federal law for a crime that would be a serious misdemeanor if committed in this state; and b) acquittals of serious misdemeanors by reason of mental disease or defect. Compare s. 941.29 (1) (a), (b), (c) and (d), stats. Is that your intent? Conversely, the draft does *not* include juvenile delinquency adjudications for serious misdemeanors. Compare s. 941.29 (1) (bm), stats. Do you want to cover such adjudications?

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3. Under s. 941.29 (2m), stats., a person who is convicted of a second or subsequent violation of s. 941.29, stats., is guilty of a Class D felony. This draft provides that a person prohibited from possessing a firearm due to a serious misdemeanor offense is guilty of a Class A misdemeanor for a second or subsequent offense. Is that okay?

4. The drafting instructions requested creating new crimes for a person who is prohibited from possessing a firearm but who then possesses a firearm during the commission of a crime. While such new crimes can be created, this draft does not do so because I was unsure whether those crimes were meant to replace s. 939.63, stats., which provides penalty enhancers for possessing a firearm or other dangerous weapon during the commission of a crime. If you do not intend to replace s. 939.63, stats., how do you want that statute and the new crimes interact?

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a serious misdemeanor. See proposed s. 941.29 (11). If the person was found not guilty of a serious misdemeanor by reason of mental disease or defect, however, they could be authorized to possess *any* firearm again under s. 941.29 (7), stats. Is that okay or do you want all serious misdemeanor cases dealt with under proposed s. 941.29 (11)?

6. Note that proposed s. 941.29 (11) refers to “a firearm other than a handgun”. Your drafting instructions referred to “long guns”, but that term is not used in the statutes and I would think need to be more specifically defined (for instance, a barrel length of at least 16 or 18 inches; compare s. 941.28 (1) (b) and (c), stats.). One problem with referring to “a firearm other than a handgun” is that the phrase would appear to include, for instance, assault weapons (to the extent they are otherwise legal). Do you intend to limit proposed s. 941.29 (11) to weapons used for certain purposes, such as rifles or shotguns used for hunting or target practice? If so, we may have to create a definition that more clearly specifies what weapons you intend to cover.

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8. This draft amends s. 941.29 (5) (a), stats., to take into account the repeal of 18 USC app. 1203, which had the effect of invalidating s. 941.29 (5) (a), stats. See 78 *Opinions of the Attorney General* 22 (1989). Before the change in federal law, a person could possess a firearm under s. 941.29 (5) (a), stats., if he or she was granted a pardon that expressly authorized him or her to possess a firearm. In 1986 Congress repealed 18 USC app. 1203 and instead provided that a pardon authorized a person to possess a firearm *unless* the pardon expressly provided that the person could *not* possess a firearm. 18 USC 921 (a) (20).

While it is not necessary to achieve your intent, this draft changes s. 941.29 (5) (a), stats., to parallel federal law. You could instead decide to repeal s. 941.29 (5) (a), stats., altogether or to leave it alone (though something should be done with it a some point, given that it is essentially a nullity now).

Note that, if the treatment remains in the draft, the change in s. 941.29 (5) (a), stats., will apply to pardons granted on or after the effective date of the draft. Pardons granted between the change in federal law in 1986 and the effective date of the draft will give the pardoned person the right to possess a firearm *unless* the pardon expressly provides otherwise. 78 *Opinions of the Attorney General* at 26.

9. Please review the initial applicability provision carefully to make sure that it does what you want it to do. It provides that a person is prohibited from possessing a firearm under the draft even if he or she was convicted *before* the effective date of the draft. Is that your intent? Note that this approach does not create retroactive punishment in violation of the *ex post facto* clause. See *State v. Thiel*, 188 Wis. 2d 695 (1994). You could, however, as a matter of policy decide that the prohibition should apply only to persons who commit serious misdemeanors on or after the effective date of the draft.

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

DAVE TRAVIS

STATE REPRESENTATIVE



STATE CAPITOL
P. O. BOX 8953
MADISON, WI 53708
(608) 266-5340

MEMORANDUM

TO: Jefren Olsen
FROM: Bill Graf
DATE: May 4, 1999
RE: Final drafting instructions for LRB-1626/P1

Please provide that this act shall apply to a person convicted of possessing a firearm in violation of a domestic abuse, child abuse, vulnerable adult or harassment order [813.12(8)(a), 813.122(11), 813.123(10), 813.125(7)].

In response to the drafter's note to LRB-1626/P1, proceed as follows:

1. Include juvenile delinquency adjudications for serious misdemeanors. ✓
2. Allow petitioning for the right to possess a firearm; do not limit it to "long guns" as originally requested. ✓
3. Provide that the act applies to convictions on or after the effective date. ✓

Please let me know if you have questions or need further information. Thank you.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1626/P1

JEO;jlg:km

Soon!

redraft
maker
run

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

raen

1 AN ACT *to renumber* 941.29 (1); *to renumber and amend* 941.29 (2m); *to*
 2 *amend* 941.29 (2) (intro.), 941.29 (2) (a), 941.29 (2) (b), 941.29 (2) (c), 941.29 (2)
 3 (d), 941.29 (2) (e), 941.29 (5) (intro.), 941.29 (5) (a), 941.29 (8), 941.29 (9), 941.29
 4 (10) (intro.), 971.17 (1g) and 973.033; and *to create* 941.29 (1d), 941.29 (1m) (h),
 5 (i), (j) and (k), 941.29 (2g), 941.29 (2m) (b) and 941.29 (11) of the statutes;
 6 **relating to:** possession of a firearm by persons convicted of certain
 7 misdemeanors and providing a penalty✓

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a subsequent version of the draft.~~

✓
ANALYSIS
INSERT

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

INS
1-8

8 SECTION 1. 941.29 (1) of the statutes is renumbered 941.29 (1m).

9 SECTION 2. 941.29 (1d) of the statutes is created to read:

1 941.29 (1d) In this section:

2 (a) "Handgun" has the meaning given in s. 175.35 (1) (b).

3 ~~(b)~~ "Serious misdemeanor" means an attempt to commit a violation of s. 940.20

4 (2) or (2m) or a violation, or the solicitation, conspiracy or attempt to commit a

5 violation, of s. 813.12 (8) (a), 813.122 (11), 813.123 (10), 813.125 (7), 940.19 (1), 940.195 (1), 940.285 (2) (b) 4., 940.295 (3) (b) 4., 940.32 (2),

6 940.42, 940.44, 941.20 (1), 941.23, 941.235 (1), 941.237 (2), 941.26 (4) (b), 941.38 (3),

7 946.41 (1), 947.013 (1r), 948.55 (2) or (3), 948.60 (2) (a), 948.605 (2) (a) or 948.61 (2)

8 (a).

and (L)

9 SECTION 3. 941.29 (1m) (h), (i), (j) ~~and~~ (k) of the statutes are created to read:

10 ~~941.29 (1m) (h) Convicted of a serious misdemeanor in this state.~~

11 ~~(i) Convicted of a crime elsewhere that would be a serious misdemeanor if~~
12 ~~committed in this state.~~

13 ~~(j) Found not guilty of a serious misdemeanor in this state by reason of mental~~
14 ~~disease or defect.~~

15 ~~(k) Found not guilty of or not responsible for a crime elsewhere that would be~~
16 ~~a serious misdemeanor in this state by reason of insanity or mental disease, defect~~
17 ~~or illness.~~

18 SECTION 4. 941.29 (2) (intro.) of the statutes is amended to read:

19 941.29 (2) (intro.) A person specified in sub. (1) (1m) is guilty of a Class E felony
20 if he or she possesses a firearm under any of the following circumstances:

21 SECTION 5. 941.29 (2) (a) of the statutes is amended to read:

22 941.29 (2) (a) The person possesses a firearm subsequent to the conviction for
23 the felony or other crime, as specified in sub. (1) (1m) (a) or (b).

24 SECTION 6. 941.29 (2) (b) of the statutes is amended to read:

INS
2-10

1 941.29 (2) (b) The person possesses a firearm subsequent to the adjudication,
2 as specified in sub. (1) (1m) (bm).

3 SECTION 7. 941.29 (2) (c) of the statutes is amended to read:

4 941.29 (2) (c) The person possesses a firearm subsequent to the finding of not
5 guilty or not responsible by reason of insanity or mental disease, defect or illness, as
6 specified in sub. (1) (1m) (c) or (d).

7 SECTION 8. 941.29 (2) (d) of the statutes is amended to read:

8 941.29 (2) (d) The person possesses a firearm while subject to the court order,
9 as specified in sub. (1) (1m) (e) or (g).

10 SECTION 9. 941.29 (2) (e) of the statutes is amended to read:

11 941.29 (2) (e) The person possesses a firearm while the injunction, as specified
12 in sub. (1) (1m) (f), is in effect.

13 SECTION 10. 941.29 (2g) of the statutes is created to read:

14 941.29 (2g) A person specified in sub. (1m) is guilty of a Class B misdemeanor
15 if he or she possesses a firearm under any of the following circumstances:

✓ 16 (a) Subsequent to the conviction for the serious misdemeanor or other crime,
17 as specified in sub. (1m) (h) or (i).

INS
3-17

18 (b) Subsequent to the finding of not guilty or not responsible by reason of
19 insanity or mental disease, defect or illness, as specified in sub. (1m) (k) or (L)

20 SECTION 11. 941.29 (2m) of the statutes is renumbered 941.29 (2m) (a) and
21 amended to read:

22 941.29 (2m) (a) Whoever violates ~~this section~~ sub. (2) after being convicted
23 ~~under this section~~ of a violation of sub. (2) is guilty of a Class D felony.

24 SECTION 12. 941.29 (2m) (b) of the statutes is created to read:

1 941.29 (2m) (b) Whoever violates sub. (2g) after being convicted of a violation
2 of sub. (2g) is guilty of a Class A misdemeanor.

3 **SECTION 13.** 941.29 (5) (intro.) of the statutes is amended to read:

4 941.29 (5) (intro.) This section does not apply to any person specified in sub.
5 ~~(1)~~ (1m) who:

6 **SECTION 14.** 941.29 (5) (a) of the statutes is amended to read:

7 941.29 (5) (a) Has received a pardon with respect to the crime or felony specified
8 in sub. ~~(1) and has been (1m), unless the pardon expressly authorized to provides that~~
9 ~~the person may not possess a firearm under 18 USC app. 1203; or~~

10 **SECTION 15.** 941.29 (8) of the statutes is amended to read:

11 ~~or (j)~~ 941.29 (8) This section does not apply to any person specified in sub. ~~(1)~~ (1m)
12 (bm) if a court subsequently determines that the person is not likely to act in a
13 manner dangerous to public safety. In any action or proceeding regarding this
14 determination, the person has the burden of proving by a preponderance of the
15 evidence that he or she is not likely to act in a manner dangerous to public safety.

16 **SECTION 16.** 941.29 (9) of the statutes is amended to read:

17 941.29 (9) This section does not apply to a person specified in sub. ~~(1)~~ (1m) (e)
18 if the prohibition under s. 51.20 (13) (cv) 1. has been canceled under s. 51.20 (13) (cv)
19 2. or (16) (gm).

20 **SECTION 17.** 941.29 (10) (intro.) of the statutes is amended to read:

21 941.29 (10) (intro.) The prohibition against firearm possession under this
22 section does not apply to a person specified in sub. ~~(1)~~ (1m) (f) if the person satisfies
23 any of the following:

24 **SECTION 18.** 941.29 (11) of the statutes is created to read:

① 941.29 (11) (a) This section does not apply to possession of a firearm ~~other than~~
 ② ~~a handgun~~ by a person specified in sub. (1m) (h) or (i) if a court grants permission to
 ③ the person under par. (c) to possess a firearm ~~other than a handgun~~. ← ^{period} stays

4 (b) A person specified in sub. (1m) (h) or (i) may file a petition requesting
 ⑤ permission to possess a firearm ~~other than a handgun~~ ^{period} stays. A petition under this
 6 paragraph shall be filed in the court in which the person was convicted or, if the
 7 person was convicted outside this state, in the circuit court for the county in which
 8 the person resides. The petition may not be filed earlier than 5 years after the date
 9 on which the person was convicted of a serious misdemeanor or of a crime that would
 10 be a serious misdemeanor if committed in this state. A person may not file a petition
 11 under this paragraph if he or she has been convicted of or charged with a crime that
 12 was committed after the conviction for the serious misdemeanor or crime that would
 13 be a serious misdemeanor if committed in this state.

14 (c) A court may grant a petition filed under par. (b) if it determines that the
 15 person is not likely to act in a manner dangerous to public safety. In any action or
 16 proceeding regarding this determination, the person has the burden of proving by a
 17 preponderance of the evidence that he or she is not likely to act in a manner
 18 dangerous to public safety.

19 **SECTION 19.** 971.17 (1g) of the statutes is amended to read:

20 971.17 (1g) If the defendant under sub. (1) is found not guilty of a felony by
 21 reason of mental disease or defect or not guilty of a serious misdemeanor, as defined
 ② in s. 941.29 (1d) (b), by reason of mental disease or defect, the court shall inform the
 23 defendant of the requirements and penalties under s. 941.29.

24 **SECTION 20.** 973.033 of the statutes is amended to read:

1

ANALYSIS INSERT:

This bill provides that persons who have committed certain misdemeanor offenses may not possess a firearm. Specifically, current law and the changes made by this bill are as follows:

Current law

Under current law, a person may not possess a firearm if he or she is a felony offender. A felony offender is a person to whom 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. In addition, under current law a person is prohibited from possessing a firearm if he or she has been involuntarily committed for treatment in a civil commitment proceeding and ordered not to possess a firearm, if he or she is subject to a domestic abuse or child abuse injunction, or if he or she is subject to a harassment injunction that includes an order not to possess a firearm.

If a felony offender or other person who is prohibited from possessing a firearm does possess a firearm, he or she is subject to the following penalties:

1. For a first offense, the person may be fined not more than \$10,000 or imprisoned for not more than two years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than five years or both, if the offense occurs on or after December 31, 1999.

2. For a second or subsequent offense, the person may be fined not more than \$10,000 or imprisoned for not more than five years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than ten years or both, if the offense occurs on or after December 31, 1999.

Current law also provides that a felony offender or other person who is prohibited from possessing a firearm 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 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.

What this bill does

This bill prohibits certain serious misdemeanor offenders from possessing a firearm. A person is a serious misdemeanor offender if any of the following applies: 1) he or she has been found guilty of a serious misdemeanor; 2) he or she has been adjudicated delinquent as a juvenile for an act that would have been a serious

① ②
Changes made by

misdemeanor if it had been committed by an adult; or 3) he or she has been found not guilty of a serious misdemeanor by reason of mental disease, defect or illness. A serious misdemeanor offender who possesses a firearm in violation of the prohibition created in the bill may be fined not more than \$1,000 or imprisoned for not more than 90 days or both for a first offense. For a second or subsequent offense, the person may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

The bill also provides that a person found guilty of a serious misdemeanor may file a petition requesting permission to possess a firearm. The petition must be filed in the court in which the person was found guilty or, if the person was found guilty outside of this state, in the circuit court for the county in which the person resides. The petition may not be filed earlier than five years after the date on which the person was found guilty of the serious misdemeanor. In addition, a person may not file a petition if, after being found guilty of a serious misdemeanor, he or she commits another serious misdemeanor. A court may grant a petition if it determines that the person is not likely to act in a manner dangerous to public safety, and the person filing the petition has the burden of proving by a preponderance of the evidence that he or she is not likely to act in a manner dangerous to public safety.

In addition, the bill provides that a person who has been adjudicated delinquent for a serious misdemeanor or found not guilty of a serious misdemeanor by reason of mental disease or defect may have the right to possess a firearm restored in the same way that a person adjudicated delinquent or found not guilty of a felony by reason of mental disease or defect may have the right restored under current law.

The serious misdemeanors covered by the provisions of the bill include all of the following: attempting to commit battery to a law enforcement officer, fire fighter, probation, parole or extended supervision agent or juvenile aftercare agent; simple battery; simple battery to an unborn child; causing bodily harm by recklessly or negligently subjecting a vulnerable adult to maltreatment or by recklessly or negligently abusing or neglecting a patient or resident of certain facilities; stalking; intimidation of a victim or a witness; endangering safety by negligent or intoxicated handling of a firearm; carrying a concealed weapon; carrying a firearm in a public building; carrying a handgun in a tavern; unlawful use of oleoresin of capsicum (pepper spray); contacting a criminal gang member in violation of a court's no-contact order; resisting or obstructing an officer; harassment; recklessly leaving a loaded firearm within reach or easy access of a child; possession of a dangerous weapon by a minor; possession of firearm in a school zone; possession of a dangerous weapon on school premises; and violating a domestic abuse restraining order, a child abuse restraining order, a vulnerable adult restraining order or a harassment restraining order.

INSERT 1-8:

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2
3
4

SECTION 1. 938.341 of the statutes is amended to read:

938.341 Delinquency adjudication; restriction on firearm possession.

Whenever a court adjudicates a juvenile delinquent for an act that if committed by

1 an adult in this state would be a felony or a serious misdemeanor, as defined in s.
2 941.29 (1d), the court shall inform the juvenile of the requirements and penalties
3 under s. 941.29.

4 History: 1995 a. 11.
INSERT 2-10:

5 941.29 (1m) (h) Convicted in this state on or after the effective date of this
6 paragraph [revisor inserts date] of a serious misdemeanor.

7 (i) Convicted elsewhere on or after the effective date of this paragraph
8 [revisor inserts date] of a crime that would be a serious misdemeanor if committed
9 in this state.

10 (j) Adjudicated delinquent on or after the effective date of this paragraph
11 [revisor inserts date], for an act that if committed by an adult in this state would be
12 a serious misdemeanor.

13 (k) Found not guilty by reason of mental disease or defect in this state on or
14 after the effective date of this paragraph [revisor inserts date] of a serious
15 misdemeanor.

16 (L) Found not guilty of or not responsible elsewhere on or after the effective
17 date of this paragraph [revisor inserts date] for a crime that would be a serious
18 misdemeanor in this state by reason of insanity or mental disease, defect or illness.

19 **INSERT 3-17:**

20 (b) Subsequent to the adjudication, as specified in sub. (1m) (j).

21 **INSERT 6-13:**

22 ^{init.}_{app} INFORMATION PROVIDED UPON ADJUDICATION OF DELINQUENCY. The treatment
23 of section 938.341 of the statutes first applies to adjudications of delinquency that
24 occur on the effective date of this subsection.

1626 A

Per Bill Graf

65340

1. Delete injunction offenses (ch. 813)

2. Delete petition process



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1626/1

JEO:jlq:jf

Soon

1999 BILL

2

redraft
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regenerate

1 AN ACT *to renumber* 941.29 (1); *to renumber and amend* 941.29 (2m); *to*
2 *amend* 938.341, 941.29 (2) (intro.), 941.29 (2) (a), 941.29 (2) (b), 941.29 (2) (c),
3 941.29 (2) (d), 941.29 (2) (e), 941.29 (5) (intro.), 941.29 (5) (a), 941.29 (8), 941.29
4 (9), 941.29 (10) (intro.), 971.17 (1g) and 973.033; and *to create* 941.29 (1d),
5 941.29 (1m) (h), (i), (j), (k) and (L), 941.29 (2g), 941.29 (2m) (b) and 941.29 (11)
6 of the statutes; **relating to:** possession of a firearm by persons convicted of
7 certain misdemeanors and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill provides that persons who have committed certain misdemeanor offenses may not possess a firearm. Specifically, current law and the changes made by this bill are as follows:

Current law

Under current law, a person may not possess a firearm if he or she is a felony offender. A felony offender is a person to whom 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. In addition, under current law a person is prohibited from possessing a firearm if he or she has been involuntarily committed for treatment in



BILL

a civil commitment proceeding and ordered not to possess a firearm, if he or she is subject to a domestic abuse or child abuse injunction, or if he or she is subject to a harassment injunction that includes an order not to possess a firearm.

If a felony offender or other person who is prohibited from possessing a firearm does possess a firearm, he or she is subject to the following penalties:

1. For a first offense, the person may be fined not more than \$10,000 or imprisoned for not more than two years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than five years or both, if the offense occurs on or after December 31, 1999.

2. For a second or subsequent offense, the person may be fined not more than \$10,000 or imprisoned for not more than five years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than ten years or both, if the offense occurs on or after December 31, 1999.

Current law also provides that a felony offender or other person who is prohibited from possessing a firearm 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 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.

Changes made by this bill

This bill prohibits certain serious misdemeanor offenders from possessing a firearm. A person is a serious misdemeanor offender if any of the following applies: 1) he or she has been found guilty of a serious misdemeanor; 2) he or she has been adjudicated delinquent as a juvenile for an act that would have been a serious misdemeanor if it had been committed by an adult; or 3) he or she has been found not guilty of a serious misdemeanor by reason of mental disease, defect or illness. A serious misdemeanor offender who possesses a firearm in violation of the prohibition created in the bill may be fined not more than \$1,000 or imprisoned for not more than 90 days or both for a first offense. For a second or subsequent offense, the person may be fined not more than \$10,000 or imprisoned for not more than nine months or both.

~~The bill also provides that a person found guilty of a serious misdemeanor may file a petition requesting permission to possess a firearm. The petition must be filed in the court in which the person was found guilty or, if the person was found guilty outside of this state, in the circuit court for the county in which the person resides. The petition may not be filed earlier than five years after the date on which the person was found guilty of the serious misdemeanor. In addition, a person may not file a petition if, after being found guilty of a serious misdemeanor, he or she commits another serious misdemeanor. A court may grant a petition if it determines that the person is not likely to act in a manner dangerous to public safety, and the person~~

BILL

The bill also provides that if a person found guilty of a serious misdemeanor is pardoned he or she may again possess a firearm unless the pardon provides that the person may not possess a firearm.

filing the petition has the burden of proving by a preponderance of the evidence that he or she is not likely to act in a manner dangerous to public safety.

In addition, the bill provides that a person who has been adjudicated delinquent for a serious misdemeanor or found not guilty of a serious misdemeanor by reason of mental disease or defect may have the right to possess a firearm restored in the same way that a person adjudicated delinquent or found not guilty of a felony by reason of mental disease or defect may have the right restored under current law.

The serious misdemeanors covered by the provisions of the bill include all of the following: attempting to commit battery to a law enforcement officer, fire fighter, probation, parole or extended supervision agent or juvenile aftercare agent; simple battery; simple battery to an unborn child; causing bodily harm by recklessly or negligently subjecting a vulnerable adult to maltreatment or by recklessly or negligently abusing or neglecting a patient or resident of certain facilities; stalking; intimidation of a victim or a witness; endangering safety by negligent or intoxicated handling of a firearm; carrying a concealed weapon; carrying a firearm in a public building; carrying a handgun in a tavern; unlawful use of oleoresin of capsicum (pepper spray); contacting a criminal gang member in violation of a court's no-contact order; resisting or obstructing an officer; harassment; recklessly leaving a loaded firearm within reach or easy access of a child; possession of a dangerous weapon by a minor; possession of firearm in a school zone; possession of a dangerous weapon on school premises ~~and violating a domestic abuse restraining order, a child abuse restraining order, a vulnerable adult restraining order or a harassment restraining order.~~ a period stays

✓ and

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

1 SECTION 1. 938.341 of the statutes is amended to read:

2 **938.341 Delinquency adjudication; restriction on firearm possession.**

3 Whenever a court adjudicates a juvenile delinquent for an act that if committed by
4 an adult in this state would be a felony or a serious misdemeanor, as defined in s.
5 941.29 (1d), the court shall inform the juvenile of the requirements and penalties
6 under s. 941.29.

7 SECTION 2. 941.29 (1) of the statutes is renumbered 941.29 (1m).

8 SECTION 3. 941.29 (1d) of the statutes is created to read:

9 **941.29 (1d)** In this section, "serious misdemeanor" means an attempt to commit
10 a violation of s. 940.20 (2) or (2m) or a violation, or the solicitation, conspiracy or

BILL

SECTION 3

1

attempt to commit a violation, of s. ~~813.12(8)(a), 813.12(1), 813.13(10), 813.124~~

2

~~(1)~~ 940.19 (1), 940.195 (1), 940.285 (2) (b) 4., 940.295 (3) (b) 4., 940.32 (2), 940.42,

3

940.44, 941.20 (1), 941.23, 941.235 (1), 941.237 (2), 941.26 (4) (b), 941.38 (3), 946.41

4

(1), 947.013 (1r), 948.55 (2) or (3), 948.60 (2) (a), 948.605 (2) (a) or 948.61 (2) (a).

5

SECTION 4. 941.29 (1m) (h), (i), (j), (k) and (L) of the statutes are created to read:

6

941.29 **(1m)** (h) Convicted in this state on or after the effective date of this paragraph ... [revisor inserts date], of a serious misdemeanor.

8

(i) Convicted elsewhere on or after the effective date of this paragraph

9

[revisor inserts date], of a crime that would be a serious misdemeanor if committed in this state.

11

(j) Adjudicated delinquent on or after the effective date of this paragraph

12

[revisor inserts date], for an act that if committed by an adult in this state would be a serious misdemeanor.

14

(k) Found not guilty by reason of mental disease or defect in this state on or

15

after the effective date of this paragraph ... [revisor inserts date], of a serious misdemeanor.

17

(L) Found not guilty of or not responsible elsewhere on or after the effective

18

date of this paragraph ... [revisor inserts date], for a crime that would be a serious misdemeanor in this state by reason of insanity or mental disease, defect or illness.

20

SECTION 5. 941.29 (2) (intro.) of the statutes is amended to read:

21

941.29 **(2)** (intro.) A person specified in sub. ~~(1)~~ **(1m)** is guilty of a Class E felony

22

if he or she possesses a firearm under any of the following circumstances:

23

SECTION 6. 941.29 (2) (a) of the statutes is amended to read:

24

941.29 **(2)** (a) The person possesses a firearm subsequent to the conviction for

25

the felony or other crime, as specified in sub. ~~(1)~~ **(1m)** (a) or (b).

BILL

1 **SECTION 7.** 941.29 (2) (b) of the statutes is amended to read:

2 941.29 (2) (b) The person possesses a firearm subsequent to the adjudication,
3 as specified in sub. ~~(1)~~ (1m) (bm).

4 **SECTION 8.** 941.29 (2) (c) of the statutes is amended to read:

5 941.29 (2) (c) The person possesses a firearm subsequent to the finding of not
6 guilty or not responsible by reason of insanity or mental disease, defect or illness, as
7 specified in sub. ~~(1)~~ (1m) (c) or (d).

8 **SECTION 9.** 941.29 (2) (d) of the statutes is amended to read:

9 941.29 (2) (d) The person possesses a firearm while subject to the court order,
10 as specified in sub. ~~(1)~~ (1m) (e) or (g).

11 **SECTION 10.** 941.29 (2) (e) of the statutes is amended to read:

12 941.29 (2) (e) The person possesses a firearm while the injunction, as specified
13 in sub. ~~(1)~~ (1m) (f), is in effect.

14 **SECTION 11.** 941.29 (2g) of the statutes is created to read:

15 941.29 (2g) A person specified in sub. (1m) is guilty of a Class B misdemeanor
16 if he or she possesses a firearm under any of the following circumstances:

17 (a) Subsequent to the conviction for the serious misdemeanor or other crime,
18 as specified in sub. (1m) (h) or (i).

19 (b) Subsequent to the adjudication, as specified in sub. (1m) (j).

20 (c) Subsequent to the finding of not guilty or not responsible by reason of
21 insanity or mental disease, defect or illness, as specified in sub. (1m) (k) or (L).

22 **SECTION 12.** 941.29 (2m) of the statutes is renumbered 941.29 (2m) (a) and
23 amended to read:

24 941.29 (2m) (a) Whoever violates ~~this section~~ sub. (2) after being convicted
25 ~~under this section~~ of a violation of sub. (2) is guilty of a Class D felony.

BILL

1 **SECTION 13.** 941.29 (2m) (b) of the statutes is created to read:

2 941.29 (2m) (b) Whoever violates sub. (2g) after being convicted of a violation
3 of sub. (2g) is guilty of a Class A misdemeanor.

4 **SECTION 14.** 941.29 (5) (intro.) of the statutes is amended to read:

5 941.29 (5) (intro.) This section does not apply to any person specified in sub.
6 ~~(1)~~ (1m) who:

7 **SECTION 15.** 941.29 (5) (a) of the statutes is amended to read:

8 941.29 (5) (a) Has received a pardon with respect to the crime or felony specified
9 in sub. ~~(1)~~ and has been (1m), unless the pardon expressly authorized to provides that
10 the person may not possess a firearm under 18 USC app. 1203; or

11 **SECTION 16.** 941.29 (8) of the statutes is amended to read:

12 941.29 (8) This section does not apply to any person specified in sub. ~~(1)~~ (1m)
13 (bm) or (j) if a court subsequently determines that the person is not likely to act in
14 a manner dangerous to public safety. In any action or proceeding regarding this
15 determination, the person has the burden of proving by a preponderance of the
16 evidence that he or she is not likely to act in a manner dangerous to public safety.

17 **SECTION 17.** 941.29 (9) of the statutes is amended to read:

18 941.29 (9) This section does not apply to a person specified in sub. ~~(1)~~ (1m) (e)
19 if the prohibition under s. 51.20 (13) (cv) 1. has been canceled under s. 51.20 (13) (cv)
20 2. or (16) (gm).

21 **SECTION 18.** 941.29 (10) (intro.) of the statutes is amended to read:

22 941.29 (10) (intro.) The prohibition against firearm possession under this
23 section does not apply to a person specified in sub. ~~(1)~~ (1m) (f) if the person satisfies
24 any of the following:

25 ~~**SECTION 19.** 941.29 (11) of the statutes is created to read:~~

BILL

1 941.29 (11) (a) This section does not apply to possession of a firearm by a person
2 specified in sub. (1m) (h) or (i) if a court grants permission to the person under par.
3 (c) to possess a firearm.

4 (b) A person specified in sub. (1m) (h) or (i) may file a petition requesting
5 permission to possess a firearm. A petition under this paragraph shall be filed in the
6 court in which the person was convicted or, if the person was convicted outside this
7 state, in the circuit court for the county in which the person resides. The petition may
8 not be filed earlier than 5 years after the date on which the person was convicted of
9 a serious misdemeanor or of a crime that would be a serious misdemeanor if
10 committed in this state. A person may not file a petition under this paragraph if he
11 or she has been convicted of or charged with a crime that was committed after the
12 conviction for the serious misdemeanor or crime that would be a serious
13 misdemeanor if committed in this state.

14 (c) A court may grant a petition filed under par. (b) if it determines that the
15 person is not likely to act in a manner dangerous to public safety. In any action or
16 proceeding regarding this determination, the person has the burden of proving by a
17 preponderance of the evidence that he or she is not likely to act in a manner
18 dangerous to public safety.

19 **SECTION 20.** 971.17 (1g) of the statutes is amended to read:

20 971.17 (1g) If the defendant under sub. (1) is found not guilty of a felony by
21 reason of mental disease or defect or not guilty of a serious misdemeanor, as defined
22 in s. 941.29 (1d), by reason of mental disease or defect, the court shall inform the
23 defendant of the requirements and penalties under s. 941.29.

24 **SECTION 21.** 973.033 of the statutes is amended to read:

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 6/7/99

To: Representative Travis

Relating to LRB drafting number: LRB-1626

Topic

Possession of firearms by persons convicted of certain misdemeanors

Subject(s)

Criminal Law - guns and weapons

1. **JACKET** the draft for introduction _____

Travis

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Legislative Attorney
Telephone: (608) 266-8906