

1999 SENATE BILL 236

September 16, 1999 - Introduced by Senator BURKE, cosponsored by Representatives TRAVIS, RICHARDS, CULLEN, WASSERMAN, RILEY and BERCEAU, by request of Attorney General James Doyle. Referred to Committee on Judiciary and Consumer Affairs.

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) and 941.29 (2m) (b) of the
6 statutes; **relating to:** possession of a firearm by persons convicted of certain
7 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

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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 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. 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.

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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; and possession of a dangerous weapon on school premises.

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
11 attempt to commit a violation, of s. 940.19 (1), 940.195 (1), 940.285 (2) (b) 4., 940.295
12 (3) (b) 4., 940.32 (2), 940.42, 940.44, 941.20 (1), 941.23, 941.235 (1), 941.237 (2),
13 941.26 (4) (b), 941.38 (3), 946.41 (1), 947.013 (1r), 948.55 (2) or (3), 948.60 (2) (a),
14 948.605 (2) (a) or 948.61 (2) (a).

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

2 941.29 **(1m)** (h) Convicted in this state on or after the effective date of this
3 paragraph [revisor inserts date], of a serious misdemeanor.

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

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

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

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

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

17 941.29 **(2)** (intro.) A person specified in sub. ~~(1)~~ (1m) is guilty of a Class E felony
18 if he or she possesses a firearm under any of the following circumstances:

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

20 941.29 **(2)** (a) The person possesses a firearm subsequent to the conviction for
21 the felony or other crime, as specified in sub. ~~(1)~~ (1m) (a) or (b).

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

23 941.29 **(2)** (b) The person possesses a firearm subsequent to the adjudication,
24 as specified in sub. ~~(1)~~ (1m) (bm).

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

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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).

4 **SECTION 9.** 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).

7 **SECTION 10.** 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.

10 **SECTION 11.** 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 adjudication, as specified in sub. (1m) (j).

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

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

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

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

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

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

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1 941.29 (5) (intro.) This section does not apply to any person specified in sub.
2 ~~(1)~~ (1m) who:

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

4 941.29 (5) (a) Has received a pardon with respect to the crime or felony specified
5 in sub. ~~(1)~~ and has been (1m), unless the pardon expressly authorized to provides that
6 the person may not possess a firearm under ~~18 USC app. 1203~~; or

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

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

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

14 941.29 (9) This section does not apply to a person specified in sub. ~~(1)~~ (1m) (e)
15 if the prohibition under s. 51.20 (13) (cv) 1. has been canceled under s. 51.20 (13) (cv)
16 2. or (16) (gm).

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

18 941.29 (10) (intro.) The prohibition against firearm possession under this
19 section does not apply to a person specified in sub. ~~(1)~~ (1m) (f) if the person satisfies
20 any of the following:

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

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

