

2001 ASSEMBLY BILL 157

March 1, 2001 – Introduced by Representatives LA FAVE, KAUFERT, SUDER, BIES, VRAKAS, HUEBSCH, STONE, GRONEMUS, ZIEGELBAUER, OLSEN, RILEY, M. LEHMAN, RYBA, LADWIG, MUSSER, J. LEHMAN, ALBERS, SERATTI, GUNDERSON, LASSA, PLOUFF, TOWNSEND, PETROWSKI, WADE and PETTIS, cosponsored by Senators BURKE, SCHULTZ, ROESSLER and DARLING. Referred to Committee on Criminal Justice.

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

Analysis by the Legislative Reference Bureau

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

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

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

This bill prohibits certain felony offenders from possessing body armor, which is defined as any garment that is designed, redesigned, or adapted to prevent bullets from penetrating through the garment. The felony offenders to whom this prohibition applies are those whose status as felony offenders is based on the commission of an act that is classified under the bill as a violent felony and who have not been pardoned for that offense (violent felons). A violent felon who violates the prohibition against possessing body armor may be fined not more than \$10,000 or imprisoned for not more than five years or both for a first offense and may be fined not more than \$10,000 or imprisoned for not more than ten years or both for a second or subsequent offense.

This bill contains several exemptions from that prohibition. First, the prohibition does not apply if the violent felon is in the actual custody of a law enforcement or correctional officer and is wearing the body armor at the request or direction of the officer.

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

Third, the bill allows a violent felon furnishing information to a law enforcement agency about a possible violation of law or assisting such an agency in an investigation of a possible violation of law to obtain a complete or partial exemption from the prohibition if the agency determines that the person is at risk of death or great bodily harm as a result of the information or assistance he or she has provided or is providing. To obtain the exemption, the person must apply to the agency to which he or she has furnished or is furnishing information or to which he or she has provided assistance or is assisting. If the agency grants the request, it may specify the circumstances under which and the places at which the person may possess body armor.

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

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

1 **SECTION 1.** 938.3415 of the statutes is created to read:

2 **938.3415 Delinquency adjudication; restriction on body armor**
3 **possession.** Whenever a court adjudicates a juvenile delinquent for an act that if
4 committed by an adult in this state would be a violent felony, as defined in s. 941.291
5 (1) (b), the court shall inform the juvenile of the requirements and penalties under
6 s. 941.291.

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

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

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

19 **941.291 Possession of body armor. (1) DEFINITIONS.** In this section:

20 (a) “Body armor” means any garment that is designed, redesigned, or adapted
21 to prevent bullets from penetrating through the garment.

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1 (b) “Violent felony” means any felony, or the solicitation, conspiracy, or attempt
2 to commit any felony, under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09,
3 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285
4 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3),
5 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013,
6 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), (1m), or (1r), 943.32, 946.43, 947.015,
7 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or 948.30.

8 **(2) PROHIBITION.** Except as provided in subs. (4), (5), and (6), no person may
9 possess body armor if any of the following applies to the person:

10 (a) The person has been convicted of a violent felony in this state and has not
11 been pardoned for it.

12 (b) The person has been convicted of a crime elsewhere that would be a violent
13 felony if committed in this state and has not been pardoned for it.

14 (c) The person has been adjudicated delinquent for an act that if committed by
15 an adult in this state would be a violent felony.

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

18 (e) The person has been found not guilty of or not responsible for a crime
19 elsewhere by reason of insanity or mental disease, defect, or illness if the crime would
20 be a violent felony in this state.

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

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

24 **(4) REQUEST BY CERTAIN PERSONS FOR COMPLETE OR PARTIAL EXEMPTION FROM**
25 **PROHIBITION.** (a) A person who is otherwise prohibited from possessing body armor

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1 under sub. (2) may request a complete or partial exemption from the prohibition if
2 all of the following apply:

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

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

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

17 (c) A court deciding whether to grant a request for an exemption made under
18 par. (b) may deny the request for an exemption, grant a complete exemption from the
19 prohibition, or grant a partial exemption by allowing possession of body armor only
20 under certain specified circumstances or in certain locations or both. In deciding
21 whether a person satisfies the criteria specified in par. (a) 1. and 2. and, if so, whether
22 to grant an exemption, the court shall consider the person's character, including the
23 person's criminal record, the totality of the person's circumstances, and any relevant
24 evidence of the person's character and circumstances, including any relevant

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1 evidence submitted by the district attorney who received the copy of the motion
2 under par. (b).

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

13 **(5) EXEMPTION FOR CERTAIN WITNESSES AND INFORMERS.** (a) A person who is
14 otherwise prohibited from possessing body armor under sub. (2) may possess body
15 armor if all of the following apply:

16 1. The person is furnishing or has furnished information to a law enforcement
17 agency relating to a possible violation of law or is assisting or has assisted a law
18 enforcement agency in an investigation of a possible violation of law.

19 2. The law enforcement agency to which the person is furnishing or has
20 furnished information or to which the person is providing or has provided assistance
21 determines that there is reason to believe that the person may be in danger of
22 suffering death or great bodily harm because he or she is furnishing or has furnished
23 information or because he or she is assisting or has assisted or is assisting in an
24 investigation.

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1 3. The law enforcement agency to which the person is furnishing or has
2 furnished information or to which the person is providing or has provided assistance
3 approves of the person's request to possess body armor under par. (b).

4 (b) A person seeking an exemption under this subsection from the prohibition
5 under sub. (2) shall request the exemption from the law enforcement agency to which
6 the person is furnishing or has furnished information or to which the person is
7 providing or has provided assistance. The law enforcement agency may deny the
8 request for an exemption, grant a complete exemption from the prohibition, or grant
9 a partial exemption by allowing possession of body armor only under certain
10 specified circumstances or in certain locations or both. If the law enforcement agency
11 grants a request for an exemption under this subsection, it shall keep a written
12 record of the exemption. If the exemption is a partial exemption, the record shall
13 specify the circumstances under which the person may possess body armor, the
14 locations in which the person may possess body armor, or, if applicable, both. A
15 written record relating to an exemption granted by a law enforcement agency under
16 this subsection is not subject to inspection or copying under s. 19.35 (1), except that
17 a written record shall, upon request, be disclosed to another law enforcement agency
18 or a district attorney, if the other law enforcement agency or the district attorney is
19 investigating or prosecuting an alleged violation of sub. (2) or to the person to whom
20 the exemption was granted.

21 **(6) EXEMPTION FROM PROHIBITION FOR CERTAIN PRISONERS.** A person who is
22 prohibited from possessing body armor under sub. (2) may wear body armor if he or
23 she is in the actual custody of a law enforcement officer, as defined in s. 165.85 (2)
24 (c), or a correctional officer, as defined in s. 102.475 (8) (a), and is wearing the body
25 armor at the request or direction of the law enforcement officer or correctional officer.

ASSEMBLY BILL 157**SECTION 4**

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

2 **971.17 (1h)** NOTICE OF RESTRICTIONS ON POSSESSION OF BODY ARMOR. If the
3 defendant under sub. (1) is found not guilty of a violent felony, as defined in s. 941.291
4 (1) (b), by reason of mental disease or defect, the court shall inform the defendant of
5 the requirements and penalties under s. 941.291.

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

7 **973.0335 Sentencing; restriction on possession of body armor.**

8 Whenever a court imposes a sentence or places a defendant on probation for a
9 conviction for a violent felony, as defined in s. 941.291 (1) (b), the court shall inform
10 the defendant of the requirements and penalties under s. 941.291.

11 **SECTION 6. Initial applicability.**

12 (1) POSSESSION OF BODY ARMOR. (a) In this subsection, “violent felony” has the
13 meaning given in section 941.291 (1) (b) of the statutes.

14 (b) The treatment of section 941.291 of the statutes first applies to the
15 possession of body armor that occurs on the effective date of this subsection, but does
16 not preclude the counting of an act that was committed before the effective date of
17 this subsection for purposes of determining whether any of the following makes a
18 person subject to section 941.291 of the statutes:

19 1. The person has been convicted of a violent felony in this state.

20 2. The person has been convicted of a crime elsewhere that would be a violent
21 felony if committed in this state.

22 3. The person has been adjudicated delinquent for an act that if committed by
23 an adult in this state would be a violent felony.

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

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

4 (2) INFORMATION AT DISPOSITIONAL HEARINGS. The treatment of section 938.3415
5 of the statutes first applies to dispositional hearings that occur on the effective date
6 of this subsection.

7 (3) INFORMATION AT COMMITMENT HEARINGS. The treatment of section 971.17 (1h)
8 of the statutes first applies to commitment hearings that occur on the effective date
9 of this subsection.

10 (4) INFORMATION AT SENTENCING. The treatment of section 973.0335 of the
11 statutes first applies to sentencing proceedings that occur on the effective date of this
12 subsection.

13

(END)