

2001 DRAFTING REQUEST

Bill

Received: 10/10/2000

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: John La Fave (608) 266-0486

By/Representing: John Kelly

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Alt. Drafters:

Subject: Criminal Law - miscellaneous

Extra Copies: rlr

Pre Topic:

No specific pre topic given

Topic:

Possession of body armor

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>
/?	mdsida 01/29/2001	jdye 02/02/2001		_____			Local
/1			martykr 02/02/2001	_____	lrb_docadmin 02/02/2001	lrb_docadmin 02/07/2001	

FE Sent For:

<END>

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May Contact:

Alt. Drafters:

Subject: Criminal Law - miscellaneous

Extra Copies: rlr

GMM

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/?	mdsida	1 2/2 jld	km 2/2	JA 2/2 km 2/2			

FE Sent For:

<END>

LEGISLATIVE REFERENCE BUREAU

Legal Section, 5th Floor, 100 N. Hamilton St.
 (608) 266-3561

BILL REQUEST FORM

M6D
~~2~~
 2

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
 Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: <i>10-4-00</i>	Legislator or agency requesting this draft: <i>LA FAVE</i>
Name/phone number of person submitting request: <i>JUDY KELLY 6-0486</i>	
Persons to contact for questions about this draft (names and phone numbers please): <i>JOHN LA FAVE 6-0486</i>	
Describe the problem, including any helpful examples. How do you want to solve the problem? <i>Redraft 1999-2000 AB699 re-amended copy attached</i>	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO

If yes, anyone who asks? YES NO

Any legislator? YES NO ONLY the following persons:

Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?

YES NO If yes, please sign your name here:

1999 ASSEMBLY BILL 699

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

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

Analysis by the Legislative Reference Bureau

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

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

ASSEMBLY BILL 699

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

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

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

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

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

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

ASSEMBLY BILL 699

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

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

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

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

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

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

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

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

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

ASSEMBLY BILL 699

SECTION 3

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

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

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

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

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

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

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

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

ASSEMBLY BILL 699

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

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

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

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

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

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

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

ASSEMBLY BILL 699**SECTION 5**

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

3 **SECTION 6. Initial applicability.**

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

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

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


16 (END)

1999 - 2000 LEGISLATURE


ASSEMBLY AMENDMENT 3,
TO 1999 ASSEMBLY BILL 699 

February 29, 2000 - Offered by Representative La Fave.


Pg1Ln1 At the locations indicated, amend the bill as follows:

AA3-AB699, Item 1. 


Pg1Ln2 1. Page 3, Line 16: delete "sub. (4)," and substitute "subs. (3g) and (4),".

AA3-AB699, Item 2. 

Pg1Ln3 2. Page 4, Line 6: after that line insert:

AA3-AB699, Item 2. - continued 

Pg1Ln4 "(3g) **Exemption from prohibition for certain prisoners.** A person who is
Pg1Ln5 prohibited from possessing body armor under sub. (2) may wear body armor if he or
Pg1Ln6 she is in the actual custody of a law enforcement officer, as defined in s. 165.85 (2)
Pg1Ln7 (c), or a correctional officer, as defined in s. 102.475 (8) (a), and is wearing the body
Pg1Ln8 armor at the request or direction of the law enforcement officer or correctional
Pg1Ln9 officer."

AA3-AB699, Item 3. 

Pg1Ln10 3. Page 4, Line 7: delete "**Exemption.**" and substitute "**Request by certain**
Pg1Ln11 **persons for complete or partial exemption from prohibition.**".


Pg1Ln12 (End)

1999 - 2000 LEGISLATURE


ASSEMBLY AMENDMENT 4,
TO 1999 ASSEMBLY BILL 699 

March 1, 2000 - Offered by Committee on Criminal Justice.


Pg1Ln1 At the locations indicated, amend the bill as follows:

AA4-AB699, Item 1. 


Pg1Ln2 1. Page 3, Line 16: delete "sub. (4)," and substitute "subs. (3m) and (4),".

AA4-AB699, Item 2. 

Pg1Ln3 2. Page 4, Line 6: after that line insert:

AA4-AB699, Item 2. - continued 

Pg1Ln4 "(3m) **EXemption of pardoned persons from prohibition.** Subsection (2) does
Pg1Ln5 not apply to any person who has received a pardon for the felony for which he or she
Pg1Ln6 was convicted."

AA4-AB699, Item 3. 


Pg1Ln7 3. Page 4, Line 7: delete "**Exemption.**" and substitute "**Request by certain**
Pg1Ln8 **persons for complete or partial exemption from prohibition.**"
Pg1Ln9 (End)

1999 - 2000 LEGISLATURE


ASSEMBLY AMENDMENT 2,
TO 1999 ASSEMBLY BILL 699 

February 29, 2000 - Offered by Representative La Fave.


Pg1Ln1 At the locations indicated, amend the bill as follows:

AA2-AB699, Item 1. 


Pg1Ln2 1. Page 1, Line 3: delete "a felony offense" and substitute "certain felony
Pg1Ln3 offenses".

AA2-AB699, Item 2. 


Pg1Ln4 2. Page 2, Line 5: delete "felony," and substitute "violent felony, as defined in
Pg1Ln5 s. 941.291 (1) (b),".

AA2-AB699, Item 3. 


Pg1Ln6 3. Page 3, Line 13: delete that line and substitute:

AA2-AB699, Item 3. - continued 


Pg1Ln7 "941.291 Possession of body armor. (1) **Definitions.** In this section:

AA2-AB699, Item 3. - continued 

Pg1Ln8 (a) "Body".

AA2-AB699, Item 4. 

Pg1Ln9 4. Page 3, Line 15: after that line insert:

AA2-AB699, Item 4. - continued 

Pg1Ln10 "(b) "Violent felony" means any felony, or the solicitation, conspiracy or attempt
Pg1Ln11 to commit any felony, under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09,
Pg1Ln12 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285
Pg1Ln13 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3),
Pg2Ln1 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013,
Pg2Ln2 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32, 946.43, 947.015,

Pg2Ln3 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08 or 948.30."

AA2-AB699, Item 5.



Pg2Ln4 **5.** Page 3, Line 18: before "felony" insert "violent".

AA2-AB699, Item 6.



Pg2Ln5 **6.** Page 3, Line 19: before "felony" insert "violent".

AA2-AB699, Item 7.



Pg2Ln6 **7.** Page 3, Line 23: before "felony" insert "violent".

AA2-AB699, Item 8.



Pg2Ln7 **8.** Page 3, Line 24: before "felony" insert "violent".

AA2-AB699, Item 9.



Pg2Ln8 **9.** Page 4, Line 2: before "felony" insert "violent".

AA2-AB699, Item 10.



Pg2Ln9 **10.** Page 5, Line 20: delete "felony" and substitute "violent felony, as defined
Pg2Ln10 in s. 941.291 (1) (b),".

AA2-AB699, Item 11.



Pg2Ln11 **11.** Page 5, Line 25: delete "felony" and substitute "conviction for a violent
Pg2Ln12 felony, as defined in s. 941.291 (1) (b),".

AA2-AB699, Item 12.



Pg2Ln13 **12.** Page 6, Line 1: delete "conviction,".

AA2-AB699, Item 13.



Pg2Ln14 **13.** Page 6, Line 8: before "felony" insert "violent".

Pg2Ln15


(End)

1999 - 2000 LEGISLATURE


ASSEMBLY AMENDMENT 1,
TO 1999 ASSEMBLY BILL 699 

February 29, 2000 - Offered by Representative La Fave.


Pg1Ln1 At the locations indicated, amend the bill as follows:

AA1-AB699, Item 1. 


Pg1Ln2 1. Page 3, Line 16: delete "sub. (4)," and substitute "subs. (4) and (5),".

AA1-AB699, Item 2. 


Pg1Ln3 2. Page 4, Line 7: delete "Exemption." and substitute "Request by certain
Pg1Ln4 persons for complete or partial exemption from prohibition."

AA1-AB699, Item 3. 


Pg1Ln5 3. Page 4, Line 13: after "exemption" insert "under this subsection".

AA1-AB699, Item 4. 


Pg1Ln6 4. Page 5, Line 18: after that line insert:

AA1-AB699, Item 4. - continued 

Pg1Ln7 "(5) Exemption for certain witnesses and informers. (a) A person who is
Pg1Ln8 prohibited from possessing body armor under sub. (2) may possess body armor if all
Pg1Ln9 of the following apply:

AA1-AB699, Item 4. - continued 

Pg1Ln10 1. The person is furnishing or has furnished information to a law enforcement
Pg1Ln11 agency relating to a possible violation of law or is assisting or has assisted a law
Pg1Ln12 enforcement agency in an investigation of a possible violation of law.

AA1-AB699, Item 4. - continued 

Pg2Ln1 2. The law enforcement agency to which the person is furnishing or has
Pg2Ln2 furnished information or to which the person is providing or has provided assistance
Pg2Ln3 determines that there is reason to believe that the person may be in danger of

Pg2Ln4
Pg2Ln5
Pg2Ln6

suffering death or great bodily harm because he or she is furnishing or has furnished information or because he or she is assisting or has assisted or is assisting in an investigation.

AA1-AB699, Item 4. - continued



Pg2Ln7
Pg2Ln8
Pg2Ln9

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

AA1-AB699, Item 4. - continued



Pg2Ln10
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Pg3Ln2
Pg3Ln3

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

(End)

History of Assembly Bill 699

ASSEMBLY BILL 699

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

2000

02-01.	A.	Introduced by Representatives La Fave, Kaufert, Musser, Stone, Ziegelbauer and Ryba; cosponsored by Senator Wirch.	
02-01.	A.	Read first time and referred to committee on Criminal Justice	618
02-09.	A.	Fiscal estimate received.	
02-10.	A.	Fiscal estimate received.	
02-15.	A.	Fiscal estimate received.	
02-22.	A.	Fiscal estimate received.	
02-24.	A.	Public hearing held.	
02-29.	A.	Assembly amendment 1 offered by Representative La Fave	682
02-29.	A.	Assembly amendment 2 offered by Representative La Fave	682
02-29.	A.	Assembly amendment 3 offered by Representative La Fave	682
03-01.	A.	Executive action taken.	
03-01.	A.	Assembly amendment 4 offered by committee on Criminal Justice	696
03-08.	A.	Report Assembly amendment 1 adoption recommended by committee on Criminal Justice, Ayes 13, Noes 0	714
03-08.	A.	Report Assembly amendment 2 adoption recommended by committee on Criminal Justice, Ayes 13, Noes 0	714
03-08.	A.	Report Assembly amendment 3 adoption recommended by committee on Criminal Justice, Ayes 13, Noes 0	714
03-08.	A.	Report Assembly amendment 4 adoption recommended by committee on Criminal Justice, Ayes 13, Noes 0	714
03-08.	A.	Report passage as amended recommended by committee on Criminal Justice, Ayes 13, Noes 0	714
03-08.	A.	Referred to committee on Rules	714
03-23.	A.	Placed on calendar 3-29-2000 by committee on Rules.	
03-29.	A.	Read a second time	888
03-29.	A.	Assembly amendment 1 adopted	888
03-29.	A.	Assembly amendment 2 adopted	888
03-29.	A.	Assembly amendment 3 adopted	888
03-29.	A.	Assembly amendment 4 adopted	888
03-29.	A.	Ordered to a third reading	888
03-29.	A.	Rules suspended	888
03-29.	A.	Read a third time and passed	888
03-29.	A.	Ordered immediately messaged	888
03-30.	S.	Received from Assembly	565
03-30.	S.	Read first time and referred to committee on Judiciary and Consumer Affairs	567
04-06.	S.	Failed to concur in pursuant to Senate Joint Resolution 1	583

[Text of Assembly Bill 699](#)

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Dsida, Michael

From: Dsida, Michael
Sent: Friday, December 22, 2000 2:14 PM
To: LaFave, John
Subject: Body armor bill

Last night I completed much of the work on the redraft of your bill. In the process, I revised some of the language in the amendments to ensure that they work more effectively. But there are a few questions that you may want to address before I finish working on the bill:

1. Assembly Amendment 4 created an exemption for persons who have been pardoned. The governor's pardoning authority, however, may not extend to persons who have been adjudicated delinquent. Do you want an exemption for persons whose delinquency adjudication records are expunged under s. 938.355 (4m)?
2. Under one of the initial applicability provisions (section 6 (1) of the bill), a person who was convicted of a violent felony is prohibited from possessing body armor even if the act that is being counted as the violent felony was committed before the bill's effective date.
Arguably, this provision could be read to apply only to persons who were convicted. In other words, for a person to be subject to the prohibition because of a delinquency adjudication or a finding of not guilty by reason of mental disease or mental defect (an NGI finding), the act leading to the delinquency adjudication or the NGI finding must take place after the bill's effective date. I assume, however, that you intend to have all of these people treated the same and that, for all three kinds of cases, if the person committed the act before the effective date, the act can be used to disqualify the person from possessing body armor. Is that assumption correct?
3. The initial applicability provisions also require that the information about the prohibition be provided at sentencing hearings and commitment hearings occurring on or after the effective date, but they do not mention dispositional hearings. Do you want s. 938.3415 to apply to all dispositional hearings occurring on or after the effective date?

I plan to take most of next week off, but I should be able to finish my work on the bill the first week of January. But our editors are very busy with budget drafts and other bills, so you will probably not see the draft until a week or two after I am done, unless you need it expedited for some reason. Is there any particular date by which you need the bill?

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@legis.state.wi.us

~~630~~ 730

1/4/201

P/c from Chief Petter

- 1) Don't treat expungement as pardoning
- 2) Look backwards for all
- 3) 938.3415 should apply to all DM's
or / after ED



State of Wisconsin
1999 - 2000 LEGISLATURE

0709/1
LRB-2199/1
IEO: [unclear]
mqd jld

D-Note

1999 BILL

Soon

~~1) drafting file -
why delinquency treated
differently? (2/4+3/21)
3) How do state treat NGI cases
in other states. Add them.
D-Note re add - explain that
state conviction -
del. act; are all cases covered.
3/19 - 1/19/99
edges think
from [unclear] use
[unclear]~~

~~secs aff
incl. adults, incl. violent
fel. list.
"actual custody" vs. phys.
pardons for delinq acts? incl. 599.1466
expunction?~~

Regen

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

Analysis by the Legislative Reference Bureau

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

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



BILL

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. (S) ANALYSIS INS. A ✓

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

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

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

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

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

as defined in s. 941.291 (1)(b) ✓

Analysis Insent B ✓

Second, he or she

person

Analysis Insent C ✓

violent felon

violent

he or she

violent

violent felon

will have

BILL

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

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

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

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

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

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

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

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

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

RWF

Insert
3/15

91 (a)

violent

and has not been pardoned for it (use twice)

violent

BILL

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

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

5 (b) Whoever violates sub. (2) [✓] after being convicted of violating sub. (2) is guilty
 6 of a Class D felony. [✓] Insert 4/7 otherwise

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

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

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

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

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

BILL

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

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

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

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

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

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

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

inserts
5/18 A
15/18 B

conviction for a violent

as defined in s. 941.291(1)(b),

BILL

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

3 SECTION 6. Initial applicability. *insert 6/4 ✓*

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

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

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

16 (END)

D-note



INSERTS OUT OF
ORDER

1

ANALYSIS INSERT **A**

~~9~~ ²⁰ ¶ 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).

2

ANALYSIS INSERT **B**

¶ 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.

3

ANALYSIS INSERT **C**

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.

4

INSERT 6/4

5

~~9~~ (a) In this subsection, "violent felony" has the meaning given in section 941.291

6

^b (1) ~~9~~ of the statutes.

7

(b) ~~9~~

8

INSERT 6/9

9

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

10

2. The person has been convicted of a crime elsewhere that would be a violent

11

felony if committed in this state.



MS 6-9
CONT

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

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

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

8 ~~(c)~~ INFORMATION AT DISPOSITIONAL HEARINGS. The treatment of section 938.3415
9 of the statutes first applies to dispositional hearings that occur on the effective date
10 of this subsection.

(end ins 6-9)



ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 699

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 3: delete "a felony offense" and substitute "certain felony
3 offenses".

4 2. Page 2, line 5: delete "felony," and substitute "violent felony, as defined in
5 s. 941.291 (1) (b),".

6 3. Page 3, line 13: delete that line and substitute:

7 "941.291 Possession of body armor. (1) DEFINITIONS. In this section:

8 (a) "Body".

9 4. Page 3, line 15: after that line insert:

10 (b) "Violent felony" means any felony, or the solicitation, conspiracy or attempt
11 to commit any felony, under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09,
12 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285
13 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3),

Insert
3/15



INS 3-15 cont

1 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013,
 2 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32, 946.43, 947.015,
 3 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08 or 948.30.

(end ins 3-15)

- 4 ~~5. Page 3, line 18: before "felony" insert "violent".~~
- 5 ~~6. Page 3, line 19: before "felony" insert "violent".~~
- 6 ~~7. Page 3, line 23: before "felony" insert "violent".~~
- 7 ~~8. Page 3, line 24: before "felony" insert "violent".~~
- 8 ~~9. Page 4, line 2: before "felony" insert "violent".~~
- 9 ~~10. Page 5, line 20: delete "felony" and substitute "violent felony, as defined~~
- 10 ~~in s. 941.291 (1) (b),".~~
- 11 ~~11. Page 5, line 25: delete "felony" and substitute "conviction for a violent~~
- 12 ~~felony, as defined in s. 941.291 (1) (b),".~~
- 13 ~~12. Page 6, line 1: delete "conviction,".~~
- 14 ~~13. Page 6, line 8: before "felony" insert "violent".~~

(END)

15



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa1466/1
JEO:jlj:jf

MGD
2

ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 699

of sub.

*Crimes described
in ~~those~~ sub. (2)(a) or (b).*

Def
Proh.

1 At the locations indicated, amend the bill as follows.

2 **1.** Page 3, line 16: delete "sub. (4)," and substitute "subs. (3m) and (4),".

3 **2.** Page 4, line 6: after that line insert:

4 **(3m) EXEMPTION OF PARDONED PERSONS FROM PROHIBITION.** Subsection (2) does
5 not apply to any person who has received a pardon for ^{each of} the felony for which he or she
6 was convicted. *(a) and (b)*

7 **3.** Page 4, line 7: delete "EXEMPTION" and substitute "REQUEST BY CERTAIN
8 PERSONS FOR COMPLETE OR PARTIAL EXEMPTION FROM PROHIBITION."

(END)

Insert
4/6B

Insert 4/7



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa1476/1
JEO:jlg:jf
MGD

ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 699

~~_____~~

~~_____~~

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 3, line 16: delete "sub. (4)," and substitute "subs. (4) and (5)."
- 3 **2.** Page 4, line 7: delete "EXEMPTION." and substitute "REQUEST BY CERTAIN
- 4 PERSONS FOR COMPLETE OR PARTIAL EXEMPTION FROM PROHIBITION."
- 5 **3.** Page 4, line 13: after "exemption" insert "under this subsection".
- 6 **4.** Page 5, line 18: after that line insert: *otherwise*

*Insert
5/18A*

7 **(5) EXEMPTION FOR CERTAIN WITNESSES AND INFORMERS.** (a) A person who is
 8 prohibited from possessing body armor under sub. (2) [✓] may possess body armor if all
 9 of the following apply:

- 10 1. The person is furnishing or has furnished information to a law enforcement
- 11 agency relating to a possible violation of law or is assisting or has assisted a law
- 12 enforcement agency in an investigation of a possible violation of law.



MS 5/18A
CONT

1 2. 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 determines that there is reason to believe that the person may be in danger of
4 suffering death or great bodily harm because he or she is furnishing or has furnished
5 information or because he or she is assisting or has assisted or is assisting in an
6 investigation.

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

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

MOVE
TO
NEXT
PAGE

INS 5-18A
cont

1 if the other law enforcement agency or the district attorney is investigating or
2 prosecuting an alleged violation of sub. (2).

3

~~END~~

✓
Insert from previous page
1/23/2001

(end ins 5/18A)



MGD
2

ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 699

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 16: delete "sub. (4)," and substitute "subs. (3g) and (4)."

3 2. Page 4, line 6: after that line insert:

4 ~~(3g)~~ ⁽³⁾ ← ^(B) EXEMPTION FROM PROHIBITION FOR CERTAIN PRISONERS. ✓ A person who is
5 prohibited from possessing body armor under sub. (2) ✓ may wear body armor if he or
6 she is in the actual custody of a law enforcement officer, as defined in s. 165.85 (2)
7 (c), or a correctional officer, as defined in s. 102.475 (8) (a), ✓ and is wearing the body
8 armor at the request or direction of the law enforcement officer or correctional
9 officer. ✓

(end of ins 5/18 B)

10 3. Page 4, line 7: delete "EXEMPTION" and substitute "REQUEST BY CERTAIN
11 PERSONS FOR COMPLETE OR PARTIAL EXEMPTION FROM PROHIBITION."

12 (END)

insert
4/10
5/18 B

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-070901dn

MGD:k:...

JLd

Rep. LaFave:

1. Under 1999 Assembly Bill 699, as amended, the prohibition on the possession of body armor would have applied to a person who had been convicted of a violent offense at any time, including before the bill's effective date. But the prohibition would not have applied to a person who had been adjudicated delinquent based on the commission of a violent offense before the bill's effective date. In drafting this bill, I have treated persons who have been found delinquent in the same way as a person who has been convicted. In other words, a delinquency adjudication that is based on a violent felony and that occurs before the bill's effective date renders a person ineligible to possess body armor (unless one of the exceptions applies). Is that change okay?
2. The definition of "violent felony" in Assembly Amendment 2 included assaults by prisoners under s. 946.43. That section has since been amended to create a new crime — throwing or expelling bodily substances by a prisoner — but I did not change the cross-reference to exclude the new crime from the list of crimes considered violent felonies. If you want to exclude it, please let me know.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0709/1dn
MGD:jld:km

February 2, 2001

Rep. LaFave:

1. Under 1999 Assembly Bill 699, as amended, the prohibition on the possession of body armor would have applied to a person who had been convicted of a violent offense at any time, including before the bill's effective date. But the prohibition would not have applied to a person who had been adjudicated delinquent based on the commission of a violent offense before the bill's effective date. In drafting this bill, I have treated persons who have been found delinquent in the same way as a person who has been convicted. In other words, a delinquency adjudication that is based on a violent felony and that occurs before the bill's effective date renders a person ineligible to possess body armor (unless one of the exceptions applies). Is that change okay?
2. The definition of "violent felony" in Assembly Amendment 2 included assaults by prisoners under s. 946.43. That section has since been amended to create a new crime — throwing or expelling bodily substances by a prisoner — but I did not change the cross-reference to exclude the new crime from the list of crimes considered violent felonies. If you want to exclude it, please let me know.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 2, 2001

MEMORANDUM

To: Representative La Fave

From: Michael Dsida, Legislative Attorney

Re: LRB-0709 Possession of body armor

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9867 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.