

2007 SENATE BILL 216

June 19, 2007 – Introduced by Senators DARLING, A. LASEE, LEHMAN, OLSEN, ROESSLER, HARSDORF and LASSA, cosponsored by Representatives GUNDERSON, MURTHA, DAVIS, STASKUNAS, FIELDS, ALBERS, BOYLE, HAHN, HUBLER, KAUFERT, KRAMER, MOLEPSKE, MOULTON, MURSAU, NERISON, NYGREN, J. OTT, PETERSEN, PETROWSKI, SUDER, TAUCHEN, VOS and M. WILLIAMS. Referred to Committee on Judiciary and Corrections.

1 **AN ACT** *to renumber and amend* 51.20 (13) (cv) 1.; *to amend* 51.20 (13) (cv) 2.,
2 51.20 (13) (cv) 3., 51.20 (13) (cv) 4., 51.20 (16) (gm), 175.35 (1) (at), 941.29 (1)
3 (e), 941.29 (2) (d), 941.29 (9) and 968.20 (1r); and *to create* 51.20 (13) (cv) 1. a.
4 and b., 51.30 (4) (b) 28., 51.45 (13) (i), 54.10 (3) (f), 55.12 (10), 175.35 (2g) (d) and
5 941.29 (1) (em) of the statutes; **relating to:** adjudications for involuntary
6 commitment, appointment of a guardian of the person, and protective
7 placement or protective services, background checks for the purchase of
8 handguns, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes certain changes in the law relating to background checks for handgun purchasers. Under current law, when a person seeks to purchase a handgun from a licensed handgun dealer, the dealer must ask the Department of Justice (DOJ) to conduct a background check on the person. In conducting the background check, DOJ searches DOJ records to determine whether the person is ineligible to possess a firearm under state law, but state law does not explicitly require DOJ to determine whether federal law bars the person from possessing a firearm based on criteria not covered by state law. This bill requires DOJ, when conducting a background check on a prospective handgun purchaser, to check

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whether the person has been the subject of a court order or finding that is based on a determination that the person's mental health would render the person ineligible to possess a firearm under federal law.

This bill requires courts to make a determination of whether a person would be ineligible to possess a firearm under federal law during proceedings for involuntary commitment for persons found by the court to be mentally ill, drug dependent, or developmentally disabled and dangerous or evidencing impaired judgment. The bill also requires courts to make the determination during proceedings for appointment of a guardian of the person for an individual found by the court to be incompetent and, if not previously determined, during proceedings under which a court orders protective placement or protective services. If the court determines that federal law prohibits the person from possessing a firearm, the court must order the person not to possess a firearm, order the seizure of any firearm the person owns, and inform the person that he or she would be committing a felony if he or she possessed a firearm. The courts must then convey the disqualified status to DOJ which may use that information only during background checks conducted when the person seeks to purchase a handgun or under rules that DOJ promulgates in order to provide information to the national instant criminal background check system.

Specifically, courts must determine if the person has been "adjudicated as a mental defective" or "committed to a mental institution," as defined in federal law. Under federal law, "adjudicated as a mental defective" means a determination by a court, board, commission, or other lawful authority that a person, as a result of a marked subnormal intelligence, or a mental illness, incompetency, condition, or disease either is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. This determination includes a finding of insanity by a court in a criminal case and persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to the Uniform Code of Military Justice. Federal law defines "committed to a mental institution" as a formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily, commitment for mental defectiveness or mental illness, and commitments for other reasons such as for drug use. The term does not include a person in an institution for observation or a voluntary admission to a mental institution.

For further information see the *state and 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.** 51.20 (13) (cv) 1. of the statutes is renumbered 51.20 (13) (cv) 1.
2 (intro.) and amended to read:

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1 51.20 (13) (cv) 1. If the court makes the disposition under par. (a) 3., 4., 4m.,
2 or 5. and the court determines, based on evidence presented on the issue of the
3 subject individual's dangerousness, that there is a substantial probability that the
4 individual may use a firearm to cause physical harm to himself or herself or endanger
5 public safety, the court shall prohibit the individual from possessing order the person
6 not to possess a firearm, order the seizure of any firearm owned by the individual,
7 and inform the individual of the requirements and penalties under s. 941.29. if the
8 court determines any of the following:

9 **SECTION 2.** 51.20 (13) (cv) 1. a. and b. of the statutes are created to read:

10 51.20 (13) (cv) 1. a. Based on evidence presented on the issue of the individual's
11 dangerousness, there is a substantial probability that the individual may use a
12 firearm to cause physical harm to himself or herself or endanger public safety. If this
13 subd. 1. a. and subd. 1. b. apply to the individual, the court shall make a
14 determination under subd. 1. b.

15 b. Under 18 USC 922 (g) (4), the individual is prohibited from possessing a
16 firearm.

17 **SECTION 3.** 51.20 (13) (cv) 2. of the statutes is amended to read:

18 51.20 (13) (cv) 2. ~~A prohibition on~~ An order prohibiting the possession of a
19 firearm under subd. 1. based on a determination under subd. 1. a. shall remain in
20 effect until the commitment order and any subsequent consecutive commitment
21 orders expire and the court determines, based on evidence presented on the issue of
22 the subject individual's dangerousness, that there is no longer a substantial
23 probability that the individual may use a firearm to cause physical harm to himself
24 or herself or endanger public safety. If the court makes this determination, it shall

SENATE BILL 216**SECTION 3**

1 cancel the ~~prohibition order~~ and order the return of any firearm ordered seized under
2 subd. 1. on the basis of a determination under subd. 1. a.

3 **SECTION 4.** 51.20 (13) (cv) 3. of the statutes is amended to read:

4 51.20 **(13)** (cv) 3. In lieu of ordering the seizure under subd. 1. on the basis of
5 a determination under subd. 1. a., the court may designate a person to store the
6 firearm until the ~~prohibition order~~ under subd. 1. based on the determination under
7 subd. 1. a. has been canceled under sub. (16) (gm).

8 **SECTION 5.** 51.20 (13) (cv) 4. of the statutes is amended to read:

9 51.20 **(13)** (cv) 4. If the court ~~prohibits orders~~ a subject individual ~~from~~
10 ~~possessing not to possess~~ a firearm under subd. 1. based on a determination under
11 subd. 1. a. or b. or cancels ~~a prohibition under subd. 2. or sub. (16) (gm) an order~~
12 issued under subd. 2. 1. based on a determination under subd. 1. a., the court clerk
13 shall notify the department of justice of that fact and provide any information
14 identifying the subject individual that is necessary to permit an accurate
15 involuntary commitment history record search, or an accurate firearms restrictions
16 record search. under s. 175.35 (2g) (c). No other information from the subject
17 individual's court records may be disclosed to the department of justice except by
18 order of the court. The department of justice may disclose information provided
19 under this subdivision only as part of an involuntary commitment history record
20 search, a firearms restrictions record search, under s. 175.35 (2g) (c) or under rules
21 the department of justice promulgates under s. 175.35 (2g) (d).

22 **SECTION 6.** 51.20 (16) (gm) of the statutes is amended to read:

23 51.20 **(16)** (gm) Upon a request under par. (a), a court may cancel the
24 ~~prohibition order not to possess a firearm issued~~ under sub. (13) (cv) 1. based on a
25 determination under sub. (13) (cv) 1. a. if the court determines, based on evidence

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1 presented on the issue of the subject individual's dangerousness, that there no longer
2 is a substantial probability that the individual may use a firearm to cause physical
3 harm to himself or herself or endanger public safety. If a court cancels ~~a prohibition~~
4 an order issued under sub. (13) (cv) 1. based on a determination under sub. (13) (cv)
5 1. a. under this paragraph, the court clerk shall notify the department of justice of
6 that fact and provide any information identifying the subject individual that is
7 necessary to permit an accurate firearms restrictions record search under s. 175.35
8 (2g) (c). No other information from the subject individual's court records may be
9 disclosed to the department of justice except by order of the court.

10 **SECTION 7.** 51.30 (4) (b) 28. of the statutes is created to read:

11 51.30 **(4)** (b) 28. To the department of justice, under the requirements of ss.
12 51.20 (3) (cv) 4. and 51.45 (13) (i).

13 **SECTION 8.** 51.45 (13) (i) of the statutes is created to read:

14 51.45 **(13)** (i) If a court orders commitment of a person under this subsection,
15 the court shall determine if, under 18 USC 922 (g) (4), the person is prohibited from
16 possessing a firearm. If the person is prohibited, the court shall order the person not
17 to possess a firearm, order the seizure of any firearm owned by the person, and
18 inform the person of the requirements and penalties under s. 941.29. The court clerk
19 shall notify the department of justice of the prohibition and provide any information
20 identifying the person that is necessary to permit an accurate firearms restrictions
21 record search under s. 175.35 (2g) (c). No other information from the person's court
22 records may be disclosed to the department of justice except by order of the court.
23 The department of justice may disclose information provided under this paragraph
24 only as part of a firearms restrictions record search under s. 175.35 (2g) (c) or under
25 rules the department of justice promulgates under s. 175.35 (2g) (d).

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1 **SECTION 9.** 54.10 (3) (f) of the statutes is created to read:

2 54.10 **(3)** (f) If the court appoints a guardian of the person under this
3 subsection, the court shall determine if, under 18 USC 922 (g) (4), the person is
4 prohibited from possessing a firearm. If the person is prohibited, the court shall
5 order the person not to possess a firearm, order the seizure of any firearm owned by
6 the person, and inform the person of the requirements and penalties under s. 941.29.
7 The court clerk shall notify the department of justice of the prohibition and provide
8 any information identifying the person that is necessary to permit an accurate
9 firearms restriction record search under s. 175.35 (2g) (c). No other information from
10 the person's court records may be disclosed to the department of justice except by
11 order of the court. The department of justice may disclose information provided
12 under this paragraph only as part of a firearms restriction record search under s.
13 175.35 (2g) (c) or under rules the department of justice promulgates under s. 175.35
14 (2g) (d).

15 **SECTION 10.** 55.12 (10) of the statutes is created to read:

16 55.12 **(10)** If a court orders protective services or protective placement of a
17 individual under this section and if an order has not been made under s. 54.10 (3) (f)
18 for the individual, the court shall determine if, under 18 USC 922 (g) (4), the
19 individual is prohibited from possessing a firearm. If the individual is prohibited,
20 the court shall order the individual not to possess a firearm, order the seizure of any
21 firearm owned by the individual, and inform the individual of the requirements and
22 penalties under s. 941.29. The court clerk shall notify the department of justice of
23 the prohibition and provide any information identifying the individual that is
24 necessary to permit an accurate firearms restriction record search under s. 175.35
25 (2g) (c). No other information from the individual's court records may be disclosed

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1 to the department of justice except by order of the court. The department of justice
2 may disclose information provided under this subsection only as part of a firearms
3 restriction record search under s. 175.35 (2g) (c) or under rules the department of
4 justice promulgates under s. 175.35 (2g) (d).

5 **SECTION 11.** 175.35 (1) (at) of the statutes is amended to read:

6 175.35 (1) (at) “Firearms restrictions record search” means a search of
7 department of justice records to determine whether a person seeking to purchase a
8 handgun is prohibited from possessing a firearm under s. 941.29. “Firearms
9 restriction record search” includes a criminal history record search, a search to
10 determine whether a person is ~~prohibited from possessing~~ has been ordered not to
11 possess a firearm under s. 51.20 (13) (cv) 1. based on a determination under s. 51.20
12 (13) (cv) 1. a., a search to determine whether the person is subject to an injunction
13 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
14 by a court established by any federally recognized Wisconsin Indian tribe or band,
15 except the Menominee Indian tribe of Wisconsin, that includes notice to the
16 respondent that he or she is subject to the requirements and penalties under s.
17 941.29 and that has been filed with the circuit court under s. 806.247 (3), and a search
18 to determine whether the person is prohibited from possessing a firearm under s.
19 813.125 (4m).

20 **SECTION 12.** 175.35 (2g) (d) of the statutes is created to read:

21 175.35 (2g) (d) The department of justice shall promulgate rules to convey
22 information in a timely manner to the national instant criminal background check
23 system regarding persons ordered not to possess a firearm under s. 51.20 (13) (cv) 1.,
24 based on a determination under s. 51.20 (13) (cv) 1. b., or ordered not to possess a
25 firearm under s. 51.45 (13) (i), 54.10 (3) (f), or 55.12 (10).

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

2 941.29 (1) (e) Committed for treatment under s. 51.20 (13) (a) and ordered not
3 to possess a firearm under s. 51.20 (13) (cv) 1. based on a determination under s. 51.20
4 (13) (cv) 1. a.

5 **SECTION 14.** 941.29 (1) (em) of the statutes is created to read:

6 941.29 (1) (em) Ordered not to possess a firearm under s. 51.20 (13) (cv) 1. based
7 on a determination under s. 51.20 (13) (cv) 1. b. or ordered not to possess a firearm
8 under s. 51.45 (13) (i), 54.10 (3) (f), or 55.12 (10).

9 **SECTION 15.** 941.29 (2) (d) of the statutes is amended to read:

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

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

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

16 **SECTION 17.** 968.20 (1r) of the statutes is amended to read:

17 968.20 (1r) If the seized property is a firearm ordered seized ~~under~~ due to a
18 determination under s. 51.20 (13) (cv) 1. a., the court that issued that order shall
19 order the firearm returned if the ~~prohibition order~~ order under s. 51.20 (13) (cv) 1. a. has
20 been canceled under s. 51.20 (13) (cv) 2. or (16) (gm).

21 **SECTION 18. Nonstatutory provisions.**

22 (1) Using the procedure under section 227.24 of the statutes, the department
23 of justice shall promulgate rules required under section 175.35 (2g) (d) of the
24 statutes, as created by this act, for the period before the effective date of the
25 permanent rules promulgated under that section, but not to exceed the period

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1 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding
2 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of justice is not
3 required to provide evidence that promulgating a rule under this subsection as an
4 emergency rule is necessary for the preservation of public peace, health, safety, or
5 welfare and is not required to provide a finding of an emergency for a rule
6 promulgated under this subsection.

SECTION 19. Initial applicability.

7
8 (1) The renumbering and amendment of section 51.20 (13) (cv) 1. of the statutes
9 and the creation of section 51.20 (13) (cv) 1. a. and b. first apply to dispositions made
10 on the effective date of this subsection.

11 (2) The treatment of section 51.45 (13) (i) of the statutes first applies to
12 commitments ordered on the effective date of this subsection.

13 (3) The treatment of section 54.10 (3) (f) of the statutes first applies to
14 appointments made on the effective date of this subsection.

15 (4) The treatment of section 55.12 (10) of the statutes first applies to court
16 orders made on the effective date of this subsection.

17 **SECTION 20. Effective dates.** This act takes effect on the first day of the 2nd
18 month beginning after publication except as follows:

19 (1) The treatment of section 175.35 (2g) (d) of the statutes and SECTION 18 (1)
20 of this act take effect on the day after publication.

21 (END)