

# Legal loophole gives mentally ill access to guns

POSTED: 11:25 a.m. EDT, April 24, 2007

- Federal law bars someone of Seung-Hui Cho's background from buying firearms
- The federal government relied on Virginia to provide the information
- Under Virginia law alone, Cho was not prohibited from buying a gun
- Only 22 states, including Virginia, put any mental-status entries into the database

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**BLACKSBURG, Virginia** (CNN) -- When a judge deemed Virginia Tech shooter Seung-Hui Cho a danger to himself due to mental illness in 2005, that ruling should have disqualified him from buying a handgun under federal law.

It didn't.

And his slaughter of 32 people last week has raised questions about the efficacy of instant background checks for firearms purchases by the mentally ill. ([Watch how the law failed](#))

Under federal law, anyone who has been judged to be a danger to himself or others because of mental illness, as Cho was, should be prohibited from buying a gun. ([Watch campus shooting rekindle debate on gun control](#))

His status should have been noted in the National Instant Criminal Background Check System, a database of people disqualified from gun purchases.

But, in Cho's case, his mental status never went in the system.

## A deadly information gap

That's because the federal government relied on Virginia to provide the information, and Virginia law disqualifies a person from buying firearms only if they have been involuntarily committed to a mental hospital. ([Read the judge's order](#))

Cho was ordered to undergo outpatient treatment, but he was never committed. His appearance before the judge and his evaluation at a mental health facility did not show up when he bought the guns. ([Read full story](#))

So Virginia never reported him, and he was not flagged in a background check.

Virginia Attorney General Robert McDonnell concedes that "the gap is clearly there in the state and federal law."

"We're taking a good look at whether the federal law would have been an absolute disqualifier," McDonnell said on CNN's "Late Edition with Wolf Blitzer."

He said state law may need to be changed to meet federal requirements.

## Cho cheated system

Ironically, although Virginia law created a loophole for Cho, the Bureau of Alcohol, Tobacco, Firearms and Explosives says Virginia is actually one of the best performing states when it comes to entering mental status of persons into the background check system.

In fact, only 22 states, including Virginia, put any mental-status entries into the federal database. The remaining states cite costs and privacy concerns as reasons they don't.

But even if Virginia had put Cho in the database, he could still have sidestepped the background check by buying his firearms from a private seller or at a gun show from a "private" individual or "collector."

Those types of transactions account for about half of the guns sold in the United States each year.

In Virginia, a person 21 or older can buy only one handgun a month, unless he has a license to buy more.

Cho bought one gun, a .22-caliber pistol, in early February and another, a 9 mm pistol, in March.

He apparently bought the .22-caliber weapon from an out-of-state dealer.

Under federal law, a weapon purchased from an out-of-state dealer must be shipped to an in-state, federally licensed gun dealer, who runs a background check. The buyer must appear in person to pick up the gun, and the dealer receives a small fee -- usually between \$20 and \$40 -- for facilitating the pickup.

On February 9, Cho picked up the out-of-state purchase -- a Walther P22 pistol -- from JND pawnshop across the street from campus, according to Joe Dowdy, who owns the shop. ([Watch dealer recount selling weapon to Cho](#))

Cho bought a Glock 19 and 50 rounds of ammunition on March 12, staying just within the limit of one gun purchase per month, said John Markell at Roanoke Firearms in nearby Roanoke, Virginia.

Even though Cho is a resident alien, Markell said, it was legal for him to purchase a firearm, and he presented three forms of identification: a driver's license, a checkbook with an address matching the driver's license, and a resident alien card.

Cho moved to the United States from South Korea at age 8.

### **Clips possibly bought on eBay**

Investigators are seeking records related to an e-mail and eBay account that may have been used by Cho, a source close to the investigation said. The account being checked was used last month to buy magazine clips that would fit one of the handguns used by Cho in his shooting rampage.

A CNN check of eBay transaction records online showed that the account that investigators are examining -- Blazers5505 -- was used in numerous transactions over the past several months.

Those included the March 22 purchase of two empty, 10-round magazines for a Walther P22 handgun from a company in Rigby, Idaho, that sells hunting and shooting supplies. Authorities have said one of the two handguns used by Cho was a Walther P22 pistol. ([Read full story](#))

## Fiscal Estimate Narratives

DOJ 11/2/2005

LRB Number	05-3685/2	Introduction Number	SB-403	Estimate Type	Original
<b>Description</b> Carrying a concealed weapon, possessing or transporting a firearm under certain circumstances, background checks for handgun purchases, photographic identification cards for retired law enforcement officers, requiring the exercise of rule-making authority, providing an exemption from rule-making authority, and providing penalties					

### Assumptions Used in Arriving at Fiscal Estimate

Senate Bill 403 creates a procedure by which a person may apply to the DOJ for a license to carry a concealed weapon in most places. Under the bill, DOJ must issue a license to an applicant who meets the qualifications established of the bill. Furthermore, the bill requires DOJ to:

- Develop an application process including forms and a "tamper proof" permit.
- Conduct a background check.
- Establish a renewal, suspension, revocation and, appeal process.
- Maintain a computerized list of licensees.
- Develop an electronic interface with CCAP to notify DOJ of proceedings that will result in suspension/revocation of a license.
- Be notified of DUI offenses.

### DOJ Assumptions

It is anticipated that DOJ will process approximately 30,000 applications the first year of operation. As a percentage of population, if the Wisconsin experience is similar to other states they will issue over 100,000 permits over a 3-5 year period. Experiences the first year of operation is necessary to predict future experience. To process the applications according to the proposed legislation and meet all of the requirements of the bill will require 4 FTE Criminal History Records Specialists and 2 Project Criminal History Records Specialists for a total of 6 additional staff the first year.

### Additional Staff Cost

#### Criminal History Records Specialists

4 FTEs and 2 Project

Salary \$12.50/hr = \$25,988/yr X 6 = \$155,928

Fringe @ 38.99% = \$10,133 X 6 = \$60,798

One-time Supplies/Equipment @ \$10,850 X 6 = \$65,100

Total for six positions \$281,826

### ID Card Equipment

The DOJ is required to issue "tamper proof" permits.

#### Equipment needed:

PC/Monitor @ \$3,000 X 6 = \$18,000

ID card printers @ \$8,000 X 2 = \$16,000

ID Software @ \$1,000 X 6 = \$12,000

Supplies (Blank cards, printer ribbons, etc) \$10,000

Total for ID card process \$56,000

### IT Development Costs

It is assumed that the Department of Justice would perform the following tasks based on the requirements of

the bill:

Tasks

- Create a design for application forms
- Create a design for license documents
- Create a unique code number and unique identification number for each license issued
- Perform a firearms restriction record search
- Issue a unique approval or non-approval for each applicant
- Maintain computerized record listing the names of all licensees
- Provide information concerning a specific individual who is a license holder to law enforcement under restricted circumstances

Estimates to design and establish a computerized method of capturing, storing and releasing this information are as follows:

Equipment

Data server and software licenses \$129,000  
3-years Oracle support \$29,000  
Redundant web server and software licenses \$95,000

Development

Programming (1000 hours @ \$75) \$75,000  
TIME Interface (640 hours @ \$200) \$128,000

Total IT Cost \$456,000

Total Startup/First Year Costs \$793,826

It should also be noted, that the bill allows a person to appeal the department's denial of an application, suspension or revocation of a license, or denial of certification as an instructor to the circuit court. As drafted, the bill includes a number of potential discretionary determinations to be made, without corresponding standards. If the court overturns the department's decision, the court shall order the department to pay the person all court costs and reasonable attorney fees. While it is difficult to know how many application denials, or license suspensions or revocations will be appealed, defending the department's decisions in court and paying the appellant's costs could have a significant fiscal impact on the department.

### Long-Range Fiscal Implications



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-2755/7

CMH:.....

WHD -  
NOON if possible

E. DAK

SA ✓  
X - ref ✓

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

js

1 AN ACT ...; relating to: adjudications for involuntary commitment, appointment  
2 of a guardian of the person, and protective placement or protective services and  
3 background checks for the purchase of handguns.

penalty

that ~~includes~~  
is based on

Analysis by the Legislative Reference Bureau

check

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 it does not attempt 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 determine whether the person has been the subject of a court order or finding in a Wisconsin court based on the person's mental health ~~that~~ would render the person ineligible to possess a firearm under federal law. Specifically DOJ must determine if the person has been "adjudicated as a mental defective" or has been committed to a mental institution. If DOJ determines that either applies to the person, the dealer may not sell the person a handgun.

5 courts

INS move to next page

a determination that

finds

has been the subject of such an order or finding

INS R move to next page

as defined in federal law

of

a person would be ineligible to possess a firearm under

INS  
R  
court

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.

This bill requires courts to make the determination of whether federal law ~~disqualifies the person from possessing a handgun~~ 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. The courts must then convey the disqualified status to DOJ who will use that information only during background checks conducted when the person seeks to purchase a handgun.

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

**History:** 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a.

98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; s. 13.93 (2) (c).

1 1

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

2 51.20 (13) (cv) 1. a. Based on evidence presented on the issue of the individual's  
3 dangerousness, there is a substantial probability that the individual may use a  
4 firearm to cause physical harm to himself or herself or endanger public safety.

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

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

8 51.20 (13) (cv) 2. ~~A prohibition on~~ the possession of a firearm under subd. 1. a.  
9 shall remain in effect until the commitment order and any subsequent consecutive  
10 commitment orders expire and the court determines, based on evidence presented  
11 on the issue of the subject individual's dangerousness, that there is no longer a  
12 substantial probability that the individual may use a firearm to cause physical harm  
13 to himself or herself or endanger public safety. If the court makes this determination,  
14 it shall cancel the ~~prohibition~~ and order the return of any firearm ordered seized  
15 under subd. 1. a.

An order ~~against~~ prohibiting

based on

on the basis of a determination under subd. 1.

on the basis of

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; s. 13.93 (2) (c).

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

17 51.20 (13) (cv) 3. In lieu of ordering the seizure under subd. 1. a., the court may  
18 designate a person to store the firearm until the ~~prohibition~~ under subd. 1. a. has  
19 been canceled under sub. (16) (gm).

on the basis of

order under subd. 1. based on the

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; s. 13.93 (2) (c).

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

determination under

SECTION 5

*based on a determination under subd. 1.*

*1. based on a determination under subd. 1.*

1 51.20 (13) (cv) 4. If the court ~~prohibits~~ orders a subject individual from

2 ~~possessing not to possess~~ a firearm under subd. 1. ~~a. or b.~~ or cancels a prohibition

3 under subd. 2. or sub. (16) (gm) an order issued under subd. 2. ~~1. a.~~, the court clerk

4 shall notify the department of justice of that fact and provide any information

5 identifying the subject individual that is necessary to permit an accurate

6 involuntary commitment history record search, or an accurate firearms restrictions

7 record search, under s. 175.35 (2g) (c). No other information from the subject

8 individual's court records may be disclosed to the department of justice except by

9 order of the court. The department of justice may disclose information provided

10 under this subdivision only as part of an involuntary commitment history record

11 search, or a firearms restrictions record search, under s. 175.35 (2g) (c).

**History:** 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; s. 13.93 (2) (c).

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

13 51.20 (16) (gm) Upon a request under par. (a), a court may cancel the

14 prohibition order not to possess a firearm issued under sub. (13) (cv) 1. a. if the court

15 determines, based on evidence presented on the issue of the subject individual's

16 dangerousness, that there no longer is a substantial probability that the individual

17 may use a firearm to cause physical harm to himself or herself or endanger public

18 safety. If a court cancels a prohibition an order issued under sub. (13) (cv) 1. a. under

19 this paragraph, the court clerk shall notify the department of justice of that fact and

20 provide any information identifying the subject individual that is necessary to

21 permit an accurate firearms restrictions record search under s. 175.35 (2g) (c). No

*based on a determination under sub. (13) (cv) 1. a.*

*based on a determination under sub. (13) (cv) 1.*



1 other information from the subject individual's court records may be disclosed to the  
2 department of justice except by order of the court.

**History:** 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2008 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; s. 13.93 (2) (c).

3 **SECTION 7.** 51.30 (3) (b) 28. of the statutes is created to read: ✕

4 51.30 (3) (b) 28. To the department of justice, under the requirements of ss.

5 51.20 (3) (cv) 4. and 51.45 (13) (i). ✓

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

7 51.45 (13) (i) If a court orders commitment of a person under this subsection, ✓  
8 the court shall determine if, under 18 USC 922 (g) (4), the person is prohibited from  
9 possessing a firearm. If the person is prohibited, the court shall order the person not  
10 to possess a firearm, order the seizure of any firearm owned by the person, and  
11 inform the person of the requirements and penalties under s. 941.29. The court clerk  
12 shall notify the department of justice of the prohibition and provide any information  
13 identifying the person that is necessary to permit an accurate firearms restrictions  
14 record search under s. 175.35 (2g) (c). No other information from the person's court  
15 records may be disclosed to the department of justice except by order of the court.  
16 The department of justice may disclose information provided under this paragraph ✓  
17 only as part of a firearms restrictions record search under s. 175.35 (2g) (c). ✓

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

19 54.10 (3) (f) If the court appoints a guardian of the person under this  
20 subsection, the court shall determine if, under 18 USC 922 (g) (4), the person is  
21 prohibited from possessing a firearm. If the person is prohibited, the court shall  
22 order the person not to possess a firearm, order the seizure of any firearm owned by  
23 the person, and inform the person of the requirements and penalties under s. 941.29.

1 The court clerk shall notify the department of justice of the prohibition and provide  
2 any information identifying the person that is necessary to permit an accurate  
3 firearms restriction record search under s. 175.35 (2g) (c). No other information from  
4 the person's court records may be disclosed to the department of justice except by  
5 order of the court. The department of justice may disclose information provided  
6 under this paragraph only as part of a firearms restriction record search under s.  
7 175.35 (2g) (c). ✓

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

9 55.12 (10) If a court orders protective services or protective placement of a  
10 individual under this section and if an order has not been made under s. 54.10 (3) (f) ✓  
11 for the individual, the court shall determine if, under 18 USC 922 (g) (4), the  
12 individual is prohibited from possessing a firearm. If the individual is prohibited,  
13 the court shall order the individual not to possess a firearm, order the seizure of any  
14 firearm owned by the individual, and inform the individual of the requirements and  
15 penalties under s. 941.29. The court clerk shall notify the department of justice of  
16 the prohibition and provide any information identifying the individual that is  
17 necessary to permit an accurate firearms restriction record search under s. 175.35  
18 (2g) (c). No other information from the individual's court records may be disclosed  
19 to the department of justice except by order of the court. The department of justice  
20 may disclose information provided under this paragraph only as part of a firearms  
21 restriction record search under s. 175.35 (2g) (c).

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

23 175.35 (1) (at) "Firearms restrictions record search" means a search of  
24 department of justice records to determine whether a person seeking to purchase a  
25 handgun is prohibited from possessing a firearm under s. 941.29. "Firearms

*based on a determination under s. 51.20 (13) (cv)*

*has been ordered not to possess*

**SECTION 11**

1 restriction record search" includes a criminal history record search, a search to  
2 determine whether a person is prohibited from possessing a firearm under s. 51.20  
3 (13) (cv) 1. a., a search to determine whether the person is subject to an injunction  
4 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued  
5 by a court established by any federally recognized Wisconsin Indian tribe or band,  
6 except the Menominee Indian tribe of Wisconsin, that includes notice to the  
7 respondent that he or she is subject to the requirements and penalties under s.  
8 941.29 and that has been filed with the circuit court under s. 806.247 (3), and a search  
9 to determine whether the person is prohibited from possessing a firearm under s.  
10 813.125 (4m).

History: 1975 c. 167; 1991 a. 11; 1993 a. 16, 195, 196; 1995 a. 71, 77, 159, 306; 2005 a. 155, 344.

**SECTION 12.** 941.29 (1) (e) of the statutes is amended to read:

*1. based on a determination under s. 51.20 (13) (cv)*

12 941.29 (1) (e) Committed for treatment under s. 51.20 (13) (a) and ordered not  
13 to possess a firearm under s. 51.20 (13) (cv) 1. a.

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417; 2001 a. 109.

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

15 941.29 (1) (em) Ordered not to possess a firearm under s. 51.20 (13) (cv) 1. b.,  
16 51.45 (13) (i), 54.10 (3) (f), or 55.12 (10).

*based on a determination*

*INS 7-17*

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

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

*based on a determination under s. 51.20 (13) (cv) 1.*

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417; 2001 a. 109.

**SECTION 15.** 968.20 (1r) of the statutes is amended to read:

21

**SECTION 15**

*ordered*  
*due to a determination under*  
*only*

1            968.20 (1r) If the seized property is a firearm seized ~~under~~ s. 51.20 (13) (cv) 1.  
2            a., the court that issued that order shall order the firearm returned if the prohibition  
3            under s. 51.20 (13) (cv) 1. a. has been canceled under s. 51.20 (13) (cv) 2. or (16) (gm).

History: 1977 c. 260; 1977 c. 449 s. 497; 1979 c. 221; 1981 c. 160; 1982 a. 139 s. 229 (3); 1983 s. 278; 1987 a. 30 ss. 243 to 249; 2000 (35); 1987 a. 203; 1987 a. 232 s. 64; 1993 a. 90, 196; 1996 a. 157; 1997 a. 192, 248; 1999 a. 185; 2001 a. 16; 2005 a. 387, 394.

**SECTION 16. Initial applicability.**

5            (1) The renumbering and amendment of section 51.20 (13) (cv) 1. of the statutes  
6            and the creation of section 51.20 (13) (cv) 1. a. and b. first applies to dispositions made  
7            on the effective date of this subsection. ✓ *to apply*

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

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

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

**SECTION 17. Effective date.**

15            (1) This act takes effect on the first day of the 2nd month beginning after  
16            publication. ✓

(END)

④ SEC.#.

Am;

941.29(2)(d)

(d) The person possesses a firearm while subject to the court order, as specified in sub. (1) (e) <sup>(em)</sup> or (g).

④ 941.29 (2) (B)

INS  
7-17

- get info to NLCs

- change analysis - focus on purchaser  
rather than dealer

- concern of DOJ adjudications -

BUT { S = felony.  
commitment is difficult

Opm is now okay w/ it.

2 of 7 DOCUMENTS

COLORADO REVISED STATUTES

\*\*\* THIS SECTION IS CURRENT THROUGH THE 2006 SUPPLEMENT (2006 SESSIONS) \*\*\*

TITLE 13. COURTS AND COURT PROCEDURE  
COURTS OF RECORD  
ARTICLE 5. JUDICIAL DISTRICTS  
PART 1. JUDGES - TERMS

**GO TO COLORADO STATUTES ARCHIVE DIRECTORY**

C.R.S. 13-5-142 (2006)

13-5-142. National instant criminal background check system - reporting

(1) Beginning July 1, 2002, the clerk of the court of every judicial district in the state shall periodically report the following information to the national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act" (P.L. No. 103-159), the relevant portion of which is codified at 18 U.S.C. sec. 922 (t):

(a) The name of each person who has been found to be incapacitated by order of the court pursuant to part 3 of article 14 of title 15, C.R.S.;

(b) The name of each person who has been committed by order of the court to the custody of the division of alcohol and drug abuse in the department of human services pursuant to section 25-1-311 or 25-1-1107, C.R.S.; and

(c) The name of each person with respect to whom the court has entered an order for involuntary certification for short-term treatment of mental illness pursuant to section 27-10-107, C.R.S., for extended certification for treatment of mental illness pursuant to section 27-10-108, C.R.S., or for long-term care and treatment of mental illness pursuant to section 27-10-109, C.R.S.

(2) Any report made by the clerk of the court of every judicial district in the state pursuant to this section shall describe the reason for the report and indicate that the report is made in accordance with 18 U.S.C. sec. 922 (g) (4).

(3) The clerk of the court of every judicial district in the state shall take all necessary steps to cancel a record made by that clerk in the national instant criminal background check system if:

(a) The person to whom the record pertains makes a written request to the clerk; and

(b) No less than three years before the date of the written request:

(I) The court entered an order pursuant to section 15-14-318, C.R.S., terminating a guardianship on a finding that the person is no longer an incapacitated person, if the record in the national instant criminal background check system is based on a finding of incapacity;

(II) The period of commitment of the most recent order of commitment or recommitment expired, or the court entered an order terminating the person's incapacity or discharging the person from commitment in the nature of habeas corpus, if the record in the national instant criminal background check system is based on an order of commitment to the custody of the division of alcohol and drug abuse; except that the clerk shall not cancel any record pertaining to a person with respect to whom two recommitment orders have been entered under section 25-1-311 (5) and (6), C.R.S., or who was discharged from treatment under section 25-1-311 (9), C.R.S., on the grounds that further treatment will not be likely to bring about significant improvement in the person's condition; or

(III) The record in the case was sealed pursuant to section 27-10-107 (7), C.R.S., or the court entered an order discharging the person from commitment in the nature of habeas corpus pursuant to section 27-10-113, C.R.S., if the record in the national instant criminal background check system is based on a court order for involuntary certification for short-term treatment of mental illness.