



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2755/1

CMH&DAK:cjs: *own*

*TODAY
if possible*

*1
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2007 BILL

Reger Cat

*and requiring the
exercise of
rule-making
authority*

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) and 941.29 (1) (em)
5 of the statutes; **relating to:** adjudications for involuntary commitment,
6 appointment of a guardian of the person, and protective placement or protective
7 services ~~and~~ background checks for the purchase of handguns.

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 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 check 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

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INS M

law. If DOJ finds that the person has been the subject of such an order or finding, the dealer may not sell the person a handgun.

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. 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.

INS A

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:
- 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

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1 public safety, the court shall ~~prohibit the individual from possessing~~ order the person
2 not to possess a firearm, order the seizure of any firearm owned by the individual,
3 and inform the individual of the requirements and penalties under s. 941.29. ~~if the~~
4 court determines any of the following:

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

6 51.20 (13) (cv) 1. a. Based on evidence presented on the issue of the individual's
7 dangerousness, there is a substantial probability that the individual may use a
8 firearm to cause physical harm to himself or herself or endanger public safety.

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

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

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

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

22 51.20 (13) (cv) 3. In lieu of ordering the seizure under subd. 1. on the basis of
23 a determination under subd. 1. a., the court may designate a person to store the
24 firearm until the ~~prohibition order~~ under subd. 1. based on the determination under
25 subd. 1. a. has been canceled under sub. (16) (gm).

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

2 51.20 (13) (cv) 4. If the court prohibits orders a subject individual from
3 possessing not to possess a firearm under subd. 1. based on a determination under
4 subd. 1. a. or b. or cancels ~~a prohibition~~ under subd. 2. or sub. (16) (gm) an order
5 issued under subd. 2. 1. based on a determination under subd. 1. a., the court clerk
6 shall notify the department of justice of that fact and provide any information
7 identifying the subject individual that is necessary to permit an accurate
8 involuntary commitment history record search, or an accurate firearms restrictions
9 record search, under s. 175.35 (2g) (c). No other information from the subject
10 individual'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 subdivision only as part of an involuntary commitment history record
13 search, or a firearms restrictions record search, under s. 175.35 (2g) (c). *INS 4-13*

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

15 51.20 (16) (gm) Upon a request under par. (a), a court may cancel the
16 prohibition order not to possess a firearm issued under sub. (13) (cv) 1. based on a
17 determination under sub. (13) (cv) 1. a. if the court determines, based on evidence
18 presented on the issue of the subject individual's dangerousness, that there no longer
19 is a substantial probability that the individual may use a firearm to cause physical
20 harm to himself or herself or endanger public safety. If a court cancels ~~a prohibition~~
21 an order issued under sub. (13) (cv) 1. based on a determination under sub. (13) (cv)
22 1. a. under this paragraph, the court clerk shall notify the department of justice of
23 that fact and provide any information identifying the subject individual that is
24 necessary to permit an accurate firearms restrictions record search under s. 175.35

BILL

1 (2g) (c). No other information from the subject individual's court records may be
2 disclosed to the department of justice except by order of the court.

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

4 51.30 (4) (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). ^{INS}
5-17

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.
24 The court clerk shall notify the department of justice of the prohibition and provide
25 any information identifying the person that is necessary to permit an accurate

BILL**SECTION 9**

1 firearms restriction record search under s. 175.35 (2g) (c). No other information from
2 the person's court records may be disclosed to the department of justice except by
3 order of the court. The department of justice may disclose information provided
4 under this paragraph only as part of a firearms restriction record search under s.
5 175.35 (2g) (c). *INS 6-5*

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

7 55.12 (10) If a court orders protective services or protective placement of a
8 individual under this section and if an order has not been made under s. 54.10 (3) (f)
9 for the individual, the court shall determine if, under 18 USC 922 (g) (4), the
10 individual is prohibited from possessing a firearm. If the individual is prohibited,
11 the court shall order the individual not to possess a firearm, order the seizure of any
12 firearm owned by the individual, and inform the individual of the requirements and
13 penalties under s. 941.29. The court clerk shall notify the department of justice of
14 the prohibition and provide any information identifying the individual that is
15 necessary to permit an accurate firearms restriction record search under s. 175.35
16 (2g) (c). No other information from the individual's court records may be disclosed
17 to the department of justice except by order of the court. The department of justice
18 may disclose information provided under this paragraph ^{e subsection} only as part of a firearms
19 restriction record search under s. 175.35 (2g) (c). *INS 6-19*

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

21 175.35 (1) (at) "Firearms restrictions record search" means a search of
22 department of justice records to determine whether a person seeking to purchase a
23 handgun is prohibited from possessing a firearm under s. 941.29. "Firearms
24 restriction record search" includes a criminal history record search, a search to
25 determine whether a person ~~is prohibited from possessing~~ has been ordered not to

BILL

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

INS
7-10

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

11 941.29 (1) (e) Committed for treatment under s. 51.20 (13) (a) and ordered not
12 to possess a firearm under s. 51.20 (13) (cv) 1. based on a determination under s. 51.20
13 (13) (cv) 1. a.

14 **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) based
16 on a determination under s. 51.20 (13) (cv) 1. b., 51.45 (13) (i), 54.10 (3) (f), or 55.12
17 (10).

1.
or ordered not to possess
a firearm
under s.

18 **SECTION 14.** 941.29 (2) (d) of the statutes is amended to read:

19 941.29 (2) (d) The person possesses a firearm while subject to the court order,
20 as specified in sub. (1) (e), (em), or (g).

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

22 941.29 (9) This section does not apply to a person specified in sub. (1) (e) if the
23 prohibition order under s. 51.20 (13) (cv) 1. based on a determination under s. 51.20
24 (13) (cv) 1. a. has been canceled under s. 51.20 (13) (cv) 2. or (16) (gm).

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

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

5 **SECTION 17. Initial applicability.**

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

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

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

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

15 **SECTION 18. Effective date.**

16 ~~(1)~~ This act takes effect on the first day of the 2nd month beginning after
17 publication, *except as follows:*

(END)

*MS
8-5*

*fix
components*

(%) (#)

*The treatment of section 175.35 (2g) (d) of the statutes
and
Section (CS) (*) of this act take effect
on the day after publication.*

*use
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2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2755/lins
CMH&DAK:cjs:nwn

1 Ins A
2 *no 9* or ~~only~~ under rules that DOJ promulgates in order to provide information to the
 national instant criminal background check *system*

3 Insert 4-13
4 *no 9* or ~~only as~~ under rules the department of justice promulgates under s. 175.35
5 (2g) (d)

6
7 Insert 5-17
8 *no 9* or ~~only as~~ under rules the department of justice promulgates under s. 175.35
9 (2g) (d)

10
11 Insert 6-5
12 *no 9* or ~~only as~~ under rules the department of justice promulgates under s. 175.35
13 (2g) (d)

14
15 Insert 6-19
16 *no 9* or ~~only as~~ under rules the department of justice promulgates under s. 175.35
17 (2g) (d)

18
19 Insert 7-10
20 SECTION 1. 175.35 (2g) (d) of the statutes is created to read:
21 175.35 (2g) (d) The department shall promulgate rules to convey information
22 in a timely manner to the national instant criminal background check system *of justice*

1 regarding persons ordered not to possess a firearm under s. 51.20 (13) (cv) 1., based ✓
2 on a determination under s. 51.20 (13) (cv) 1. b., or ordered not to possess a firearm ✓
3 under s. 51.45 (13) (i), 54.10 (3) (f), or 55.12 (10). The information provided shall
4 indicate that it is in accordance with 18 USC 922 (g).

5
6 *create auto ref X*
7 *create auto ref A*
8 **SECTION 2. Nonstatutory provisions.**

9 (Y) Using the procedure under section 227.24 of the statutes, the department
10 of justice shall promulgate rules required under section 175.35 (2g) (d) of the
11 statutes, as created by this act, for the period before the effective date of the
12 permanent rules promulgated under that section, but not to exceed the period
13 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding
14 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department ^{of justice} is not required
15 to provide evidence that promulgating a rule under this subsection as an emergency
16 rule is necessary for the preservation of public peace, health, safety, or welfare and
17 is not required to provide a finding of an emergency for a rule promulgated under this
subsection.

1W3 H ✓

Ⓢ If the court determines that the 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. Ⓢ

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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 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 check whether the person has been the

state law

explicitly require DOJ

BILL

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:

BILL

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: ^{this}

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.

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

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

16 51.20 (13) (cv) 2. ~~A prohibition on~~ An order prohibiting the possession of a
 17 firearm under subd. 1. based on a determination under subd. 1. a. shall remain in
 18 effect until the commitment order and any subsequent consecutive commitment
 19 orders expire and the court determines, based on evidence presented on the issue of
 20 the subject individual's dangerousness, that there is no longer a substantial
 21 probability that the individual may use a firearm to cause physical harm to himself
 22 or herself or endanger public safety. If the court makes this determination, it shall
 23 cancel the prohibition order and order the return of any firearm ordered seized under
 24 subd. 1. on the basis of a determination under subd. 1. a.

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

to the individual
subd. 1.
If subd. 1. a. and b. apply, the
court shall make a determination
under subd. 1. b.

BILL**SECTION 4**

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

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

6 51.20 (13) (cv) 4. If the court ~~prohibits~~ orders a subject individual ~~from~~
7 ~~possessing~~ not to possess a firearm under subd. 1. based on a determination under
8 subd. 1. a. or b. or ~~cancels a prohibition~~ under subd. 2. or sub. (16) (gm) an order
9 issued under subd. 2. 1. based on a determination under subd. 1. a., the court clerk
10 shall notify the department of justice of that fact and provide any information
11 identifying the subject individual that is necessary to permit an accurate
12 involuntary commitment history record search, or an accurate firearms restrictions
13 record search. under s. 175.35 (2g) (c). No other information from the subject
14 individual's court records may be disclosed to the department of justice except by
15 order of the court. The department of justice may disclose information provided
16 under this subdivision only as part of an involuntary commitment history record
17 search, or a firearms restrictions record search. under s. 175.35 (2g) (c) or under rules
18 the department of justice promulgates under s. 175.35 (2g) (d).

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

20 51.20 (16) (gm) Upon a request under par. (a), a court may cancel the
21 ~~prohibition order not to possess a firearm issued under sub. (13) (cv) 1.~~ based on a
22 determination under sub. (13) (cv) 1. a. if the court determines, based on evidence
23 presented on the issue of the subject individual's dangerousness, that there no longer
24 is a substantial probability that the individual may use a firearm to cause physical
25 harm to himself or herself or endanger public safety. If a court cancels ~~a prohibition~~

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1 an order issued under sub. (13) (cv) 1. based on a determination under sub. (13) (cv)
2 1. a. under this paragraph, the court clerk shall notify the department of justice of
3 that fact and provide any information identifying the subject individual that is
4 necessary to permit an accurate firearms restrictions record search under s. 175.35
5 (2g) (c). No other information from the subject individual's court records may be
6 disclosed to the department of justice except by order of the court.

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

8 51.30 **(4)** (b) 28. To the department of justice, under the requirements of ss.
9 51.20 (3) (cv) 4. and 51.45 (13) (i).

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

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

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

24 54.10 **(3)** (f) If the court appoints a guardian of the person under this
25 subsection, the court shall determine if, under 18 USC 922 (g) (4), the person is

BILL**SECTION 9**

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

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

13 55.12 (10) If a court orders protective services or protective placement of a
14 individual under this section and if an order has not been made under s. 54.10 (3) (f)
15 for the individual, the court shall determine if, under 18 USC 922 (g) (4), the
16 individual is prohibited from possessing a firearm. If the individual is prohibited,
17 the court shall order the individual not to possess a firearm, order the seizure of any
18 firearm owned by the individual, and inform the individual of the requirements and
19 penalties under s. 941.29. The court clerk shall notify the department of justice of
20 the prohibition and provide any information identifying the individual that is
21 necessary to permit an accurate firearms restriction record search under s. 175.35
22 (2g) (c). No other information from the individual's court records may be disclosed
23 to the department of justice except by order of the court. The department of justice
24 may disclose information provided under this subsection only as part of a firearms

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1 restriction record search under s. 175.35 (2g) (c) or under rules the department of
2 justice promulgates under s. 175.35 (2g) (d).

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

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

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

19 175.35 (2g) (d) The department of justice shall promulgate rules to convey
20 information in a timely manner to the national instant criminal background check
21 system regarding persons ordered not to possess a firearm under s. 51.20 (13) (cv) 1.,
22 based on a determination under s. 51.20 (13) (cv) 1. b., or ordered not to possess a
23 firearm under s. 51.45 (13) (i), 54.10 (3) (f), or 55.12 (10).

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

BILL**SECTION 13**

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

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

5 941.29 (1) (em) Ordered not to possess a firearm under s. 51.20 (13) (cv) 1. based
6 on a determination under s. 51.20 (13) (cv) 1. b. or ordered not to possess a firearm
7 under s. 51.45 (13) (i), 54.10 (3) (f), or 55.12 (10).

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

9 941.29 (2) (d) The person possesses a firearm while subject to the court order,
10 as specified in sub. (1) (e), (em), or (g).

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

12 941.29 (9) This section does not apply to a person specified in sub. (1) (e) if the
13 ~~prohibition order~~ under s. 51.20 (13) (cv) 1. based on a determination under s. 51.20
14 (13) (cv) 1. a. has been canceled under s. 51.20 (13) (cv) 2. or (16) (gm).

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

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

20 **SECTION 18. Nonstatutory provisions.**

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

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

SECTION 19. Initial applicability.

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

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

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

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

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

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

19
20 (END)

Basford, Sarah

From: Hogan, John
Sent: Wednesday, May 30, 2007 1:20 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-2755/3 Topic: Mental health adjudications and background checks for gun purchases

Please Jacket LRB 07-2755/3 for the SENATE.