

2007 DRAFTING REQUEST

Senate Amendment (SA-SB216)

Received: 03/05/2008

Received By: chanaman

Wanted: As time permits

Identical to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: John

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters:

Subject: Courts - miscellaneous
Criminal Law - guns and weapons
Criminal Law - procedure
Mental Health - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Sen.Darling@legis.wisconsin.gov

Carbon copy (CC:) to: anne.sappenfield@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Relief from disabilities program implementation and storage and return of firearms

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>
/?	chanaman 03/05/2008	lkunkel 03/05/2008		_____			
/1			nmatzke 03/05/2008	_____	lparisi 03/05/2008	lparisi 03/05/2008	

FE Sent For:

2007 DRAFTING REQUEST

Senate Amendment (SA-SB216)

Received: 03/05/2008

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Alberta Darling (608) 266-5830**

By/Representing: **John**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Courts - miscellaneous
Criminal Law - guns and weapons
Criminal Law - procedure
Mental Health - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Darling@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Relief from disabilities program implementation and storage and return of firearms

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>
/?	chanaman	/ilmk 3/5	MWH 3/5	mm/FS 3/5			

FE Sent For:

<END>

Hanaman, Cathlene

From: Hogan, John
Sent: Wednesday, March 05, 2008 9:44 AM
To: Hanaman, Cathlene
Subject: FW: Gun bill questions

Cathlene - Here's what I posed to Anne about applying the return and storage clause to Sections 8 9 and 10. Maybe this will be helpful.

From: Hogan, John
Sent: Wednesday, March 05, 2008 8:33 AM
To: Sappenfield, Anne
Subject: Gun bill questions

Hi Anne,

A question came up today about gun seizures and storage of seized guns.

Sect 1 lays out that, under Ch 51.20 (13) (cv), a court shall order a person not to possess a firearm, order the seizure of any firearm owned by the individual, and inform...". This appears to be the model used in Ch 54 (Sect 9) and Ch 55 (Sect 10)

Sect 3 states "If the court makes the order and order the return of any firearm ordered seized under..."

Sect 4 states "... the court may designate a person to store the firearm until the order under subd...."

Would it be prudent to apply those same storage and return-of-firearm sections to the prohibitions under Sections 8, 9, and 10?

However, Sect 17 refers to returning the firearms. Does that cover us cancelled prohibitions under Ch 51, Ch 54, and Ch 55?

Then the question becomes Can the Sect 4 "designated person to store the firearms" be applied to everyone?

From: Sappenfield, Anne
Sent: Tuesday, March 04, 2008 5:15 PM
To: Hogan, John
Subject:

Hey John--

Sorry I missed your call. I'm heading home. Call me tomorrow. I'll be in all day. I just have an exec at 10:00.

Anne Sappenfield
Senior Staff Attorney
Legislative Council Staff
(608) 267-9485

Hanaman, Cathlene

From: Hogan, John
Sent: Wednesday, March 05, 2008 9:56 AM
To: Hanaman, Cathlene
Cc: Sappenfield, Anne
Subject: FW: NICS Improvement

Here's Sec 105, which Anne already found, as well as Sec 101 which is language for federal relief.

From: Austin, Jordan [mailto:jaustin@nrahq.org]
Sent: Wednesday, March 05, 2008 9:52 AM
To: Hogan, John
Subject: Fw: NICS Improvement

-----Original Message-----

From: Galythly, Skipp
To: Austin, Jordan
Sent: Wed Mar 05 10:31:35 2008
Subject: NICS Improvement

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ180.110.pdf

The main provisions are below. See all Sec. 103 for requirements of spending money from the grants for such relief programs.

SEC. 105. RELIEF FROM DISABILITIES PROGRAM REQUIRED AS CONDITION FOR PARTICIPATION IN GRANT PROGRAMS.

(a) PROGRAM DESCRIBED.—A relief from disabilities program is implemented by a State in accordance with this section if the program—

- (1) permits a person who, pursuant to State law, has been adjudicated as described in subsection (g)(4) of section 922 of title 18, United States Code, or has been committed to a mental institution, to apply to the State for relief from the disabilities imposed by subsections (d)(4) and (g)(4) of such section by reason of the adjudication or commitment;
- (2) provides that a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities referred to in paragraph (1), and the person's record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest; and
- (3) permits a person whose application for the relief is denied to file a petition with the State court of appropriate jurisdiction for a de novo judicial review of the denial.

(b) AUTHORITY TO PROVIDE RELIEF FROM CERTAIN DISABILITIES WITH RESPECT TO FIREARMS.—If, under a State relief from disabilities program implemented in accordance with this section, an

application for relief referred to in subsection (a)(1) of this section is granted with respect to an adjudication or a commitment to a mental institution or based upon a removal of a record under section 102(c)(1)(B), the adjudication or commitment, as the case may be, is deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code.

In addition, here is the language for the federal relief under Sec. 101:

(2) TREATMENT OF CERTAIN ADJUDICATIONS AND COMMITMENTS.—

(A) PROGRAM FOR RELIEF FROM DISABILITIES.—

(i) IN GENERAL.—Each department or agency of the United States that makes any adjudication related to the mental health of a person or imposes any commitment to a mental institution, as described in subsection (d)(4) and (g)(4) of section 922 of title 18, United States Code, shall establish, not later than 120 days after the date of enactment of this Act, a program that permits such a person to apply for relief from the disabilities imposed by such subsections.

(ii) PROCESS.—Each application for relief submitted under the program required by this subparagraph shall be processed not later than 365 days after the receipt of the application. If a Federal department or agency fails to resolve an application for relief within 365 days for any reason, including a lack of appropriated funds, the department or agency shall be deemed for all purposes to have denied such request for relief without cause. Judicial review of any petitions brought under this clause shall be de novo.

(iii) JUDICIAL REVIEW.—Relief and judicial review with respect to the program required by this subparagraph shall be available according to the standards prescribed in section 925(c) of title 18, United States Code. If the denial of a petition for relief has been reversed after such judicial review, the court shall award the prevailing party, other than the United States, a reasonable attorney's fee for any and all proceedings in relation to attaining such relief, and the United States shall be liable for such fee. Such fee shall be based upon the prevailing rates awarded to public interest legal aid organizations in the relevant community.

(B) RELIEF FROM DISABILITIES.—In the case of an adjudication related to the mental health of a person or a commitment of a person to a mental institution, a record of which may not be provided to the Attorney General under paragraph (1), including because of the absence of a finding described in subparagraph (C) of such paragraph, or from which a person has been granted relief under a program established under subparagraph (A) or (B), or because of a removal of a record under section 103(e)(1)(D) of the Brady Handgun Violence Prevention Act, the adjudication or commitment, respectively, shall be deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of section 922 of title 18, United States Code. Any Federal agency that grants a person relief from disabilities under this subparagraph shall notify such person that the person is no longer prohibited under 922(d)(4) or 922(g)(4): PUBL180 jbridges on POFP91QD1 with P

of title 18, United States Code, on account of the relieved disability for which relief was granted pursuant to a proceeding conducted under this subparagraph, with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms.

(3) NOTICE REQUIREMENT.—Effective



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

**SENATE AMENDMENT ,
TO 2007 SENATE BILL 216**

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

2 **1.** Page 3, line 16: after that line insert:

3 **"SECTION 2m.** 51.20 (13) (cv) 1m. of the statutes is created to read:

4 51.20 (13) (cv) 1m. a. If a court orders a person under subd. 1. not to possess
5 a firearm based on a determination under subd. 1. b., the person may petition that
6 court or the court in the county where the person resides to cancel the order.

7 b. The court considering the petition under subd. 1m. a. shall grant the petition
8 if the court determines that the circumstances regarding the disposition under par.

9 (a) 3., 4., 4m., or 5. and the ~~individual's~~ ^{person's} record and reputation indicate that the person
10 is not likely to act in a manner dangerous to public safety and that the granting of
11 the petition would not be contrary to public interest.

1 c. If the court grants the petition under subd. 1m. b., the court shall cancel the
2 order under subd. 1. and order the return of any firearm ordered seized under subd.
3 1.".

4 **2.** Page 4, line 4: delete the material beginning with "on the basis" and ending
5 with "1. a." on line 5.

6 **3.** Page 4, line 7: after "(gm)" insert "or until the order under subd. 1. based
7 on the determination under subd. 1. b. has been canceled under sub. 1m. c".

8 **4.** Page 4, line 10: after "subd. 1." insert "er".

9 **5.** Page 4, line 11: delete "b. or" and substitute "b.".

10 **6.** Page 4, line 12: after "subd. 1. a." insert ", or cancels under subd. 1m. ^{c.}an
11 order issued under subd. 1. based on a determination under subd. 1. b.".

12 **7.** Page 5, line 12: after "(i)" insert "4".

13 **8.** Page 5, line 13: delete the material beginning with that line and ending with
14 page 7, line 4, and substitute:

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

16 51.45 (13) (i) 1. If a court orders commitment of a person under this subsection,
17 the court shall determine if, under 18 USC 922 (g) (4), the person is prohibited from
18 possessing a firearm. If the person is prohibited, the court shall order the person not
19 to possess a firearm, order the seizure of any firearm owned by the person, and
20 inform the person of the requirements and penalties under s. 941.29.

21 2. a. If a court orders a person under subd. 1. not to possess a firearm, the person
22 may petition that court or the court in the county where the person resides to cancel
23 the order.

1 b. The court considering the petition under subd. 2. a. shall grant the petition
2 if the court determines that the circumstances regarding the commitment under this
3 subsection and the person's record and reputation indicate that the person is not
4 likely to act in a manner dangerous to public safety and that the granting of the
5 petition would not be contrary to public interest. ✓

6 c. If the court grants the petition under subd. 2. b., the court shall cancel the
7 order under subd. 1. and order the return of any firearm ordered seized under subd.
8 1. ✓

9 3. In lieu of ordering the seizure under subd. 1., the court may designate a
10 person to store the firearm ~~under this~~ order under subd. 1. is cancelled. ✓

11 4. If the court orders under subd. 1. a person not to possess a firearm or cancels
12 under subd. 2. ^{c.} (an order issued under subd. 1., the court clerk shall notify the
13 department of justice of the order ^{or cancellation} and provide any information identifying the person
14 that is necessary to permit an accurate firearms restrictions record search under s.
15 175.35 (2g) (c). No other information from the person's court records may be disclosed
16 to the department of justice except by order of the court. ✓ The department of justice
17 may disclose information provided under this subdivision only as part of a firearms
18 restrictions record search under s. 175.35 (2g) (c) or under rules the department of
19 justice promulgates under s. 175.35 (2g) (d). ✓

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

21 54.10 (3) (f) 1. If the court appoints a guardian of the person under this
22 subsection, the court shall determine if, under 18 USC 922 (g) (4), the person is
23 prohibited from possessing a firearm. ✓ If the person is prohibited, the court shall
24 order the person not to possess a firearm, order the seizure of any firearm owned by
25 the person, and inform the person of the requirements and penalties under s. 941.29. ✓

1 2. a. If a court orders a person under subd. 1. not to possess a firearm, the person
2 may petition that court or the court in the county where the person resides to cancel
3 the order. ✓

appointment of a guardian

4 b. The court considering the petition under subd. 2. a. shall grant the petition
5 if the court determines that the circumstances regarding the ~~commitment~~
6 subsection and the person's record and reputation indicate that the person is not
7 likely to act in a manner dangerous to public safety and that the granting of the
8 petition would not be contrary to public interest. ✓

9 c. If the court grants the petition under subd. 2. b., the court shall cancel the
10 order under subd. 1. and order the return of any firearm ordered seized under subd.
11 1. ✓

12 3. In lieu of ordering the seizure under subd. 1., the court may designate a
13 person to store the firearm ~~under this order~~ under subd. 1. is cancelled. ✓

until the

14 4. If the court orders under subd. 1. a person not to possess a firearm or cancels
15 under subd. 2. ^{c.} an order issued under subd. 1. the court clerk shall notify the
16 department of justice of the ~~prohibition~~ and provide any information identifying the
17 person that is necessary to permit an accurate firearms restriction^s record search
18 under s. 175.35 (2g) (c). No other information from the person's court records may
19 be disclosed to the department of justice except by order of the court. The department
20 of justice may disclose information provided under this subdivision only as part of
21 a firearms restriction^s record search under s. 175.35 (2g) (c) or under rules the
22 department of justice promulgates under s. 175.35 (2g) (d). ✓

order or cancellation

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

24 55.12 (10) (a) If a court orders protective services or protective placement of a
25 ~~individual~~ under this section and if an order has not been made under s. 54.10 (3) (f)

person

1 for the ~~individual~~, the court shall determine if, under 18 USC 922 (g) (4), the
 2 ~~individual~~ ^{person (2x)} is prohibited from possessing a firearm. If the ~~individual~~ ^{person} is prohibited, the
 3 court shall order the ~~individual~~ ^{person} not to possess a firearm, order the seizure of any
 4 firearm owned by the ~~individual~~, and inform the ~~individual~~ of the requirements and
 5 penalties under s. 941.29. ✓

6 (b) 1. If a court orders a person under par. (a) not to possess a firearm, the person
 7 may petition that court or the court in the county where the person resides to cancel
 8 the order. ✓

9 2. The court considering the petition under subd. 1. shall grant the petition if
 10 the court determines that the circumstances regarding the protective services or
 11 protective placement order under this subsection and the person's record and
 12 reputation indicate that the person is not likely to act in a manner dangerous to
 13 public safety and that the granting of the petition would not be contrary to public
 14 interest.

15 3. If the court grants the petition under subd. 2., the court shall cancel the order
 16 under par. (a) and order the return of any firearm ordered seized under par. (a).

17 (c) In lieu of ordering the seizure under par. (a), the court may designate a
 18 person to store the firearm ~~under this~~ ^{until the} order under par. (a) is cancelled.

19 (d) If the court orders under par. (a) a person not to possess a firearm or cancels
 20 under par. (b) ^{3.} an order issued under par. (a) the court clerk shall notify the
 21 department of justice of the ~~prohibition~~ ^{order or cancellation} and provide any information identifying the
 22 person that is necessary to permit an accurate firearms restriction record search
 23 under s. 175.35 (2g) (c). No other information from the person's court records may
 24 be disclosed to the department of justice except by order of the court. The department
 25 of justice may disclose information provided under this paragraph only as part of a

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

3 **9.** Page 7, line 25: after "(i)" insert "1." ✓

4 **10.** Page 7, line 25: after "(f)" insert "1." ✓

5 **11.** Page 7, line 25: after "(10)" insert "(a)". ✓

6 **12.** Page 8, line 8: after "(i)" insert "1." ✓

7 **13.** Page 8, line 8: after "(f)" insert "1." ✓

8 **14.** Page 8, line 8: after "(10)" insert "(a)". ✓ *.c.*

9 **15.** Page 8, line 15: after "(gm)" insert "if the order under s. 51.30 (13) (cv)

10 1. based on a determination under s. 51.20 (13) (cv) 1. b. has been canceled under s.

11 51.20 (13) (cv) 1m, if the order under s. 51.45 (13) (i) 1. is canceled under s. 51.45 (13)

12 (i) 2., if the order under s. 54.10 (3) (f) 1. is canceled under s. 54.10 (3) (f) 3., or if the

13 order under s. 55.12 (10) (a) is canceled under s. 55.12 (1) (c)". *(10) (b) 3* *20c*

14 **16.** Page 8, line 20: after "(gm)" insert "if the order under s. 51.30 (13) (cv)

15 1. based on a determination under s. 51.20 (13) (cv) 1. b. has been canceled under s.

16 51.20 (13) (cv) 1m if the order under s. 51.45 (13) (i) 1. is canceled under s. 51.45 (13)

17 (i) 2., if the order under s. 54.10 (3) (f) 1. is canceled under s. 54.10 (3) (f) 3., or if the

18 order under s. 55.12 (10) (a) is canceled under s. 55.12 (1) (c)". *(10) (b) 3* *20c*

19 (END)

⊙ (10) Δ