

2009 DRAFTING REQUEST

Bill

Received: **05/19/2009**

Received By: **chanaman**

Wanted: **As time permits**

Companion to LRB: **-4543**

For: **Anthony Staskunas (608) 266-0620**

By/Representing: **Tom Kelly**

May Contact:

Drafter: **chanaman**

Subject: **Criminal Law - guns and weapons**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Staskunas@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Sales and transfers of firearms, records from sales of firearms, possession by younger persons

Instructions:

See attached--2007 -2777/p3

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 07/23/2009	nmatzke 07/27/2009		_____			S&L Crime
/1	chanaman 09/16/2009	nmatzke 09/24/2009	rschluet 07/27/2009	_____	sbasford 07/27/2009		S&L Crime
/2	chanaman 12/11/2009	nmatzke 12/14/2009	rschluet 09/25/2009	_____	cduerst 09/25/2009		S&L Crime
/3	chanaman 02/03/2010		phenry 12/14/2009	_____	mbarman 12/14/2009		S&L Crime

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/4	chanaman 03/08/2010	nmatzke 02/15/2010 nmatzke 03/08/2010	rschluet 02/15/2010	_____ _____ _____	sbasford 02/15/2010		S&L Crime
/5			mduchek 03/09/2010	_____ _____	sbasford 03/09/2010	lparisi 03/15/2010	

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*at
intro*

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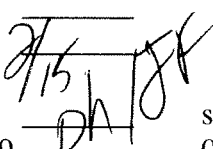
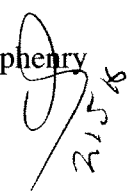
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<END>

2007 - 2008 LEGISLATURE

-2912/1
LRB-2777/P3
CMH: [initials] nwn
nwn

Monday please

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
X-ref ✓

repeal

1 AN ACT *to repeal* 175.35 (2k) (b) 2. b., 941.29 (2) and 941.29 (9); *to renumber*
2 175.35 (2) (a) to (d) and 175.35 (2j); *to renumber and amend* 175.35 (2)
3 (intro.), 175.35 (2i), 175.35 (2k) (b) 2. a., 175.35 (3) and 941.29 (1); *to amend*
4 20.455 (2) (gr), 29.921 (1), 175.35 (title) and (1) (ag), 175.35 (2g) (b), 175.35 (2g)
5 (c) (intro.), 175.35 (2g) (c) 4. c., 175.35 (2k) (ar) (intro.), 175.35 (2k) (ar) 2., 175.35
6 (2k) (b) (intro.), 175.35 (2k) (c) 2. a., 175.35 (2k) (c) 2. b., 175.35 (2k) (g), 175.35
7 (2k) (h), 175.35 (2k) (i), 175.35 (2t) (a), 175.35 (2t) (b), 175.35 (2t) (c), 938.208
8 (1) (c), 938.34 (4m) (b) 3., 938.341, 938.396 (2g) (d), 938.396 (2g) (n), 938.78 (3),
9 941.29 (3), 941.29 (4), 941.29 (5) (intro.), 941.29 (5) (a), 941.29 (8), 941.29 (10)
10 (intro.), 948.60 (title), 948.60 (1), 968.255 (1) (a) 2., 971.17 (1g) and 973.176 (1);
11 and *to create* 175.33, 175.35 (1) (bm), 175.35 (2b), 175.35 (2c) (a) (intro.) and
12 (b), 175.35 (2j) (b), 175.35 (2k) (k), 175.35 (3) (a), 941.29 (1g), 941.29 (1m) (ag),
13 941.29 (1m) (bg), 941.29 (1m) (br), 941.29 (1m) (cg), 941.29 (1m) (dg), 941.29 (11)
14 and 948.59 of the statutes; **relating to:** sales and transfers of firearms, records
15 from sales of firearms, possession of firearms by persons committing violent
convicted of

1 offenses that are not felonies, possession of handguns by or transfers of
2 handguns involving younger persons, and providing penalties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

ANALYSIS
INSERT

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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:

3 SECTION 1. 20.455 (2) (gr) of the statutes, as affected by 2005 Wisconsin Act 25,
4 is amended to read:
5 20.455 (2) (gr) ~~Handgun purchaser record check fee~~. All moneys received as fee
6 payments under s. 175.35 (2i) (a) to provide services under s. 175.35.

7 SECTION 2. 29.921 (1) of the statutes is amended to read:

INS
2-7

8 29.921 (1) GENERALLY. The department and its wardens may execute and serve
9 warrants and processes issued under any law enumerated in ss. 23.50 (1), 167.31,
10 346.19, 940.24, 941.20, 948.59, 948.60, 948.605, and 948.61 in the same manner as
11 any constable may serve and execute the process; and may arrest, with or without
12 a warrant, any person detected in the actual violation, or whom the officer has
13 probable cause to believe is guilty of a violation of any of the laws cited in this
14 subsection, whether the violation is punishable by criminal penalties or by forfeiture,
15 and may take the person before any court in the county where the offense was
16 committed and make a proper complaint. For the purpose of enforcing any of the

1 laws cited in this subsection, any officer may stop and board any boat and stop any
2 vehicle, if the officer reasonably suspects there is a violation of those sections. ✓

3 ^{XW^}
SECTION 3. 175.33 of the statutes is created to read:

4 **175.33 Transfer of firearms; license required. (1)** In this section: ✓

5 (a) “Family member” means a spouse, parent, grandparent, child, or
6 grandchild. The relationship may be by blood, marriage, or adoption. ✓

7 (b) “Firearms dealer” has the meaning given in s. 175.35 (1) (ar). ✓

8 **(2)** No person may sell or transfer ownership of a firearm, or purchase or obtain
9 ownership of a firearm, unless one of the following applies:

10 (a) The seller or transferor is a firearms dealer. ✓

11 (b) The seller or transferor makes the sale or transfer to or through a firearms
12 dealer and obtains a receipt under s. 175.35 (2j) (b). ✓

13 (c) The sale or transfer of ownership of the firearm is one of the transfers listed
14 under s. 175.35 (2t). ✓

15 (d) The transferor is transferring ownership of the firearm to a family member
16 by gift, bequest, or inheritance, the transferee is not prohibited from possessing a
17 firearm under s. 941.29, ✓ and, if the firearm is a handgun, as defined in s. 175.35 (1)
18 (b), ✓ the transferee is at least 21 years of age. ✓

19 (e) The transferor is transferring ownership of the firearm with the intent that
20 the transfer be temporary, neither the transferor nor the transferee is prohibited
21 from possessing a firearm under s. 941.29 ✓ or 948.59, ✓ and the purpose of the transfer
22 is not prohibited by law. ✓

23 **(3)** Any person who intentionally violates sub. (2) is guilty of a Class G felony. ✓

24 ^{XW}
SECTION 4. 175.35 (title) and (1) (ag) of the statutes are amended to read:

1 **175.35 (title) Waiting period for purchase of handguns and records for**
2 **purchases of firearms.**

3 **(1) (ag)** “Criminal history record” includes information reported to the
4 department under s. 938.396 (2g) (n) that indicates a person was adjudicated
5 delinquent for an act that if committed by an adult in this state would be a felony or
6 if the adjudication occurred within the preceding 5 years, a violent nonfelony offense.✓

7 ^{✓X}
SECTION 5. 175.35 (1) (bm) of the statutes is created to read:

8 175.35 **(1)** (bm) “Violent nonfelony offense” has the meaning given in s. 941.29
9 (1g).✓

10 ^{✓X}
SECTION 6. 175.35 (2) (intro.) of the statutes is renumbered 175.35 (2) and
11 amended to read:

12 175.35 **(2)** When a firearms dealer sells a ~~handgun~~ firearm, he or she may not
13 transfer possession of that ~~handgun~~ firearm to any other person until all of the
14 ~~following have occurred:~~ requirements of sub. (2c) have been met.✓

15 ^{✓X}
SECTION 7. 175.35 (2) (a) to (d) of the statutes are renumbered 175.35 (2c) (a)
16 1. to 4.✓

17 ^{✓XΛ}
SECTION 8. 175.35 (2b) of the statutes is created to read:

18 175.35 **(2b)** When a person sells a firearm or transfers ownership of a firearm
19 through a firearms dealer, the person may not transfer possession of that firearm to
20 any person other than the firearms dealer, and the firearms dealer may not transfer
21 or authorize the transfer of possession of that firearm to any person, until all of the
22 requirements of sub. (2c)✓ have been met. This subsection✓ does not apply if a person
23 sells a firearm or transfers ownership of a firearm to a firearms dealer.✓

24 ^{✓X}
SECTION 9. 175.35 (2c) (a) (intro.) and (b) of the statutes are created to read:

1 175.35 (2c) (a) (intro.) All of the following must occur before a sale or transfer
2 of a firearm that is a handgun occurs under sub. (2) or (2b):

3 (b) All of the following must occur before a sale or transfer of a firearm that is
4 not a handgun occurs under sub. (2) or (2b):

5 1. The transferee has provided identification as required by rule under sub. (2g)
6 (a).

7 2. The transferee has completed the notification form described in sub. (2g) (b).

8 3. The firearms dealer has conveyed the information from the completed
9 notification form to the department of justice as required by rule under sub. (2g) (b).

10 SECTION 10. ~~175.35~~ (2g) (b) of the statutes is amended to read:

11 175.35 (2g) (b) The department of justice shall promulgate rules prescribing
12 a notification form for use under sub. ~~(2)~~ (2c) (a) 2. and (b) 2. requiring the transferee
13 to provide his or her name, date of birth, gender, and race ~~and social security number~~
14 and, if the sale or transfer involves a handgun, other identification or information
15 necessary to permit an accurate firearms restrictions record search under par. (c) 3.
16 and the required notification under par. (c) 4. The department of justice shall make
17 the forms available at locations throughout the state.

18 SECTION 11. ~~175.35~~ (2g) (c) (intro.) of the statutes is amended to read:

19 175.35 (2g) (c) (intro.) The department of justice shall promulgate rules for
20 firearms restrictions record searches regarding transferees under sub. subs. (2) and
21 (2b), including procedures for all of the following:

22 SECTION 12. ~~175.35~~ (2g) (c) 4. c. of the statutes is amended to read:

23 175.35 (2g) (c) 4. c. If the search indicates a felony charge or a violent nonfelony
24 offense charge without a recorded disposition, the deadline under sub. ~~(2) (d)~~ (2c) (a)
25 4. is extended to the end of the 3rd complete working day commencing after the day

1 on which the finding is made. The department shall notify the firearms dealer of the
2 extension as soon as practicable. During the extended period, the department shall
3 make every reasonable effort to determine the disposition of the charge and notify
4 the firearms dealer of the results as soon as practicable. ✓

5 ~~SECTION 13. 175.35 (2i) of the statutes is renumbered 175.35 (2i) (a) and
6 amended to read:~~

7 ~~175.35 (2i) (a) The department shall charge a firearms dealer an \$8 fee for each
8 firearms restrictions record search that the firearms dealer requests under sub. (2)
9 (2c) (a) 3.~~

10 ~~(b) The firearms dealer may collect the fee under par. (a) from the transferee
11 or, if the transfer is made under sub. (2b), from the transferor.~~

12 ~~(c) The department may refuse to conduct firearms restrictions record searches
13 for any firearms dealer who fails to pay any fee under this subsection par. (a) within
14 30 days after billing by the department.~~

15 ~~SECTION 14. 175.35 (2j) of the statutes is renumbered 175.35 (2j) (a). ✓~~

16 ~~SECTION 15. 175.35 (2j) (b) of the statutes is created to read:~~

17 ~~175.35 (2j) (b) If a person sells a firearm or transfers ownership of a firearm
18 through a firearms dealer under sub. (2b), ✓ or sells a firearm or transfers ownership
19 of a firearm to a firearms dealer, the firearms dealer shall provide the person a
20 written receipt documenting the dealer's participation in the sale or transfer. ✓~~

21 ~~SECTION 16. 175.35 (2k) (ar) (intro.) of the statutes is amended to read:~~

22 ~~175.35 (2k) (ar) (intro.) Except as provided in pars. (b) to (j) (k) ✓ and as necessary
23 to administer this section, the department of justice shall do all of the following: ✓~~

24 ~~SECTION 17. 175.35 (2k) (ar) 2. of the statutes is amended to read:~~

TNS ✓
6-75 ✓

1 175.35 (2k) (ar) 2. Check each duplicate notification form received under sub.
2 (2j) (a) against the information recorded by the department regarding the
3 corresponding request for a firearms restrictions record search under sub. (2g). If the
4 department previously provided a unique approval number regarding the request
5 and nothing in the duplicate completed notification form indicates that the
6 transferee is prohibited from possessing a firearm under s. 941.29, the department
7 shall destroy all records regarding that firearms restrictions record search within 30
8 days after receiving the duplicate form.

9 ~~SECTION 18.~~ 175.35 (2k) (b) (intro.) of the statutes is amended to read:

10 175.35 (2k) (b) (intro.) Notwithstanding par. (ar), the The department of justice
11 may maintain all of the following:

12 ~~SECTION 19.~~ 175.35 (2k) (b) 2. a. of the statutes is renumbered 175.35 (2k) (b)
13 2. and amended to read:

14 175.35 (2k) (b) 2. ~~Except as provided in subd. 2. b., a~~ A log of dates of requests
15 for firearms restrictions record searches under sub. (2g) together with confirmation
16 numbers, unique approval and nonapproval numbers and firearms dealer
17 identification numbers corresponding to those dates.

18 ~~SECTION 20.~~ 175.35 (2k) (b) 2. b. of the statutes is repealed.

19 ~~SECTION 21.~~ 175.35 (2k) (c) 2. a. of the statutes is amended to read:

20 175.35 (2k) (c) 2. a. A statement that the Wisconsin law enforcement agency
21 is conducting an investigation of a crime in which a handgun firearm was used or was
22 attempted to be used or was unlawfully possessed.

23 ~~SECTION 22.~~ 175.35 (2k) (c) 2. b. of the statutes is amended to read:

24 175.35 (2k) (c) 2. b. A statement by a division commander or higher authority
25 within the Wisconsin law enforcement agency that he or she has a reasonable

1 suspicion that the person who is the subject of the information request has obtained
2 or is attempting to obtain a handgun firearm.[✓]

3 **SECTION 23.** ^{✓~~x~~} 175.35 (2k) (g) of the statutes is amended to read:

4 175.35 **(2k)** (g) If a search conducted under sub. (2g) indicates that the
5 transferee is prohibited from possessing a firearm under s. 941.29, the attorney
6 general or his or her designee may disclose to a law enforcement agency that the
7 transferee has attempted to obtain a handgun firearm.[✓]

8 **SECTION 24.** ^{✓~~x~~} 175.35 (2k) (h) of the statutes is amended to read:

9 175.35 **(2k)** (h) If a search conducted under sub. (2g) indicates a felony charge
10 or violent nonfelony offense charge without a recorded disposition and the attorney
11 general or his or her designee has reasonable grounds to believe the transferee may
12 pose a danger to himself, herself or another, the attorney general or his or her
13 designee may disclose to a law enforcement agency that the transferee has obtained
14 or has attempted to obtain a handgun firearm.[✓]

15 **SECTION 25.** ^{✓~~x~~} 175.35 (2k) (i) of the statutes is amended to read:

16 175.35 **(2k)** (i) The department of justice may not charge a fee for any services
17 that the department provides under pars. (c) to (j) (k).[✓]

18 **SECTION 26.** ^{✓~~x~~^} 175.35 (2k) (k) of the statutes is created to read:

19 175.35 **(2k)** (k) The department may provide access to records kept under this
20 section [✓] to a person engaged in research if the department has approved the research
21 and the researcher agrees that the information will be used only for the purposes for
22 which it was provided, the information will not be released to anyone not connected
23 with the research, and the research will not involve revealing information that may
24 serve to identify the individuals involved. The department shall also impose

1 whatever additional safeguards are needed to prevent unwarranted disclosure of
2 information from the records.✓

3 **SECTION 27.** ^{✓X} 175.35 (2t) (a) of the statutes is amended to read:

4 175.35 (2t) (a) Transfers of any handgun firearm classified as an antique by
5 regulations of the U.S. department of the treasury.✓

6 **SECTION 28.** ^{✓X} 175.35 (2t) (b) of the statutes is amended to read:

7 175.35 (2t) (b) Transfers of any handgun firearm between firearms dealers or
8 between wholesalers and dealers.✓

9 **SECTION 29.** ^{✓X} 175.35 (2t) (c) of the statutes is amended to read:

10 175.35 (2t) (c) Transfers of any handgun firearm to law enforcement or armed
11 services agencies.✓

12 **SECTION 30.** ^{✓X} 175.35 (3) of the statutes is renumbered 175.35 (3) (b) and
13 amended to read:

14 175.35 (3) (b) Any person who intentionally violates sub. (2), (2e)✓, (2f)✓ or (2j)✓
15 shall be fined not less than \$500 nor more than \$10,000 and may be imprisoned for
16 not more than 9 months.✓

17 **SECTION 31.** ^{✓X} 175.35 (3) (a) of the statutes is created to read:

18 175.35 (3) (a) Any person who intentionally violates sub. (2) or (2b) is guilty of
19 a Class G felony.✓

20 **SECTION 32.** ^{✓X} 938.208 (1) (c) of the statutes is amended to read:

21 938.208 (1) (c) Probable cause exists to believe that the juvenile has possessed
22 or gone armed with a short-barreled rifle or a short-barreled shotgun in violation
23 of s. 941.28, or has possessed or gone armed with a handgun in violation of s. 948.60
24 948.59.✓

25 **SECTION 33.** ^{✓X} 938.34 (4m) (b) 3. of the statutes is amended to read:

1 938.34 **(4m)** (b) 3. The juvenile has possessed or gone armed with a
2 short-barreled rifle or a short-barreled shotgun in violation of s. 941.28 or has
3 possessed or gone armed with a handgun in violation of s. ~~948.60~~ 948.59.[✓]

4 ^{✓x}
SECTION 34. 938.341 of the statutes is amended to read:

5 **938.341 Delinquency adjudication; restriction on firearm possession.**

6 Whenever a court adjudicates a juvenile delinquent for an act that if committed by
7 an adult in this state would be a felony or a violent nonfelony offense, as defined in
8 s. 941.29 (1g),[✓] the court shall inform the juvenile of the requirements and penalties
9 under s. 941.29.[✓]

10 ^{✓x}
SECTION 35. 938.396 (2g) (d) of the statutes is amended to read:

11 938.396 **(2g)** (d) *Bail; impeachment; firearm possession.* Upon request of a
12 court of criminal jurisdiction or a district attorney to review court records for the
13 purpose of setting bail under ch. 969, impeaching a witness under s. 906.09, or
14 investigating and determining whether a person has possessed a firearm in violation
15 of s. 941.29 (2) or body armor in violation of s. 941.291 (2) or upon request of a court
16 of civil jurisdiction or the attorney for a party to a proceeding in that court to review
17 court records for the purpose of impeaching a witness under s. 906.09, the court
18 assigned to exercise jurisdiction under this chapter and ch. 48 shall open for
19 inspection by authorized representatives of the requester the records of the court
20 relating to any juvenile who has been the subject of a proceeding under this chapter.[✓]

21 ^{✓x}
SECTION 36. 938.396 (2g) (n) of the statutes is amended to read:

22 938.396 **(2g)** (n) *Firearms restriction record search.* If a juvenile is adjudged
23 delinquent for an act that would be a felony or a violent nonfelony offense, as defined
24 in s. 941.29 (1g),[✓] if committed by an adult, the court clerk shall notify the department
25 of justice of that fact. No other information from the juvenile's court records may be

1 disclosed to the department of justice except by order of the court. The department
2 of justice may disclose any information provided under this subsection only as part
3 of a firearms restrictions record search under s. 175.35 (2g) (c). ✓

4 **SECTION 37.** 938.78 (3) of the statutes is amended to read:

5 **938.78 (3) RELEASE OF INFORMATION WHEN ESCAPE OR ABSENCE; RULES.** If a juvenile
6 adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 or found to be in need
7 of protection or services under s. 48.13 (12), 1993 stats., or s. 48.13 (14), 1993 stats.,
8 or s. 938.13 (12) or (14) on the basis of a violation of s. 943.23 (1m) or (1r), 1999 stats.,
9 or s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28,
10 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2)
11 (a), 943.23 (1g), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.085 (2),
12 948.59, 948.60, 948.605, or 948.61 or any crime specified in ch. 940 has escaped from
13 a juvenile correctional facility, residential care center for children and youth,
14 inpatient facility, as defined in s. 51.01 (10), juvenile detention facility, or juvenile
15 portion of a county jail, or from the custody of a peace officer or a guard of such a
16 facility, center, or jail, or has been allowed to leave a juvenile correctional facility,
17 residential care center for children and youth, inpatient facility, juvenile detention
18 facility, or juvenile portion of a county jail for a specified time period and is absent
19 from the facility, center, home, or jail for more than 12 hours after the expiration of
20 the specified period, the department or county department having supervision over
21 the juvenile may release the juvenile's name and any information about the juvenile
22 that is necessary for the protection of the public or to secure the juvenile's return to
23 the facility, center, home, or jail. The department shall promulgate rules
24 establishing guidelines for the release of the juvenile's name or information about
25 the juvenile to the public.

1/11/11 11-25 ✓

1 ~~941.29~~^{✓X} SECTION 38. 941.29 (1) of the statutes is renumbered 941.29 (1m) and amended
2 to read:

3 941.29 (1m) A person is ~~subject to the requirements and penalties of this~~
4 ~~section if he or she has been~~ who possesses a firearm is guilty of a Class G felony if
5 any of the following apply:[✓]

6 (a) ~~Convicted~~ The person has been convicted of a felony in this state.[✓]

7 (b) ~~Convicted~~ The person has been convicted of a crime elsewhere that would
8 be a felony if committed in this state.[✓]

9 (bm) ~~Adjudicated~~ The person has been adjudicated delinquent for an act
10 committed on or after April 21, 1994, that if committed by an adult in this state would
11 be a felony.[✓]

12 (c) ~~Found~~ The person has been found not guilty of a felony in this state by reason
13 of mental disease or defect.[✓]

14 (d) ~~Found~~ The person has been found not guilty of or not responsible for a crime
15 elsewhere that would be a felony in this state by reason of insanity or mental disease,
16 defect or illness.[✓]

17 (e) ~~Committed~~ The person has been committed for treatment under s. 51.20 (13)
18 (a) and ~~ordered~~ is subject to an order not to possess a firearm under s. 51.20 (13) (cv).[✓]

19 (f) ~~Enjoined under~~ The person is subject to an injunction issued under s. 813.12
20 or 813.122 or ~~under~~ a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
21 established by any federally recognized Wisconsin Indian tribe or band, except the
22 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
23 or she is subject to the requirements and penalties under s. 941.29 and that has been
24 filed under s. 806.247 (3).[✓]

1 (g) ~~Ordered~~ The person is subject to an order not to possess a firearm under s.
2 813.125 (4m).[✓]

3 **SECTION 39.** ^{✓X^} 941.29 (1g) of the statutes is created to read:

4 941.29 (1g) "Violent nonfelony offense" means any of the following:

5 (a) A misdemeanor violation of s. 940.19,[✓] 940.195,[✓] 940.20,[✓] 940.225,[✓] 940.42,[✓]
6 940.44,[✓] 941.237,[✓] 941.38,[✓] 941.39,[✓] 947.013,[✓] 948.10,[✓] 948.55,[✓] (or 948.60.[✓] 948.59,[✓])

7 (b) A violation of a temporary restraining order or injunction issued under s.
8 813.12 (3) or (4),[✓] 813.122 (4) or (5),[✓] or 813.125 (3) or (4).[✓]

9 (c) Any misdemeanor crime for which the maximum term of imprisonment has
10 been increased under s. 939.63.[✓]

11 **SECTION 40.** ^{✓X^} 941.29 (1m) (ag) of the statutes is created to read:

12 941.29 (1m) (ag) The person has been convicted on or after the effective date
13 of this paragraph [revisor inserts date],^{LRB} of a crime that would be a violent
14 nonfelony offense.[✓]

15 **SECTION 41.** ^{✓X^} 941.29 (1m) (bg) of the statutes is created to read:

16 941.29 (1m) (bg) The person has been convicted elsewhere on or after the
17 effective date of this paragraph [revisor inserts date],^{LRB} of a crime that would be a
18 violent nonfelony offense if committed in this state.[✓]

19 **SECTION 42.** ^{✓X^} 941.29 (1m) (br) of the statutes is created to read:

20 941.29 (1m) (br) The person has been adjudicated delinquent on or after the
21 effective date of this paragraph [revisor inserts date],^{LRB} for an act that if committed
22 by an adult in this state would be a violent nonfelony offense.[✓]

23 **SECTION 43.** ^{✓X^} 941.29 (1m) (cg) of the statutes is created to read:

LKD

1 941.29 **(1m)** (cg) On or after the effective date of this paragraph [revisor
 2 inserts date], the person has been found not guilty by reason of mental disease or
 3 defect of a violent nonfelony offense in this state.✓

4 **SECTION 44.** ^{✓XΛ} 941.29 (1m) (dg) of the statutes is created to read:

5 941.29 **(1m)** (dg) On or after the effective date of this paragraph [revisor
 6 inserts date], the person has been found not guilty of, or not responsible for, by reason
 7 of insanity or mental disease, defect, or illness, a crime elsewhere that would be a
 8 violent nonfelony offense in this state.✓

9 **SECTION 45.** ^{✓X} 941.29 (2) of the statutes is repealed.✓

10 **SECTION 46.** ^{✓X} 941.29 (3) of the statutes is amended to read:

11 941.29 **(3)** Any firearm involved in an offense under ~~sub. (2)~~ this section✓ is
 12 subject to s. 968.20 (3).✓

13 **SECTION 47.** ^{✓X} 941.29 (4) of the statutes is amended to read:

14 941.29 **(4)** A person is concerned with the commission of a crime, as specified
 15 in s. 939.05 (2) (b), in violation of this section if he or she knowingly furnishes a person
 16 with a firearm in violation of ~~sub. (2)~~ this section.✓

17 **SECTION 48.** ^{✓X} 941.29 (5) (intro.) of the statutes is amended to read:

18 941.29 **(5)** (intro.) This section does not apply to any person specified in sub.
 19 ~~(4)~~ (1m) who:✓

20 **SECTION 49.** ^{✓X} 941.29 (5) (a) of the statutes is amended to read:

21 941.29 **(5)** (a) Has received a pardon with respect to the crime or felony specified
 22 in sub. ~~(4)~~ (1m) and has been expressly authorized to possess a firearm under 18 USC
 23 app. 1203; or✓

24 **SECTION 50.** ^{✓X} 941.29 (8) of the statutes is amended to read:

1 941.29 **(8)** This section does not apply to any person specified in sub. ~~(1)~~ (1m)
2 (bm) if a court subsequently determines that the person is not likely to act in a
3 manner dangerous to public safety. In any action or proceeding regarding this
4 determination, the person has the burden of proving by a preponderance of the
5 evidence that he or she is not likely to act in a manner dangerous to public safety.✓

6 **SECTION 51.** ^{✓✓}941.29 (9) of the statutes is repealed.✓

7 **SECTION 52.** ^{✓✓}941.29 (10) (intro.) of the statutes is amended to read:

8 941.29 **(10)** (intro.) The prohibition against firearm possession under this
9 section does not apply to a person specified in sub. ~~(1)~~ (1m) (f) if the person satisfies
10 any of the following:✓

11 **SECTION 53.** ^{✓✓}941.29 (11) of the statutes is created to read:

12 941.29 **(11)** Subsection (1m) (ag)✓, (bg)✓, (br)✓, (cg)✓, and (dg)✓ does not apply if the
13 conviction, adjudication, or finding occurred more than 5 years before the date on
14 which the person possesses the firearm.✓

15 **SECTION 54.** ^{✓✓}948.59 of the statutes is created to read:

16 **948.59 Possession of a handgun by a person under 21. (1)** In this section:

17 (a) “Handgun” has the meaning given in s. 175.35 (1) (b).✓

18 (b) “Law enforcement officer” means a Wisconsin law enforcement officer, as
19 defined in s. 175.46 (1) (g)✓, or a federal law enforcement officer, as defined in s. 175.40
20 (7) (a) 1.✓

21 **(2)** (a) Any person under 21 years of age who possesses or goes armed with a
22 handgun is guilty of a Class A misdemeanor.✓

23 (b) 1. Except as provided in subd. 2.✓, any person who intentionally sells, loans,
24 or gives a handgun to a person under 21 years of age is guilty of a Class I felony.✓

1 2. Whoever violates subd. 1. is guilty of a Class H felony if the person under 21
2 years of age under subd. 1. discharges the handgun and the discharge causes death
3 to himself, herself, or another.

4 (c) A person under 17 years of age who has violated this subsection is subject
5 to the provisions of ch. 938 unless jurisdiction is waived under s. 938.18 or the person
6 is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

7 (3) (a) Subsection (2) (a) does not apply to a person under 21 years of age who
8 possesses or goes armed with a handgun when the handgun is being used in target
9 practice under the supervision of an adult or in a course of instruction in the
10 traditional and proper use of the handgun under the supervision of an adult.

11 (1) (a) Subsection (2) (b) does not apply to an adult who transfers a handgun to a person
12 under 21 years of age for use only in target practice under the adult's supervision or
13 in a course of instruction in the traditional and proper use of the handgun under the
14 adult's supervision.

15 (b) Subsection (2) (a) does not apply to a person under 21 years of age who is
16 a member of the armed forces or national guard and who possesses or goes armed
17 with a handgun in the line of duty. Subsection (2) (b) does not apply to a person who
18 is a member of the armed forces or national guard and who transfers a handgun to
19 a person under 21 years of age in the line of duty.

20 (c) Subsection (2) (a) does not apply to a person under 21 years of age who is
21 a law enforcement officer and who possesses or goes armed with a handgun.

22 (2) Subsection (2) (b) does not apply to a person who transfers a handgun to a person who
23 is under 21 years of age if the latter is a law enforcement officer.

24 (d) Subsection (2) (a) does not apply to a person under 21 years of age who
25 possesses or goes armed with a handgun having a barrel 12 inches in length or longer

1 and who is in compliance with ss. 29.304[✓] and 29.563[✓]. (Subsection (2) (b)^{912.} does not apply[✓]
2 to an adult who transfers a handgun having a barrel 12 inches in length or longer[✓]
3 to a person under 21 years of age who is in compliance with ss. 29.304[✓] and 29.563[✓].

4 (e) Subsection (2) (a)[✓] does not apply if, on the effective date of this paragraph[✓]
5 [revisor inserts date]^{LKS}, the person was at least 18 years of age and owned the[✓]
6 handgun.[✓]

7 **SECTION 55.** 948.60 (title) of the statutes is amended to read:^{✓X}

8 **948.60** (title) **Possession of ~~a~~ other dangerous weapon weapons by a**
9 **person under 18.**

10 **SECTION 56.** 948.60 (1) of the statutes is amended to read:^{✓X}

11 948.60 (1) In this section, "dangerous weapon" means any loaded or unloaded
12 firearm, ~~loaded or unloaded~~ other than a handgun, as defined in s. 175.35 (1) (b); any[✓]
13 electric weapon, as defined in s. 941.295 (4); metallic knuckles or knuckles of any
14 substance which could be put to the same use with the same or similar effect as
15 metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood,
16 plastic or metal connected at one end by a length of rope, chain, wire or leather; a
17 cestus or similar material weighted with metal or other substance and worn on the
18 hand; a shuriken or any similar pointed star-like object intended to injure a person
19 when thrown; or a manrikigusari or similar length of chain having weighted ends.[✓]

INS 20 **SECTION 57.** 968.255 (1) (a) 2. of the statutes is amended to read:^{✓X}

17-20 21 968.255 (1) (a) 2. Arrested for any misdemeanor under s. 167.30, 940.19, 941.20
22 (1), 941.23, 941.237, 941.24, 948.59, 948.60, or 948.61.[✓]

23 **SECTION 58.** 971.17 (1g) of the statutes is amended to read:^{✓X}

24 971.17 (1g) If the defendant under sub. (1) is found not guilty of a felony or a
25 violent nonfelony offense, as defined in s. 941.29 (1g), by reason of mental disease or

1 defect, the court shall inform the defendant of the requirements and penalties under
2 s. 941.29.✓

3 **SECTION 59.** ~~973.176~~^{✓X} (1) of the statutes is amended to read:

4 973.176 (1) FIREARM POSSESSION. Whenever a court imposes a sentence or
5 places a defendant on probation regarding a ~~felony conviction~~ for a felony or for a
6 violent nonfelony offense, as defined in s. 941.29 (1g), the court shall inform the
7 defendant of the requirements and penalties under s. 941.29.✓

8 **SECTION 60. Initial applicability.**

9 (1) The treatment of sections 175.33[✓] and 175.35 (2) (intro.)[✓] and (a)[✓] to (d),[✓] (2b),[✓]
10 (2c) (a) (intro.)[✓] and (b),[✓] (2g) (b)[✓] and (c) (intro.)[✓] and 4. c.,[✓] (2i),[✓] and (2k) (ar) 2.[✓] and (h)[✓]
11 of the statutes, the renumbering of section 175.35 (2j)[✓] of the statutes, the
12 renumbering and amendment of section 175.35 (3)[✓] of the statutes, and the creation
13 of section 175.35 (2j) (b)[✓] and (3) (a)[✓] of the statutes first apply to sales or transfers of
14 ownership of firearms that occur on the effective date of this subsection.✓

15 (2) The treatment of sections 938.341,[✓] 938.396 (2g) (n),[✓] 971.17 (1g),[✓] and 973.176
16 (1)[✓] of the statutes first applies to delinquency adjudications, findings of not guilty by
17 reason of mental disease or defect, and convictions occurring on the effective date of
18 this subsection.✓

19 **SECTION 61. Effective date.**

20 (1) This act takes effect on the first day of the 7th month beginning after
21 publication.✓

22 (END)

1 Analysis Insert

Current law provides that various conditions, including a background check of a prospective purchaser, must be met before a federally licensed firearms dealer may transfer a handgun after a sale. This bill prohibits the sale or transfer of any firearm unless one of the following applies: the sale or transfer is by a federally licensed firearms dealer; the sale or transfer is to or through a firearms dealer; the sale or transfer is one for which the waiting period for the purchase of a handgun under current law does not apply; the transfer is by gift, bequest, or inheritance to a family member; or the transfer is intended to be temporary and the purpose of the transfer is not prohibited. In addition, this bill requires that, before any firearm that is not a handgun is transferred, the person receiving the firearm must provide identification and complete a notification form listing his or her name, date of birth, gender, and race, and the firearms dealer must convey the information on the form to the Department of Justice.

Current law prohibits a person from possessing a firearm if he or she has been convicted of a felony. This bill prohibits a person from possessing a firearm if he or she has been convicted of a "violent nonfelony offenses". A violent nonfelony offense includes misdemeanor battery, misdemeanor harassment, and exposing genitals to a child; violations of a domestic abuse, child abuse, or harassment temporary restraining order or injunction; and misdemeanors for which the maximum term of imprisonment has been increased for use of a dangerous weapon when committing the misdemeanor.

Current law prohibits a person who is under the age of 18 from possessing a dangerous weapon, including a firearm, an electric weapon, and metallic knuckles. This bill prohibits, with exceptions for supervised target practice, law enforcement, or military service, a person who is under the age of 21 from possessing a handgun and a person from transferring a handgun to a person who is under the age of 21.

Unless five years have passed since the conviction

3 Insert 2-7

4 SECTION 1. 20.455 (2) (gr) of the statutes is amended to read:

5 20.455 (2) (gr) *Handgun purchaser record check fee*. All moneys received as fee
6 payments under s. 175.35 (2i) (a) to provide services under s. 175.35.

History: 1971 c. 125; 1973 c. 90, 336; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 29, 418; 1979 c. 34 ss. 286m, 290, 523 to 526; 1979 c. 189, 219, 355; 1981 c. 20, 169; 1983 a. 27 ss. 427 to 430, 1800; 1983 a. 199, 523; 1985 a. 29, 120; 1987 a. 27, 326, 399; 1989 a. 31, 122, 336; 1991 a. 11, 39, 269; 1993 a. 16, 98, 193, 460, 496; 1995 a. 27 ss. 1014h to 1029, 9126 (19), 9130 (4); 1995 a. 227; 1997 a. 27, 237; 1999 a. 5, 9, 186; 2001 a. 16, 109; 2003 a. 33, 139, 309, 326; 2005 a. 25 ss. 356c to 363r, 415m to 415v, 415w, 416g, 416h; 2005 a. 60, 254, 433; 2007 a. 1; 2007 a. 20 ss. 482 to 500, 9121 (6) (a); 2007 a. 200; s. 13.92 (2) (i).

7

8 Insert 6-15

1 ^{✓X}
2 **SECTION 2.** 175.35 (2i) of the statutes, as affected by 2009 Wisconsin Act 28,[✓] is
3 renumbered 175.35 (2i) (a) and amended to read:

4 175.35 (2i) (a) The department shall charge a firearms dealer a \$13 fee for each
5 firearms restrictions record search that the firearms dealer requests under sub. (2)
6 (e) (2c) (a) 3.[✓]

7 (b) The firearms dealer may collect the fee under par. (a)[✓] from the transferee
8 or, if the transfer is made under sub. (2b)[✓], from the transferor.[✓]

9 (c) The department may refuse to conduct firearms restrictions record searches
10 for any firearms dealer who fails to pay any fee under this subsection par. (a)[✓] within
11 30 days after billing by the department.[✓]

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

12 Insert 11-25

13 ^{✓X}
14 **SECTION 3.** 938.78 (3) of the statutes is amended to read:

15 938.78 (3) **RELEASE OF INFORMATION WHEN ESCAPE OR ABSENCE; RULES.** If a juvenile
16 adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 or found to be in need
17 of protection or services under s. 48.13 (12), 1993 stats., or s. 48.13 (14), 1993 stats.,
18 or s. 938.13 (12) or (14) on the basis of a violation of s. 943.23 (1m) or (1r), 1999 stats.,
19 or s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28,
20 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2)
21 (a), 943.23 (1g), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.59, 948.085
22 (2), 948.60, 948.605, or 948.61 or any crime specified in ch. 940 has escaped from a
23 juvenile correctional facility, residential care center for children and youth, inpatient
24 facility, as defined in s. 51.01 (10), juvenile detention facility, or juvenile portion of
 a county jail, or from the custody of a peace officer or a guard of such a facility, center,

1 or jail, or has been allowed to leave a juvenile correctional facility, residential care
2 center for children and youth, inpatient facility, juvenile detention facility, or
3 juvenile portion of a county jail for a specified time period and is absent from the
4 facility, center, home, or jail for more than 12 hours after the expiration of the
5 specified period, the department or county department having supervision over the
6 juvenile may release the juvenile's name and any information about the juvenile that
7 is necessary for the protection of the public or to secure the juvenile's return to the
8 facility, center, home, or jail. The department shall promulgate rules establishing
9 guidelines for the release of the juvenile's name or information about the juvenile to
10 the public. ✓

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283; 1999 a. 9; 2001 a. 38, 59, 109; 2003 a. 292, 321; 2005 a. 25, 277, 293, 344, 406, 434; 2007 a. 20 ss. 3834, 9121 (6) (a); 2007 a. 97.

Am: 968.02(4)

948.59 (2)(b) ✓

1WS 17-20

968.02(4)

(4) If the alleged violator under s. 948.55 (2) or 948.60 (2) (c) is or was the parent or guardian of a child who is injured or dies as a result of an accidental shooting, the district attorney may consider, among other factors, the impact of the injury or death on the alleged violator when deciding whether to issue a complaint regarding the alleged violation. This subsection does not restrict the factors that a district attorney may consider in deciding whether to issue a complaint regarding any alleged violation.

cont →

968.02 - ANNOT.

History: 1977 c. 449; 1991 a. 139; 1999 a. 185.

968.02 - ANNOT.

A judge abused his discretion in barring the public from a hearing under sub. (3). State ex rel. Newspapers v. Circuit Court, 124 Wis. 2d 499, 370 N.W.2d 209 (1985).

968.02 - ANNOT.

A judge's order under sub. (3) is not appealable. Gavcus v. Maroney, 127 Wis. 2d 69, 377 N.W.2d 201 (Ct. App. 1985).

968.02 - ANNOT.

Sub. (3) does not give a trial court authority to order a district attorney to file different or additional charges than those already brought. Unnamed Petitioner v. Walworth Circuit Ct., 157 Wis. 2d 157, 458 N.W.2d 575 (Ct. App. 1990).

968.02 - ANNOT.

Sub. (3) does not confer upon the person who is the subject of a proposed prosecution the right to participate in any way or to obtain reconsideration of the ultimate decision reached. A defendant named in a complaint issued pursuant to sub. (3) has the same opportunity to challenge in circuit court the legal and factual sufficiency of that complaint as a defendant named in a complaint issued pursuant to sub. (1). Kalal v. Dane County, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110, 02-2490.

968.02 - ANNOT.

A refusal to issue a complaint under sub. (3) may be proven directly or circumstantially, by inferences reasonably drawn from words and conduct. The refusal can be open and explicit or indirect and inferred. Inaction alone will ordinarily not support an inference of a refusal to prosecute. Kalal v. Dane County, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110, 02-2490.

968.02 - ANNOT.

Forms similar to the uniform traffic citation that are used as complaints to initiate criminal prosecutions in certain misdemeanor cases are sufficient to confer subject matter jurisdiction on the court but any conviction that results from their use in the manner described in the opinion is null and void; ss. 968.02, 968.04, 971.01, 971.04, 971.05, and 971.08 are discussed. 63 Atty. Gen. 540.

968.02 - ANNOT.

Judicial scrutiny of prosecutorial discretion in decision not to file complaint. Becker. 71 MLR 749 (1988).

continues
↘

Am. 968.07(3)

Ins 17-20 cont'd

948.59 (2)(b) ✓

968.07



(3) If the alleged violator under s. 948.55 (2) or 948.60 (2) (c) is or was the parent or guardian of a child who is injured or dies as a result of an accidental shooting, no law enforcement officer may arrest the alleged violator until at least 7 days after the date of the shooting.

968.07 - ANNOT.



History: 1991 a. 139; 1993 a. 486; 2005 a. 104.

968.07 - ANNOT.



If the police have probable cause for arrest without a warrant, they may break down a door to effect the arrest after announcing their purpose in demanding admission. The remedy for excessive force is not dismissal of the criminal charge. *Nadolinski v. State*, 46 Wis. 2d 259, 174 N.W.2d 483 (1970).

968.07 - ANNOT.



An arrest based solely on evidence discovered after an illegal search is invalid. *State ex rel. Furlong v. Waukesha County Court*, 47 Wis. 2d 515, 177 N.W.2d 333 (1970).

968.07 - ANNOT.



While probable cause for an arrest without a warrant requires that an officer have more than a mere suspicion, the officer does not need the same quantum of evidence necessary for conviction, but information that would lead a reasonable officer to believe that guilt is more than a possibility, which information can be based in part on hearsay. *State v. DiMaggio*, 49 Wis. 2d 565, 182 N.W.2d 466 (1971).

968.07 - ANNOT.



An officer need not be in possession of a warrant to make a valid arrest. *Schill v. State*, 50 Wis. 2d 473, 184 N.W.2d 858 (1971).

968.07 - ANNOT.



An arrest was valid when a defendant, approached by an officer, voluntarily stated that he assumed they would be looking for him because he had been the last person to see the victim alive. *Schenk v. State*, 51 Wis. 2d 600, 187 N.W.2d 853 (1971).

968.07 - ANNOT.



Police have grounds to arrest without a warrant when they have information from a reliable informer that a crime is to be committed, when they check the information, and when the defendants attempt to escape when stopped. *Molina v. State*, 53 Wis. 2d 662, 193 N.W.2d 874 (1972).

968.07 - ANNOT.



A person is not under arrest and the officer is not attempting an arrest, so far as the right to use force is concerned, until the person knows or should know that the person restraining or attempting to restrain him or her is an officer. *Celmer v. Quarberg*, 56 Wis. 2d 581, 203 N.W.2d 45 (1972).

968.07 - ANNOT.



An arrest pursuant to a valid warrant is legal even though the officer entered the defendant's home without warning or knocking; therefore the court had personal jurisdiction. *State v. Monsoor*, 56 Wis. 2d 689, 203 N.W.2d 20 (1973).