SENATE BILL 44 (LRB -1438)

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

2009

02-05.	S.	Introduced by Senators **Darling, Harsdorf, Olsen, Schultz** and **Sullivan**; cosponsored by Representatives **Gunderson, Richards, Murtha, Kerkman, Vos, Fields, Lothian, Townsend, Stone, Bies, Ballweg, Kaufert, LeMahieu, Nygren, Petersen, Van Roy** and **Spanbauer**.	
02-05.	S.	Read first time and referred to committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing	52

2010

02-05.	S.	Senate substitute amendment 1 offered by Senator Darling **(LRB s0271)**	542
02-08.	S.	Public hearing held.	
02-09.	S.	Fiscal estimate received.	
02-16.	S.	Fiscal estimate received.	
02-16.	S.	Fiscal estimate received.	
02-24.	S.	Executive action taken.	
02-25.	S.	Report adoption of Senate Substitute Amendment 1 recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 5, Noes 0	590
02-25.	S.	Report passage as amended recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 5, Noes 0	590
02-25.	S.	Available for scheduling.	
02-25.	S.	Placed on calendar 3-2-2010 pursuant to Senate Rule 18(1)	591
03-02.	S.	Read a second time	606
03-02.	S.	Senate substitute amendment 1 **adopted**	606
03-02.	S.	Ordered to a third reading	606
03-02.	S.	Rules suspended	606
03-02.	S.	Read a third time and **passed**	606
03-02.	S.	Ordered immediately messaged	608
03-02.	A.	Received from Senate	715
03-03.	A.	Read first time and referred to committee on Rules	720
04-13.	A.	Placed on calendar 4-15-2010 by committee on Rules.	
04-15.	A.	Read a second time.	
04-15.	A.	Ordered to a third reading.	
04-15.	A.	Rules suspended.	
04-15.	A.	Read a third time and **concurred in**.	
04-15.	A.	Ordered immediately messaged.	
04-16.	S.	Received from Assembly concurred in.	

GMB

2009
ENROLLED BILL

09en S B- 44

ADOPTED DOCUMENTS:

☐ Orig ☐ Engr S SubAmdt 1 09 s0271/1

Amendments to above (if none, write "NONE"): None

Corrections - show date (if none, write "NONE"): None

Topic Rel

4-17-
Date

Enrolling Drafter

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBs0271/1
CMH:kjf:md

SENATE SUBSTITUTE AMENDMENT 1,

TO 2009 SENATE BILL 44

February 5, 2010 – Offered by Senator DARLING.

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

Analysis by the Legislative Reference Bureau

Under current law, if a person seeks to purchase a handgun from a licensed handgun dealer, the dealer must ask the Department of Justice (DOJ) to conduct a background check on the person. In conducting the background check, DOJ searches DOJ records to determine whether the person is ineligible to possess a firearm under state law, but state law does not explicitly require DOJ to determine whether federal

law bars the person from possessing a firearm based on criteria not covered by state law. This substitute amendment requires DOJ, when conducting a background check on a prospective handgun purchaser, to check whether a court has ordered the person not to possess a firearm due to a determination that the person's mental health would render the person ineligible under federal law to possess a firearm.

This substitute amendment requires courts to determine whether a person would be ineligible under federal law to possess a firearm during proceedings for involuntary commitment for persons found by the court to be mentally ill, drug dependent, or developmentally disabled and to be dangerous, 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 (mental health proceeding). 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 court 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, to determine ineligibility under federal law at a mental health proceeding, a court 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.

If, at a mental health proceeding, the court finds a person ineligible under federal law to possess a firearm, the person may petition a court to cancel the order. A court must grant the petition if the court determines that the person is not likely to act in a manner dangerous to public safety and that the granting of the petition would not be contrary to public interest. The court must then convey the change in status to DOJ so that DOJ may update the information provided during background checks for handgun purchases and the information provided to the national instant criminal background check system.

This substitute amendment also eliminates obsolete references to "involuntary commitment history record search." It also deletes determinations at mental health proceedings of ineligibility under state law to possess a firearm as the determinations would be redundant to those under federal law.

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 amended to read:

2 51.20 **(13)** (cv) 1. If the court makes the disposition under par. (a) 3., 4., 4m.,
3 or 5. ~~and the court determines, based on evidence presented on the issue of the~~
4 ~~subject individual's dangerousness, that there is a substantial probability that the~~
5 ~~individual may use a firearm to cause physical harm to himself or herself or endanger~~
6 ~~public safety~~, the court shall ~~prohibit the individual from possessing~~ order the
7 individual not to possess a firearm, order the seizure of any firearm owned by the
8 individual, and inform the individual of the requirements and penalties under s.
9 941.29 if the court determines that the individual is prohibited, under 18 USC 922
10 (g) (4), from possessing a firearm.

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

12 51.20 **(13)** (cv) 1m. a. If a court orders an individual under subd. 1., or ordered
13 an individual under s. 51.20 (13) (cv) 1., 2007 stats., not to possess a firearm, the
14 individual may petition that court or the court in the county where the individual
15 resides to cancel the order.

16 b. The court considering the petition under subd. 1m. a. shall grant the petition
17 if the court determines that the circumstances regarding the disposition under par.
18 (a) 3., 4., 4m., or 5. and the individual's record and reputation indicate that the
19 individual is not likely to act in a manner dangerous to public safety and that the
20 granting of the petition would not be contrary to public interest.

c. If the court grants the petition under subd. 1m. b., the court shall cancel the order under subd. 1., or the order under s. 51.20 (13) (cv) 1., 2007 stats., whichever is appropriate, and order the return of any firearm ordered seized under subd. 1. or s. 51.20 (13) (cv) 1., 2007 stats.

SECTION 3. 51.20 (13) (cv) 2. of the statutes is repealed.

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

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

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

51.20 **(13)** (cv) 4. If the court ~~prohibits~~ orders a subject individual ~~from possessing~~ not to possess a firearm under subd. 1. or cancels ~~a prohibition~~ under subd. ~~2.~~ 1m. c. an order issued under subd. 1. or under s. 51.20 (13) (cv) 1., 2007 stats., the court clerk shall notify the department of justice of that fact and provide any information identifying the subject individual that is necessary to permit an accurate ~~involuntary commitment history~~ firearms restrictions record search under s. 175.35 (2g) (c). No other information from the subject individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only as part of ~~an involuntary commitment history~~ a firearms restrictions record search under s. 175.35 (2g) (c) or under rules the department of justice promulgates under s. 175.35 (2g) (d).

SECTION 6. 51.20 (16) (gm) of the statutes is repealed.

SECTION 7. 51.30 (3) (c) of the statutes is amended to read:

51.30 **(3)** (c) The files and records of court proceedings under this chapter may be released to other persons with the informed written consent of the individual, pursuant to lawful order of the court which maintains the records or under s. 51.20 (13) (cv) 4. ~~or (16) (gm).~~

SECTION 8. 51.30 (4) (b) 28. of the statutes is created to read:

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

SECTION 9. 51.45 (13) (i) of the statutes is created to read:

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

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

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

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

3. In lieu of ordering the seizure under subd. 1., the court may designate a person to store the firearm until the order under subd. 1. is canceled under subd. 2. c.

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

SECTION 10. 54.10 (3) (f) of the statutes is created to read:

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

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

b. The court considering the petition under subd. 2. a. shall grant the petition if the court determines that the circumstances regarding the appointment of a guardian under this subsection and the individual's record and reputation indicate

1 that the individual is not likely to act in a manner dangerous to public safety and that
2 the granting of the petition would not be contrary to public interest.
3 c. If the court grants the petition under subd. 2. b., the court shall cancel the
4 order under subd. 1. and order the return of any firearm ordered seized under subd.
5 1.
6 3. In lieu of ordering the seizure under subd. 1., the court may designate a
7 person to store the firearm until the order under subd. 1. is canceled under subd. 2.
8 c.
9 4. If the court orders under subd. 1. an individual not to possess a firearm or
10 cancels under subd. 2. c. an order issued under subd. 1., the court clerk shall notify
11 the department of justice of the order or cancellation and provide any information
12 identifying the individual that is necessary to permit an accurate firearms
13 restrictions record search under s. 175.35 (2g) (c). No other information from the
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 a firearms restrictions record search under s.
17 175.35 (2g) (c) or under rules the department of justice promulgates under s. 175.35
18 (2g) (d).
19 **SECTION 11.** 55.12 (10) of the statutes is created to read:
20 55.12 **(10)** (a) If a court orders protective services or protective placement of an
21 individual under this section and if an order has not been made under s. 54.10 (3) (f)
22 for the individual, the court shall determine if, under 18 USC 922 (g) (4), the
23 individual is prohibited from possessing a firearm. If the individual is prohibited,
24 the court shall order the individual not to possess a firearm, order the seizure of any

1 firearm owned by the individual, and inform the individual of the requirements and
2 penalties under s. 941.29.

3 (b) 1. If a court orders under par. (a) an individual not to possess a firearm, the
4 individual may petition that court or the court in the county where the individual
5 resides to cancel the order.

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

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

14 (c) In lieu of ordering the seizure under par. (a), the court may designate a
15 person to store the firearm until the order under par. (a) is canceled under par. (b)
16 3.

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

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

SECTION 12. 175.35 (1) (at) of the statutes is amended to read:

175.35 **(1)** (at) "Firearms restrictions record search" means a search of department of justice records to determine whether a person seeking to purchase a handgun is prohibited from possessing a firearm under s. 941.29. "Firearms restriction record search" includes a criminal history record search, a search to determine whether a person is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check system to determine whether a person has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search to determine whether the person is subject to an injunction under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. 806.247 (3), and a search to determine whether the person is prohibited from possessing a firearm under s. 813.125 (4m).

SECTION 13. 175.35 (2g) (d) of the statutes is created to read:

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

2. The department of justice shall promulgate rules to convey information in a timely manner to the national instant criminal background check system

regarding the cancellation under s. 51.20 (13) (cv) 1m. c., 51.45 (13) (i) 2. c., 54.10 (3) (f) 2. c., or 55.12 (10) (b) 3. of an order not to possess a firearm.

SECTION 14. 941.29 (1) (e) of the statutes is amended to read:

941.29 **(1)** (e) Committed for treatment under s. 51.20 (13) (a) and ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 2007 stats.

SECTION 15. 941.29 (1) (em) of the statutes is created to read:

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

SECTION 16. 941.29 (2) (d) of the statutes is amended to read:

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

SECTION 17. 941.29 (9) of the statutes is renumbered 941.29 (9) (a) and amended to read:

941.29 **(9)** (a) This section does not apply to a person specified in sub. (1) (e) if the prohibition under s. 51.20 (13) (cv) 1., 2007 stats., has been canceled under s. 51.20 (13) (cv) 2. or (16) (gm), 2007 stats., or under s. 51.20 (13) (cv) 1m. c.

SECTION 18. 941.29 (9) (b) of the statutes is created to read:

941.29 **(9)** (b) This section does not apply to a person specified in sub. (1) (em) if the order under s. 51.30 (13) (cv) 1. is canceled under s. 51.20 (13) (cv) 1m. c., if the order under s. 51.45 (13) (i) 1. is canceled under s. 51.45 (13) (i) 2. c., if the order under s. 54.10 (3) (f) 1. is canceled under s. 54.10 (3) (f) 2. c., or if the order under s. 55.12 (10) (a) is canceled under s. 55.12 (10) (b) 3.

SECTION 19. 968.20 (1r) of the statutes is renumbered 968.20 (1r) (a) and amended to read:

968.20 **(1r)** (a) If the seized property is a firearm ordered seized under s. 51.20 (13) (cv) 1., 2007, stats., the court that issued that order shall order the firearm returned if the ~~prohibition~~ order under s. 51.20 (13) (cv) 1., 2007 stats., has been canceled under s. 51.20 (13) (cv) 2. or (16) (gm), 2007 stats., or is canceled under s. 51.20 (13) (cv) 1m. c.

SECTION 20. 968.20 (1r) (b) of the statutes is created to read:

968.20 **(1r)** (b) If the seized property is a firearm ordered seized under s. 51.20 (13) (cv) 1., the court that issued that order shall order the firearm returned if the order under s. 51.20 (13) (cv) 1. is canceled under s. 51.20 (13) (cv) 1m. c.

SECTION 21. 968.20 (1r) (c) of the statutes is created to read:

968.20 **(1r)** (c) If the seized property is a firearm ordered seized under s. 51.45 (13) (i) 1., the court that issued that order shall order the firearm returned if the order under s. 51.45 (13) (i) 1. is canceled under s. 51.45 (13) (i) 2. c.

SECTION 22. 968.20 (1r) (d) of the statutes is created to read:

968.20 **(1r)** (d) If the seized property is a firearm ordered seized under s. 54.10 (3) (f) 1., the court that issued that order shall order the firearm returned if the order under s. 54.10 (3) (f) 1. is canceled under s. 54.10 (3) (f) 2. c.

SECTION 23. 968.20 (1r) (e) of the statutes is created to read:

968.20 **(1r)** (e) If the seized property is a firearm ordered seized under s. 55.12 (10) (a), the court that issued that order shall order the firearm returned if the order under s. 55.12 (10) (a) is canceled under s. 55.12 (10) (b) 3.

SECTION 24. Nonstatutory provisions.

(1) Using the procedure under section 227.24 of the statutes, the department of justice shall promulgate rules required under section 175.35 (2g) (d) of the statutes, as created by this act, for the period before the effective date of the

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

8 **SECTION 25. Initial applicability.**

9 (1) The treatment of section 51.20 (13) (cv) 1. of the statutes first applies to
10 dispositions made on the effective date of this subsection.

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

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

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

17 **SECTION 26. Effective dates.** This act takes effect on the first day of the 2nd
18 month beginning after publication, except as follows:

19 (1) The treatment of section 175.35 (2g) (d) of the statutes and SECTION 24 (1)
20 of this act take effect on the day after publication.

21 **(END)**