



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Assembly Bill 70

**Assembly
Substitute Amendment 1**

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2009 Assembly Bill 70

In order to conform state law to federal law regarding firearms restrictions related to certain mental health proceedings, Assembly Bill 70 (hereinafter, “the bill”) makes two major changes to current law. The first change relates to court findings during a mental health-related proceeding for *involuntary commitments, guardianship of incompetent persons, and protective placement or protective services*. Under the bill, if during one of these proceedings, the court determines that a person is ineligible under federal law to possess a firearm because the person is a danger to himself or herself or others, or lacks the mental capacity to contract or manage his or her own affairs, the court must order the person not to possess a firearm, order seizure of any firearm owned by the person, and inform the person that possession of the firearm is a felony. The court must also notify the Department of Justice (DOJ) of this finding. Under Wisconsin law, a court only makes a determination as to the person’s dangerousness during certain involuntary commitments.

Under the bill, a person who is found ineligible to possess a firearm may petition a court to cancel the order. The 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 granting the petition would not be contrary to the public interest.

The second change the bill makes to Wisconsin law so that it is consistent with federal law is that during background checks for handgun purchases, DOJ must search to determine whether a court has ordered a person not to possess a firearm due to a determination that the person’s health would render the person ineligible under federal law to possess a firearm. As previously stated, the court is required to notify DOJ if the person is found ineligible to possess a firearm under federal law.

Assembly Substitute Amendment 1

Assembly Substitute Amendment 1 (ASA 1) makes the following two changes to the bill:

- ASA 1 deletes repetitive language that would require a court, during an involuntary commitment proceeding, to find that a person is a danger to himself or herself or to others as specified under either *state* or *federal law*. Because federal law already requires this determination, ASA 1 removes reference to state law and requires the court to only base its determination upon federal law.
- ASA 1 replaces references to obsolete type of firearms background search called an “*involuntary commitment history record search*,” with “*firearms restrictions record search*,” as this is the background search that DOJ is currently required to conduct.

Legislative History

Representative Gunderson introduced ASA 1 on July 8, 2009. On February 4, 2010, the Assembly Committee on Criminal Justice voted to recommend adoption of ASA 1 by a vote of Ayes, 10; Noes, 0; Absent, 1. The committee recommended passage of the bill, as amended, by a vote of Ayes, 10; Noes, 0; Absent, 1.

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