



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Assembly Bill 13

**Assembly Substitute
Amendment 1**

Memo published: June 11, 2015

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BACKGROUND

Process for Applying for the Return of Property Seized by Law Enforcement

If property is seized by law enforcement either pursuant to a search warrant or without a search warrant, any person claiming the right to possession of the property may apply for its return to the court located in the county where the property was seized or where the search warrant was returned. The court must hold a hearing to hear all claims to the seized property's ownership. The court must also order notice it determines to be adequate to the district attorney (DA) and all persons who have or may have an interest in the property.

The court, in general, must order that the property be returned to the person who has proven the right to possession to the court's satisfaction and if either of the following apply: (1) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or (2) all proceedings in which the seized property might be required have been completed. However, if the property is not required for evidence or use in further investigation, and the property is not contraband, a dangerous weapon, or ammunition, then the property may be returned by an officer to the person from whom it was seized within the requirement of a hearing.

If the property is either a dangerous weapon, which is defined to include any firearm whether loaded or unloaded,¹ or ammunition, then the seized property may be returned to the

¹ A "dangerous weapon" means "any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood;

rightful owner if the owner had no knowledge of and gave no consent to the commission of the crime. Also, dangerous weapons and ammunition may not be returned to any person who committed a crime involving the use of the dangerous weapon or ammunition.

Court Access to Information Regarding Who is Prohibited From Possessing a Firearm Under Certain Court Orders

Current law specifies when a judge, court commissioner, law enforcement agency, or a law enforcement officer is required to request information from the Department of Justice (DOJ) as to whether an individual is prohibited from possessing a firearm pursuant a civil commitment, involuntary commitment, guardianship, or protective services or protective placement. Likewise, the statutes require DOJ to provide this information to the judge, court commissioner, law enforcement agency, or law enforcement officer upon such request. The statutes do not, however, specifically require a court, court commissioner, law enforcement agency, or law enforcement officer to make a request for this information when determining whether to return a firearm that was seized by law enforcement, nor does it specifically require DOJ to provide such information.

2015 ASSEMBLY BILL 13

2015 Assembly Bill 13 (the bill) requires a court to order the return of a firearm to a person claiming to be its rightful owner if one of the following occurs:

- The DA affirmatively declines to file charges in connection with the seizure against the person.
- All charges filed in connection with the seizure against the person are dismissed.
- Six months have passed since the seizure and no charges in connection with the seizure are filed against the person.
- The trial court reaches final disposition for all charges in connection with the seizure and the person is not adjudged guilty of a crime in connection with the seizure.
- The person establishes that he or she had no prior knowledge of and gave no consent to the commission of the activity that led to the seizure.

The bill also provides a timeframe within which the seized firearm must be returned. A firearm that was seized must be returned within the following timeframe:

- If the person claims the right of possession within eight business days after the occurrence of one of the events listed above, the court is required to order the firearm

any electric weapon, as defined in s. 941.295 (1c) (a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.” [s. 939.22 (10), Stats.]

to be returned to the person claiming the right to possession within 10 business days after the event.

- If the person claims the right to possession later than eight business days after the applicable event listed above, the court must order the firearm to be returned to the person as soon as practically possible, but no later than five business days after the order.

ASSEMBLY SUBSTITUTE AMENDMENT 1

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

- Clarifies that a court must order the return of seized property, other than contraband, a dangerous weapon, or ammunition, to a person that has proven in a hearing that he or she has the right to possession if all proceedings and **investigations** in which it might be required have been completed.
- Requires that if a person claiming the right to possession of a seized firearm that has not been returned, the court must order a hearing to occur within 20 days after the person applies for the return for a determination as to whether the person has the right to possession and whether the firearm must be returned. ASA 1 requires the court to order within five days of the completion of the hearing, using a form developed by the director of state courts, that the firearm be returned if all of the following apply:
 - Either: (1) the firearm is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or (2) all proceedings and investigations in which the evidence might be required have been completed.
 - The person is not prohibited from possessing a firearm under state or federal law as determined by using information provided under the process of requesting information from DOJ as to whether the person is prohibited from possessing a firearm as a result of a civil commitment, involuntary commitment, guardianship action, or protective services or protective placement.
 - One of the following has occurred:
 - The DA has affirmatively declined to file charges in connection with the seizure against the person.
 - All charges filed in connection with the seizure against the person have been dismissed.
 - Ten months have passed since the seizure and no charges have been filed against the person.

- The trial court has reached final disposition for all charges in connection with the seizure and the person has not been adjudged guilty, or not guilty by reason of mental disease or defect, of a crime in connection with the seizure.
- The person has established that he or she had no prior knowledge of and gave no consent to the commission of the activity that led to the seizure.

BILL HISTORY

ASA 1 was introduced by Representative Knodl on February 24, 2015. On February 26, 2015, the Assembly Committee on Criminal Justice voted to recommend adoption of ASA 1 by a vote of Ayes, 8; Noes 4. The committee then voted to recommend passage of the bill, as amended, by a vote of Ayes, 8; Noes, 4.

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