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ELIMINATING WISCONSIN'S 48-HOUR WAITING PERIOD FOR HANDGUN PURCHASES

This brief summarizes the issue of mandatory waiting periods to receive a handgun after purchase, focusing on bills recently introduced in the Wisconsin Legislature to repeal the state's 48-hour waiting period.

BACKGROUND CHECKS REQUIRED FOR ALL FIREARMS SALES

The federal Brady Handgun Violence Protection Act of 1993 (Public Law 103-59) has, since 1998, required all federally licensed firearms dealers to perform background checks in conjunction with purchases of all firearms, including both handguns and long guns. In addition, Section 175.35, Wisconsin Statutes, requires licensed dealers to perform background checks for all handgun purchases from dealers. The Brady Act also generally required a five-day waiting period and criminal background check before handgun purchases were completed. The federal waiting period is no longer in effect, and retailers may deliver firearms to purchasers as soon as the background checks are completed, or after three business days even if a requested background check has not been completed.

Prior to a sale, purchasers of long guns, which are rifles or shotguns, must be approved through the National Instant Criminal Background Check System, which the Federal Bureau of Investigation operates. The Wisconsin Department of Justice (DOJ) conducts state checks relating to handguns. Most sales are authorized within an hour. Dealers who fail to comply with state and federal laws may be fined and risk loss of licensure. Private, person-to-person sales, such as at gun shows or via the Internet, do not require a federal license and are exempt from the background check requirement.

FORTY-EIGHT-HOUR WAITING PERIOD FOR HANDGUN SALES

In 1993, Wisconsin was exempted from the longer, now expired, federal five-day waiting period for purchases of handguns because state law already mandated a 48-hour waiting period. The state waiting period, which was created by Chapter 167, Laws of 1975, was based on a similar City of Milwaukee ordinance and has been in effect since 1976.

When purchasing a handgun in Wisconsin from a federally licensed dealer, a purchaser must provide proper personal identification and truthful information on his or her application. Before transferring the firearm, the dealer must initiate a "firearms restrictions record search" on the prospective purchaser through DOJ's Handgun Hotline to determine if the person is prohibited from possessing a firearm. The dealer may not transfer the handgun to the purchaser until 48 hours have passed since DOJ acknowledged that the firearms dealer conveyed the request to perform a background check and DOJ has not told the dealer that the purchaser is prohibited from possessing a firearm. Usually, the firearms dealer receives a unique approval number from DOJ. The waiting period may be extended up to three working days if the search indicates a felony charge without a recorded disposition. Any party who violates the law is subject to a fine of not less than \$500 nor more than \$10,000 and imprisonment for not more than nine months. The attorney general may inform local law enforcement authorities when a DOJ background check indicates that an ineligible person attempted to purchase a handgun.

CURRENT WISCONSIN LEGISLATION TO REPEAL THE WAITING PERIOD

Two bills under consideration in the current Wisconsin legislative session propose to repeal the 48-hour waiting period for handgun purchases in Wisconsin. 2015 Senate Bill 35 was introduced on February 13, 2015, by Senators Van Wanggaard, Tom Tiffany, Mary Lazich, and others, and was referred to the Senate Committee on Judiciary and Public Safety. 2015 Assembly Bill 49 was introduced on February 17, 2015, by Representatives Romaine Quinn, Jesse Kremer, Mary Czaja, and others, and was referred to the Assembly Committee on Criminal Justice and Public Safety.

Both bills would amend Section 175.35, Wisconsin Statutes, to repeal the 48-hour waiting period. Both bills allow a firearms dealer to transfer a handgun to a purchaser immediately after receiving an approval number from DOJ confirming that a firearms restrictions record search did not indicate the purchaser is prohibited from possessing a firearm. If the search indicates a felony charge without a recorded disposition, DOJ must make every reasonable effort to notify the firearms dealer of the results within three working days.

The Assembly Committee on Criminal Justice and Public Safety held a public hearing on AB-49 on February 26, 2015. The Senate Committee on Judiciary and Public Safety held a public hearing on SB-35 on March 11, 2015. On March 12, 2015, the senate committee recommended passage, by a vote of three to two, of the bill as amended by Senate Amendment 1, which the committee had introduced. The amendment provides that if the background check indicates that it is unclear whether the prospective purchaser is prohibited from possessing a firearm and DOJ needs more time to make the determination, DOJ must resolve the issue "as soon as practicable" but no later than five working days after the search was requested.

ARGUMENTS

Supporters of the waiting period cite its usefulness as a deterrent to hasty crimes of passion, and supporters of its repeal state that the delay is no longer necessary to give authorities time to confirm that a prospective buyer may legally own a handgun.

A March 27, 2015, *Wisconsin State Journal* editorial recounted several examples of newly purchased handguns being used to kill that were cited by state lawmakers when the original 48-hour waiting period was enacted in 1976. The editorial concluded that the law is a "sensible measure to help protect the public from gun violence" and opined that the state should stick with "its reasonable 48-hour rule." A February 7, 2015, *Wisconsin State Journal* article noted that bill opponent Senator Fred Risser, a member of the Senate Committee on Judiciary and Public Safety, raised concerns that someone in a domestic violence incident could too quickly buy a gun and harm or kill someone, saying: "It's also a cooling-off period. I don't see the purpose of speeding it up."

In the same article, Senator Wanggaard, the chair of the senate committee that recommended passage of the legislation, said that "This basically is a time tax... on both the dealer and the purchaser." In a letter to the editor appearing in the March 5, 2015, issue of the Turtle Lake, Wisconsin, newspaper *The Times*, Representative Czaja said that repealing the waiting period would "allow women another avenue towards self-protection and ability to possess their legal firearm without the... window of vulnerability." In the letter, assembly lead sponsor Representative Romaine Quinn talked of the rapidity with which modern information technology and communications have, in his opinion, obviated the need for a waiting period in order to determine that a person is eligible to possess a handgun:

This bill brings Wisconsin into the 21st century by eliminating needless red tape. The 48-hour waiting period made sense when a clerk had to look through multiple filing cabinets in order to complete the background

check. With today's technology, that background check is often completed in a matter of minutes. There is no good reason for law-abiding citizens to have to wait for a process that is no longer relevant.

OTHER STATES

According to the Law Center to Prevent Gun Violence, four other states impose waiting periods for the purchase of handguns only: Florida and Iowa (3 days) and Maryland and New Jersey (7 days). Minnesota has a seven-day waiting period for the purchases of handguns and "assault weapons" (certain military-style semiautomatic rifles with high-capacity magazines); Illinois has a 24-hour waiting period for long guns and 72 hours for handguns; and the following jurisdictions have waiting periods applicable to all firearms: Rhode Island (7 days), California and the District of Columbia (10 days), and Hawaii (14 days).

WHO MAY NOT POSSESS FIREARMS

In Wisconsin, unlawful possession of a firearm is a Class G felony, punishable by a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both (§ 941.29, Wisconsin Statutes). Children generally may not go armed with a dangerous weapon, and the following categories of persons are generally not permitted to possess firearms in Wisconsin:

- **Felons.** A person convicted of a felony, found not guilty of a felony by reason of mental disease or defect, or adjudicated delinquent for an act that, if committed by an adult in this state, would be a felony, is prohibited from possessing a firearm. When a court imposes a sentence for a felony conviction, it must inform the defendant about the firearms restriction.
- **Mentally ill.** A person who has been involuntarily committed for treatment of mental illness, drug dependency, or developmental disability if the court deems the person to be a threat to self

or others and makes a protective services placement. For those involuntarily committed, the court must order a person's firearms seized and stored until the person is judged to no longer suffer from the mental illness and is no longer likely to be a danger to the public.

- **Persons under injunctions.** Wisconsin law bars possession of a firearm in cases in which a person is under a court-ordered injunction for domestic abuse or child abuse and, in certain situations, subject to a harassment or "individual-at-risk." The enjoined person is required to surrender any guns to the county sheriff or a court-ordered third party.

Federal law additionally bans selling or delivering a firearm to any person if the transferor has reasonable cause to believe that the person is a fugitive from justice, is an unlawful user of a controlled substance, is an alien illegally or unlawfully in the United States, has been discharged from the armed forces under dishonorable conditions, has renounced U.S. citizenship, or has been convicted of a misdemeanor crime of domestic violence.

SOURCES

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