

State of Wisconsin



2009 Senate Bill 44

Date of enactment: **May 7, 2010**
Date of publication*: **May 21, 2010**

2009 WISCONSIN ACT 258

AN ACT *to repeal* 51.20 (13) (cv) 2. and 51.20 (16) (gm); *to renumber and amend* 941.29 (9) and 968.20 (1r); *to amend* 51.20 (13) (cv) 1., 51.20 (13) (cv) 3., 51.20 (13) (cv) 4., 51.30 (3) (c), 175.35 (1) (at), 941.29 (1) (e) and 941.29 (2) (d); and *to create* 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.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 51.20 (13) (cv) 1. of the statutes is amended to read:

51.20 (13) (cv) 1. If the court makes the disposition under par. (a) 3., 4., 4m., or 5. ~~and the court determines, based on evidence presented on the issue of the subject individual's dangerousness, that there is a substantial probability that the individual may use a firearm to cause physical harm to himself or herself or endanger public safety, the court shall prohibit the individual from possessing 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 ~~if the court determines that the individual is prohibited, under 18 USC 922 (g) (4), from possessing a firearm.~~

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

51.20 (13) (cv) 1m. a. If a court orders an individual under subd. 1., or ordered an individual under s. 51.20 (13) (cv) 1., 2007 stats., not to possess a firearm, the indi-

vidual 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. 1m. a. shall grant the petition if the court determines that the circumstances regarding the disposition under par. (a) 3., 4., 4m., or 5. and the individual's record and reputation indicate that the individual 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. 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 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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. Im. 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 that the individual 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. an individual 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 individual that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c). No other informa-

tion from the 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 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 11. 55.12 (10) of the statutes is created to read:

55.12 (10) (a) If a court orders protective services or protective placement of an individual under this section and if an order has not been made under s. 54.10 (3) (f) for the individual, 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.

(b) 1. If a court orders under par. (a) 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.

2. The court considering the petition under subd. 1. shall grant the petition if the court determines that the circumstances regarding the protective services or protective placement order under this section and the individual's record and reputation indicate that the individual 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.

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

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

(d) If the court orders under par. (a) an individual not to possess a firearm or cancels under par. (b) 3. an order issued under par. (a), the court clerk shall notify the department of justice of the order or cancellation and provide any information identifying the individual that is necessary to permit an accurate firearms restriction record search under s. 175.35 (2g) (c). No other information from the 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 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 permanent rules promulgated under that section, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of justice is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of an emergency for a rule promulgated under this subsection.

SECTION 25. Initial applicability.

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

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

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

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

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

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