

Chapter Jus 10

HANDGUN TRANSFERS

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Jus 10.01 Purpose. The purpose of this chapter is to establish the procedures, as required under s. 175.35 (2g), Stats., for searching the records of persons to whom a handgun dealer proposes to transfer a handgun.

Note: This administrative rule chapter is promulgated as required by s. 175.35, Stats., created by 1991 Wis. Act 11, Section 175.35 (2g) (c) (intro.) and 3, Stats., directs the department of justice to promulgate rules requiring the department to search criminal history records using, among other things, the "transaction management of enforcement system." This is a statutory reference to the transaction information for management of enforcement (TIME) system referred to more exactly in ss. 20.455 (2) (h) and 59.245, Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.02 Applicability. (1) Except as provided in sub. (2), this chapter applies to all handgun sales by a handgun dealer. It establishes requirements affecting handgun dealers, the Wisconsin department of justice and handgun transferees.

(2) This chapter does not apply to any of the following:

(a) Transfer of a handgun that is an antique under federal department of the treasury regulations,

(b) Transfer of a handgun between firearms dealers or between a firearms wholesaler and a firearms dealer, and

(c) Transfer of a handgun to a law enforcement or armed services agency.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.03 Definitions. In this chapter:

(1) "Approval number" means the unique number the department provides a handgun dealer when the department approves a handgun transfer under this chapter.

(2) "Confirmation number" means the unique number the department provides a handgun dealer to confirm an initial telephone call from the dealer to the department requesting handgun transfer approval whenever approval is not granted during that call.

Note: The department intends to issue a confirmation number even when approval is granted during the initial telephone call. See s. Jus 10.06 (2) (a) 2.

(3) "Dealer identification number" means the number the department provides a handgun dealer when the dealer registers as a handgun dealer under this chapter.

(4) "FBI" means the federal bureau of investigation.

(5) "Department" means the Wisconsin department of justice.

(6) "Handgun" means a weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore.

(7) "Handgun dealer" or "dealer" means a firearms dealer as defined in s. 175.35 (1) (a), Stats., who offers one or more handguns for sale.

(8) "Handgun store" means a distinct business location where a handgun dealer is in business as a handgun dealer regardless of how long or short the time and how small or large the business and regardless whether the dealer also operates other stores.

(9) "Nonapproval number" means the number the department provides a handgun dealer when the department denies approval for a handgun transfer.

(10) "Notification form" means the form a handgun dealer requires a transferee to complete before the dealer requests handgun transfer approval from the department.

(11) "Record" means a transferee's criminal history records available for the department to search including the state criminal history record and the national criminal history record maintained by the FBI.

(12) "Search" means a systematic inspection by the department of a transferee's record.

(13) "Transferee" means a person who purchases a handgun from a dealer and to whom or at whose direction the dealer will transfer possession of the purchased handgun.

(14) "Working day" means each day except Saturday, Sunday or a legal holiday under s. 895.20, Stats.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.04 Dealer registration. The following preconditions shall be met before a dealer may offer a handgun for sale or request department approval for any handgun transfer as required under this chapter:

(1) A dealer shall register each handgun store the dealer owns or operates with the department by fully and accurately completing and submitting to the department in duplicate the firearms dealer registration form provided to the dealer for that purpose by the department and by

obtaining from the department under sub. (2) (intro.) and (a) a dealer identification number for each handgun store. A dealer that operates multiple handgun stores shall file a separate registration form for each store.

Note: A copy of the firearms dealer registration form required under this subsection is attached to this chapter as appendix I. The department will provide a dealer a form for ordering the dealer registration form and other forms required under this chapter. Forms can be ordered from the following address: Crime Information Bureau, Attention: Firearms Hotline, P.O. Box 2718, Madison, Wisconsin 53701.

(2) After receiving a properly completed firearms dealer registration form from a dealer under sub. (1), the department, if it may do so in compliance with this chapter and s. 175.35, Stats., shall do the following:

(a) Issue the dealer a dealer identification number for the handgun store for which the firearms dealer registration form was completed and submitted,

(b) Inform the dealer in writing of the toll-free telephone number designated by the department for use by the dealer in requesting departmental approval for any handgun transfer, and

(c) Mail the dealer the notification forms, each bearing a notification form number, needed for use by the dealer under s. Jus 10.06 (1) (c).

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.05 Prohibited handgun transfers. A dealer may not transfer a handgun to a transferee unless one of the following preconditions is met:

(1) The dealer receives an approval number under s. Jus 10.06 (2) (a) 2 a, (c) 1 or (d) 3 a or c, 10.07 (2) (c), 10.08 (3) (a), or 10.09 (3) (b) 1 for the handgun transfer; or

(2) The department fails to notify the dealer of the results of its record search within 48 hours after the dealer receives a confirmation number under s. Jus 10.06 (2) (a) 2 b or, if applicable, within the additional time allowed for the search under s. Jus 10.06 (2) (c) 3 and (d).

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.06 Dealer and departmental procedures for reviewing handgun transfers. (1) **DEALER RESPONSIBILITIES.** To request an approval number, a dealer shall do each of the following in the sequence listed:

(a) *Require identification.* A dealer shall require each handgun transferee to show the dealer, for the dealer's inspection, a reliable identification document. The identification document shall include a photograph of the transferee.

Note: A motor vehicle operator's license or state issued identification card when those documents include the licensee or card holder's photograph are examples of reliable identification documents. See, e.g., ss. 343.17 (3) (a) 2 and 343.50 (3), Stats.

(b) *Inspect identification.* A dealer shall carefully inspect the identification document, including the photograph shown by a transferee under par. (a), and shall ensure that it accurately and reliably identifies the transferee as the person the transferee claims to be.

(c) *Require transferee to complete notification form.* 1. A dealer shall require each transferee to complete an official notification form obtained from the department. The Register, September, 1994, No. 465

transferee shall fully and truthfully complete the form in triplicate. The dealer shall provide one copy of the completed form to the transferee when the handgun is transferred to the transferee or when notification of nonapproval is given to the transferee. Within 24 hours after the dealer receives departmental notification that the handgun transfer for which the form was completed is either approved or not approved, the dealer shall mail one copy of the completed form to the department. The dealer shall retain the completed original form as required under s. Jus 10.10 (1) (a). Each form shall have a form number placed on it by the department and shall require all the following information about the transferee:

a. Legal name and any alias or other name used at any time,

b. Birth date,

c. Gender,

d. Race,

e. Social security number,

f. Current address, and

g. Other information reasonably required by the department to ensure a reliable record search and to ensure the required notification under this paragraph.

2. If a transferee cannot read or write, a notification form may be completed on the transferee's behalf by a competent person other than the dealer or any officer, employe or agent of the dealer. The person completing the form shall do so in accordance with this paragraph and with the instructions on the form and shall do so in the presence of and after careful consultation with the transferee to ensure that each notification form answer is truthful and complete. After a person completes a notification form on behalf of a transferee, the dealer shall question the transferee to ensure that the form is truthfully and fully completed and shall then obtain the transferee's signature on the form. If the transferee cannot write, the dealer shall obtain the transferee's mark in the signature space on the form or shall obtain the transferee's name written by another person in the presence of and at the request of the transferee.

Note: A copy of the notification form required by the department is attached to this chapter as appendix II. A dealer may request copies of the required notification form from the address noted in the note following s. Jus 10.04 (1).

(d) *Call department.* After a transferee truthfully completes the notification form in its entirety as required under par. (c), the dealer shall telephone the department using the toll-free telephone number designated by the department for that purpose. During the call, the dealer shall request a record search and shall convey to the department, as required by the department under sub. (2) (a), the material information shown on the notification form completed by the transferee in accordance with par. (c).

(2) **DEPARTMENT RESPONSIBILITIES.** When the department receives a record search request under sub. (1) (d), the department shall do the following in the sequence listed:

(a) *Issue approval number or confirmation number.* During the telephone call received under sub. (1) (d), the department shall proceed as follows:

1. The department shall first obtain from the caller and shall then record for department use the calling dealer's dealer identification number and the notification form number on the form about which the telephone call is made under sub. (1) (d). The department shall use those numbers to verify the authenticity of the call. If the department determines that the call is authentic, the department shall proceed as appropriate under subd. 2. If the department determines that the call is not authentic, the department shall so inform the caller and shall end the telephone call without proceeding further under this subsection.

2. The department, in accordance with sub. (1) (d), shall obtain from the caller the notification form information needed to search the record and, if possible, shall conduct an initial search and proceed as follows during the telephone call:

a. If the initial search shows that transferring a handgun to the transferee is allowed under s. 941.29, Stats., the department shall approve the transfer and shall provide the dealer a confirmation number confirming that the department received the telephone call required under sub. (1) (d) and shall provide the dealer an approval number; or

b. If an initial search is not possible or if the initial search shows that transferring a handgun to the transferee is prohibited by s. 941.29, Stats., or if the search is inconclusive on whether the transferee is prohibited by s. 941.29, Stats., the department shall not approve the transfer and shall instead provide the dealer a confirmation number confirming that the department received the telephone call required under sub. (1) (d).

(b) *Search records.* If the department has issued a confirmation number under par. (a) 2 b, the department shall, as soon as reasonably practicable, complete its search of the record to determine whether the transferee is subject to any of the prohibitions under s. 941.29, Stats.

Note: Under s. 941.29, Stats., it is a felony for persons in the following categories to possess a firearm: (a) persons convicted of a felony in Wisconsin, (b) persons convicted of a crime elsewhere that would be a felony if committed in Wisconsin, (c) persons found not guilty of a felony in Wisconsin by reason of mental disease or defect, and (d) persons found not guilty of or not responsible for a crime elsewhere that would be a felony in Wisconsin by reason of insanity or mental disease, defect or illness.

(c) *Notify dealer of search results.* If infeasible during the telephone call required under sub. (1) (d), then as soon after the call as reasonably possible and in no event more than 48 hours after the dealer receives a confirmation number under par. (a) 2 b, the department shall notify the dealer by telephone of the results of its record search performed under par. (b). In notifying the dealer, the department shall proceed as follows:

1. If the search shows that transferring a handgun to the transferee is allowed under s. 941.29, Stats., the department shall approve the transfer and provide the dealer an approval number;

2. If the search shows that transferring a handgun to the transferee is prohibited by s. 941.29, Stats., the de-

partment shall not approve the transfer and shall provide the dealer a nonapproval number; or

3. If the search shows a felony arrest of the transferee but shows no recorded disposition of that arrest or if the search shows an out-of-state criminal conviction but fails to show whether that conviction would be a felony in Wisconsin, the department shall, as soon as reasonably practicable within the 48 hours described in par. (c) (intro.), notify the dealer by telephone that a three working-day extension of time, as allowed under par. (d) 1, is required for the department to complete its record search.

(d) *Extension of time for search.* 1. The extension of time allowed under par. (c) 3 shall extend until midnight of the third complete working day following the day on which the department makes a finding under that subdivision.

2. During the extension under subd. 1, the department shall take all reasonable steps required to determine the disposition of any identified felony arrest of the transferee and to determine whether an out-of-state criminal conviction would be a felony in Wisconsin.

3. As soon as practicable and no later than the end of the extension under subd. 1, the department shall notify the dealer by telephone of the results of its extended search. In notifying the dealer, the department shall proceed as follows:

a. If the extended search shows that transferring a handgun to the transferee is allowed under s. 941.29, Stats., the department shall approve the transfer and provide the dealer an approval number;

b. If the extended search shows that transferring a handgun to the transferee is prohibited by s. 941.29, Stats., the department shall not approve the transfer and shall provide the dealer a nonapproval number;

c. If the extended search shows a felony arrest of the transferee but shows no recorded disposition of that arrest or if the department cannot reasonably determine whether an out-of-state conviction would be a felony in Wisconsin, the department shall provide the dealer a nonapproval number; or

d. If the extended search shows that a felony arrest is still awaiting disposition, the department shall not provide the dealer a nonapproval number under subpar. c but shall instead approve the transfer and provide the dealer an approval number.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.07 Identification review after nonapproval. (1) (a) Any transferee whose attempt to purchase a handgun is not approved under s. Jus 10.06 may within 10 days after a nonapproval number affecting the transferee is issued request review by the department by mailing a departmental review request form to the department on a form provided by the department.

(b) A review request shall be accompanied by proof of the transferee's identity. Satisfactory proof shall include the transferee's name and date of birth and a set of rolled-ink fingerprints of the transferee prepared by a law enforcement agency on a state or FBI card.

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Note: Any transferee entitled to request review under this subsection may do so by mailing a completed review request form and a set of rolled-ink fingerprints to the following address: Crime Information Bureau, Attention: Firearms Hotline, P.O. Box 2718, Madison, Wisconsin 53701. A copy of the review request form required under this section is attached to this chapter as appendix III. On appropriate request, the department will provide this form to a transferee. Review request forms may also be available from handgun dealers. A set of rolled-ink fingerprints may be obtained from a local law enforcement agency.

(2) After receiving a review request under sub. (1), the department shall, within 10 working days if nonapproval is based on a Wisconsin record or as soon as reasonably practicable if nonapproval is based on an out-of-state record, proceed as follows:

(a) If nonapproval is based on a Wisconsin record, the department shall mail the transferee a copy of the pertinent state record with an accompanying explanation for nonapproval. The department shall also mail the transferee the set of rolled-ink fingerprints submitted with the review request under sub. (1) (b).

(b) If nonapproval is based on an out-of-state record, the department shall notify the transferee stating that nonapproval was based on review of the national record maintained by the FBI and that it is necessary for the FBI to process the fingerprint card submitted to the department under sub. (1) (b). Subsequently, after the set of rolled-ink fingerprints submitted under sub. (1) (b) is compared with the pertinent national record maintained by the FBI and after the FBI provides a copy of that record to the department, the department shall mail the transferee a copy of that pertinent record and an explanation for nonapproval. The department shall then also mail the transferee the set of rolled-ink fingerprints submitted with the review request under sub. (1) (b).

(c) If after review the department finds that the transferee is not the person identified in the record on which the department relied in denying approval of the handgun transfer to the transferee and that approval may be granted under the law, the department shall notify the transferee and the dealer in writing and shall withdraw the previously issued nonapproval number and shall provide the dealer an approval number.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.08 Record correction review after nonapproval. (1) After receiving a copy of the pertinent record under s. Jus 10.07 (2), a transferee whose handgun purchase is not approved under s. Jus 10.06 or 10.07 may, within 10 days after being mailed the record, request a record correction review of the department's nonapproval. The request shall be made by mailing a written request to the department with the information required under sub. (2). The director of the bureau of crime information within the department or the director's designee shall review the record correction request.

(2) The transferee's request under this section shall include a copy of the pertinent record mailed to the transferee under s. Jus 10.07 (2) (a) or (b), shall state the grounds for the requested record correction review and shall specifically identify the alleged error in the record. The properly authenticated relevant court document or documents showing the alleged disposition or nonexistence of the apparent felony arrest or conviction shall accompany the request. Also if relevant to the transferee's

request, the properly authenticated relevant document or documents showing that the transferee has received a pardon or has obtained relief under s. 941.29, Stats., shall accompany the request.

Note: Any transferee entitled to request a record correction review under this subsection may do so by mailing a written request with the necessary accompanying authenticated document or documents to the following address: Crime Information Bureau, Attention: Firearms Hotline, P.O. Box 2718, Madison, Wisconsin 53701.

(3) Within 10 working days after receiving a request for record correction review that complies with and is complete under subs. (1) and (2), the director of the bureau of crime information or the director's designee shall review and either affirm or reverse the department's earlier nonapproval and shall notify the transferee and the dealer in writing providing them a brief explanation for the result on review. In notifying the transferee and the dealer, the department shall proceed as follows:

(a) If the director or the director's designee concludes that transferring a handgun to the transferee is allowed under s. 941.29, Stats., the department shall withdraw the previously issued nonapproval number and shall provide the dealer an approval number; or

(b) If the director or the director's designee concludes that transferring a handgun to the transferee is prohibited by s. 941.29, Stats., the department shall notify the transferee and the dealer that the nonapproval number already issued remains in effect.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.09 Appeal after review. (1) After receiving the written review results under s. Jus 10.08 (3) (intro.) and (b), a transferee may within 10 days after being mailed those results file an appeal. The appeal shall be in writing to the administrator of the division of law enforcement services within the department.

(2) The written appeal as filed shall include a copy of the relevant written review results issued under s. Jus 10.08 (3) (intro.) and (b), shall specifically identify the particular alleged error in those review results, and shall include any properly authenticated documentation required to support the appeal.

Note: Any transferee entitled to appeal under this subsection may do so by mailing an appeal to the following address: Administrator, Division of Law Enforcement Services, P.O. Box 7857, Madison, Wisconsin 53707-7857.

(3) (a) The administrator or the administrator's designee shall examine both the relevant written review results issued under s. Jus 10.08 (3) (intro.) and (b) and the written appeal with accompanying documentation as filed under subs. (1) and (2). Based on that examination and under the applicable law, the administrator or the administrator's designee shall reach a final departmental conclusion either affirming or reversing the review results issued under s. Jus 10.08 (3) (b).

(b) Within 10 working days after receiving a written appeal under sub. (1), the administrator or the administrator's designee shall notify the transferee and the dealer in writing providing them a brief explanation for the departmental conclusion on appeal. In notifying the transferee and the dealer, the department shall proceed as follows:

1. If the administrator or the administrator's designee concludes that transferring a handgun to the transferee is allowed under s. 941.29, Stats., the department shall withdraw the previously issued nonapproval number and shall provide the dealer an approval number; or

2. If the administrator or the administrator's designee concludes that transferring a handgun to the transferee is prohibited by s. 941.29, Stats., the department shall notify the transferee and the dealer that the nonapproval number already issued remains in effect.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.10 Records. (1) **DEALER RECORDS.** (a) *Notification forms.* A dealer shall keep the original copy of each completed notification form prepared under s. Jus 10.06 (1) (c).

(b) *Confirmation and approval or nonapproval numbers.* A dealer shall keep records showing each confirmation number issued to the dealer under s. Jus 10.06 (2) (a) 2 b and showing the approval or nonapproval number issued to the dealer that corresponds with each confirmation number.

(c) *Record availability.* A dealer shall keep the records required under this subsection available for inspection by a department employe or designee during the dealer's normal business hours and as otherwise reasonably requested.

(2) **DEPARTMENT RECORDS.** (a) *Required records.* The department shall keep the following records:

1. Notes sufficient to show the information communicated to the department by telephone under s. Jus 10.06 (1) (d) about each individual notification form,

2. A duplicate of each notification form mailed to the department under s. Jus 10.06 (1) (c) 1 intro.,

3. Records required to comply with any pertinent federal law,

4. Daily logs showing the date or dates for each departmental record search and showing the dealer identification number, any confirmation number and either an approval or nonapproval number for each search, and

5. Records reasonably required for the department to administer this chapter effectively and efficiently.

(b) *Checking notification forms.* After the department receives a duplicate of a completed notification form as required under s. Jus 10.06 (1) (c) 1 intro., the department shall check to ensure that the information on the submitted duplicate corresponds in all material respects with the information the department received about the notification form by telephone from the dealer under s. Jus 10.06 (1) (d). If there is a material discrepancy, the department may notify the appropriate local law enforcement authori-

ties and if appropriate may seek penalties under s. 175.35 (3), Stats.

(c) *Destroying records.* The department shall destroy certain records kept under par. (a) as follows:

1. Within 30 days after receiving a duplicate notification form under s. Jus 10.06 (1) (c) 1 intro., the department shall destroy its duplicate notification form and all its records concerning the record search associated with that form, except for the daily log entries required under par. (a) 4. The department shall, however, destroy its records under this subdivision only if it has already issued an approval number for the transfer involved and if nothing on the duplicate form shows that a handgun transfer to the transferee may be prohibited under s. 941.29, Stats.

2. No later than 3 years after issuing an approval number, the department shall destroy all the daily log entries kept under par. (a) 4 that correspond with that approval number.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.11 Fees. (1) The department shall charge a dealer a \$5 fee for each record search the dealer requests under s. Jus 10.06 (1) (d). A dealer may collect the \$5 fee from the transferee.

(2) (a) The department shall mail a monthly bill to each dealer that has requested any record search under s. Jus 10.06 (1) (d) during the preceding billing period. Each bill shall include the dealer's identification number, an approval number or a nonapproval or confirmation number for each individual transfer approval request, and the total amount payable by the dealer to the department.

(b) A dealer shall pay each bill mailed to the dealer under par. (a) in full within 30 days after it is mailed to the dealer. The department may refuse to accept a toll-free call or to search a record for any dealer that fails to pay any amount due within 30 days after a bill is mailed to the dealer.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

Jus 10.12 Penalties. The penalties for violating this chapter are set forth in s. 175.35 (3), Stats.

Note: Section 175.35 (3), Stats., imposes statutory penalties for the following conduct if it is intentional: transferring a handgun without satisfying the conditions for transfer set forth in s. 175.35, Stats., or this chapter; untruthfully completing a notification form required under s. Jus 10.06 (1) (c); claiming falsely to the department to be a handgun dealer or providing the department an incorrect dealer identification number while requesting a record search; or failing to maintain a required dealer record including failing to maintain an original copy of each completed notification form or to maintain a record of each confirmation number and each corresponding approval or nonapproval number. Under s. 175.35 (3), Stats., the statutory penalties are as follows: a mandatory fine of not less than \$500 nor more than \$10,000 and a discretionary imprisonment of not more than nine months.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.