



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2007 Senate Bill 216**

**Senate Amendments 1 and 2**

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### **Current Law**

Under current law, the Department of Justice (DOJ) conducts background checks for handgun purchasers. Current law provides that a licensed firearms dealer may not transfer possession of a handgun to another person until 48 hours after the dealer receives confirmation from DOJ that the person is not prohibited from possessing a firearm. Persons prohibited from possessing a firearm under state law include persons convicted of a felony and persons convicted of a misdemeanor for a domestic violence offense.

Under current law, certain persons who have been involuntarily committed for mental health treatment are also prohibited from possessing a firearm. Specifically, if a court involuntarily commits an individual because the individual is mentally ill, drug dependent, or developmentally disabled and is a danger to him or herself or others 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 him or herself or endanger public safety, the court must prohibit the person from possessing a firearm and order seizure of any firearm owned by the individual. The court may also designate a person to store the firearm in lieu of ordering seizure of the firearm. Such a prohibition remains in effect until the commitment order and any subsequent consecutive commitment orders expire and the court determines that there is no longer a substantial probability that the individual may use a firearm to cause physical harm to him or herself or endanger public safety.

Federal law prohibits possession of a firearm by a person who is adjudicated as a mental defective or is committed to a mental institution. Federal law defines "adjudicated as a mental defective" as a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence or mental illness, incompetency, condition, or disease either is a danger to him or herself or others or lacks the mental capacity to contract or manage his or her own affairs.

“Committed to a mental institution” means a formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes a commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as drug use. The term does *not* include a person in a mental institution for observation or a voluntary admission to a mental institution.

### Senate Bill 216

Senate Bill 216 maintains current law regarding prohibiting the possession of firearms by persons involuntarily committed for reasons of mental illness and dangerousness. However, the bill additionally prohibits a person who is subject to one of the following involuntary commitments or protective placement or guardianship on or after the effective date of the bill from possessing a firearm if the court finds that the person is prohibited under federal law from possessing a firearm:

- A person who is involuntarily committed under s. 51.20, Stats., based upon a finding that: (a) the person is mentally ill, drug dependent, or developmentally disabled and is a proper subject for treatment; and (b) the person is a danger to him or herself or others.
- A person who is involuntarily committed under s. 51.45 (13), Stats., for alcoholism based upon a finding that the condition of the person is such that he or she habitually lacks self-control as to the use of alcohol beverages and uses such beverages to the extent that his or her health is substantially impaired or endangered and social or economic functioning is substantially disrupted. This finding must be evidenced by a pattern of conduct which is dangerous to the person or to others.
- A person for whom a court has ordered protective placement under s. 55.12, Stats., based upon a finding that: (a) the person has a primary need for residential care and custody; (b) except in the case of a minor who is alleged to be developmentally disabled, the individual has either been adjudicated incompetent by a circuit court, or has had submitted on the minor’s behalf a petition for guardianship; (c) as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to him or herself or others; and (d) the individual has a disability that is permanent or likely to be permanent.
- A person who is subject to a guardianship under s. 54.10 (3), Stats., due to incompetence based upon a finding that: (a) the individual is at least 17 years and 9 months of age; (b) because of an impairment, the individual is unable to effectively receive and evaluate information or make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety; and (c) the individual’s need for assistance in decision-making or communication is unable to be met effectively and less restrictively through appropriate and reasonable available training, education, support services, health care, assistive devices, or other means that the individual will accept.

Under the bill, this information will be forwarded to DOJ for state handgun purchase background checks and will be conveyed to the National Instant Criminal Background Check System (NICS) for

firearm purchase background checks conducted by the Federal Bureau of Investigation under administrative rules promulgated by DOJ.

The bill maintains the current provisions relating to cancellation of an order not to possess a firearm and permitting the court to designate a person to store a person's firearm in lieu of ordering seizure of the firearm. However, the bill does not contain similar provisions for the orders not to possess a firearm, as created by the bill.

### **Senate Amendment 1**

Senate Amendment 1 requires DOJ to include in its promulgated rules a requirement to convey to NICS information regarding the cancellation of an order not to possess a firearm.

### **Senate Amendment 2**

Senate Amendment 2 provides that a person who is ordered not to possess a firearm under the bill may petition the court or the court in the county where the person resides to cancel the order. The court must grant the petition if the court determines both of the following:

- The circumstances regarding the person's commitment, guardianship appointment, or order for protective placement or services and the person's record and reputation indicate that the person is not likely to act in a manner dangerous to public safety.
- Granting the petition would not be contrary to public interest.

If the court grants the petition to cancel the order not to possess a firearm, the amendment requires the court to cancel the order and order the return of any firearm that has been seized. The court clerk must notify DOJ of any cancellation.

The amendment also permits the court to designate a person to store a firearm seized under the provisions of the bill in lieu of ordering seizure of the firearm.

### **Legislative History**

On March 6, 2008, the Senate Committee on Judiciary, Corrections and Housing adopted Senate Amendments 1 and 2 and recommended passage of Senate Bill 216, as amended, all on votes of Ayes, 5; Noes, 0.

AS:wu:jal