



## 2009 SENATE BILL 380

November 3, 2009 - Introduced by Senators TAYLOR, ROBSON, LASSA, JAUCH and COGGS, cosponsored by Representatives STASKUNAS, BERNARD SCHABER, HRAYCHUCK, PASCH, POPE-ROBERTS, PARISI, ROYS, BERCEAU, FIELDS, TURNER, A. OTT, MILROY, CULLEN, VAN AKKEREN, ZEPNICK, SEIDEL, GRIGSBY and LEMAHIEU. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1     **AN ACT to repeal** 941.29 (2); **to renumber** 971.17 (1g); **to renumber and**  
2     **amend** 941.29 (1); **to amend** 938.396 (2g) (d), 941.29 (3), 941.29 (4), 941.29 (5)  
3     (intro.), 941.29 (5) (a), 941.29 (8), 941.29 (9), 941.29 (10) (intro.) and 973.176 (1);  
4     and **to create** 941.29 (1c), 941.29 (1m) (ag), 941.29 (1m) (cm), 971.17 (1g) (b) and  
5     973.136 of the statutes; **relating to:** the possession of a firearm by a person who  
6     has committed a misdemeanor crime of domestic violence and providing a  
7     penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law prohibits a person from possessing a firearm if he or she has been 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. Federal law prohibits a person who is convicted of a misdemeanor crime of domestic violence from possessing a firearm. Under this bill, following a conviction, or a finding of not guilty by reason of mental disease or defect, for a misdemeanor crime of domestic violence, state law also prohibits the person from possessing a firearm. A person who violates the prohibition is guilty of a felony and is subject to a fine of up to \$25,000 or a term of imprisonment of up to 10 years, or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a

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report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 938.396 (2g) (d) of the statutes is amended to read:

2           938.396 **(2g)** (d) *Bail; impeachment; firearm possession.* Upon request of a  
3 court of criminal jurisdiction or a district attorney to review court records for the  
4 purpose of setting bail under ch. 969, impeaching a witness under s. 906.09, or  
5 investigating and determining whether a person has possessed a firearm in violation  
6 of s. 941.29 ~~(2)~~ or body armor in violation of s. 941.291 (2) or upon request of a court  
7 of civil jurisdiction or the attorney for a party to a proceeding in that court to review  
8 court records for the purpose of impeaching a witness under s. 906.09, the court  
9 assigned to exercise jurisdiction under this chapter and ch. 48 shall open for  
10 inspection by authorized representatives of the requester the records of the court  
11 relating to any juvenile who has been the subject of a proceeding under this chapter.

12           **SECTION 2.** 941.29 (1) of the statutes is renumbered 941.29 (1m) and amended  
13 to read:

14           941.29 **(1m)** A person is ~~subject to the requirements and penalties of this~~  
15 ~~section if he or she has been~~ who possesses a firearm is guilty of a Class G felony if  
16 any of the following applies:

17           (a) ~~Convicted~~ The person has been convicted of a felony in this state.

18           (b) ~~Convicted~~ The person has been convicted of a crime elsewhere that would  
19 be a felony if committed in this state.

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1           (bm) ~~Adjudicated~~ The person has been adjudicated delinquent for an act  
2 committed on or after April 21, 1994, that if committed by an adult in this state would  
3 be a felony.

4           (c) ~~Found~~ The person has been found not guilty of a felony in this state by reason  
5 of mental disease or defect.

6           (d) ~~Found~~ The person has been found not guilty of or not responsible for a crime  
7 elsewhere that would be a felony in this state by reason of insanity or mental disease,  
8 defect or illness.

9           (e) ~~Committed~~ The person has been committed for treatment under s. 51.20 (13)  
10 (a) and ordered not to possess a firearm under s. 51.20 (13) (cv).

11           (f) ~~Enjoined under~~ The person is subject to an injunction issued under s. 813.12  
12 or 813.122 or under a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court  
13 established by any federally recognized Wisconsin Indian tribe or band, except the  
14 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he  
15 or she is subject to the requirements and penalties under s. 941.29 and that has been  
16 filed under s. 806.247 (3).

17           (g) ~~Ordered~~ The person is subject to an order not to possess a firearm under s.  
18 813.125 (4m).

19           **SECTION 3.** 941.29 (1c) of the statutes is created to read:

20           941.29 (1c) In this section, “misdemeanor crime of domestic violence” has the  
21 meaning given in s. 973.136 (1) (e).

22           **SECTION 4.** 941.29 (1m) (ag) of the statutes is created to read:

23           941.29 (1m) (ag) The person has been convicted on or after the effective date  
24 of this paragraph .... [LRB inserts date], of a misdemeanor crime of domestic violence.

25           **SECTION 5.** 941.29 (1m) (cm) of the statutes is created to read:

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1           941.29 (1m) (cm) The person has been found not guilty by reason of mental  
2 disease or defect on or after the effective date of this paragraph .... [LRB inserts date],  
3 of a misdemeanor crime of domestic violence.

4           **SECTION 6.** 941.29 (2) of the statutes is repealed.

5           **SECTION 7.** 941.29 (3) of the statutes is amended to read:

6           941.29 (3) Any firearm involved in an offense under sub. ~~(2)~~ this section is  
7 subject to s. 968.20 (3).

8           **SECTION 8.** 941.29 (4) of the statutes is amended to read:

9           941.29 (4) A person is concerned with the commission of a crime, as specified  
10 in s. 939.05 (2) (b), in violation of this section if he or she knowingly furnishes a person  
11 with a firearm in violation of sub. ~~(2)~~ this section.

12           **SECTION 9.** 941.29 (5) (intro.) of the statutes is amended to read:

13           941.29 (5) (intro.) This section does not apply to any person specified in sub.  
14 ~~(1)~~ (1m) who:

15           **SECTION 10.** 941.29 (5) (a) of the statutes is amended to read:

16           941.29 (5) (a) Has received a pardon with respect to the crime or felony specified  
17 in sub. ~~(1)~~ (1m) and has been expressly authorized to possess a firearm under 18 USC  
18 app. 1203; or

19           **SECTION 11.** 941.29 (8) of the statutes is amended to read:

20           941.29 (8) This section does not apply to any person specified in sub. ~~(1)~~ (1m)  
21 (bm) if a court subsequently determines that the person is not likely to act in a  
22 manner dangerous to public safety. In any action or proceeding regarding this  
23 determination, the person has the burden of proving by a preponderance of the  
24 evidence that he or she is not likely to act in a manner dangerous to public safety.

25           **SECTION 12.** 941.29 (9) of the statutes is amended to read:

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1           941.29 (9) This section does not apply to a person specified in sub. ~~(1)~~ (1m) (e)  
2 if the prohibition under s. 51.20 (13) (cv) 1. has been canceled under s. 51.20 (13) (cv)  
3 2. or (16) (gm).

4           **SECTION 13.** 941.29 (10) (intro.) of the statutes is amended to read:

5           941.29 (10) (intro.) The prohibition against firearm possession under this  
6 section does not apply to a person specified in sub. ~~(1)~~ (1m) (f) if the person satisfies  
7 any of the following:

8           **SECTION 14.** 971.17 (1g) of the statutes is renumbered 971.17 (1g) (a).

9           **SECTION 15.** 971.17 (1g) (b) of the statutes is created to read:

10           971.17 (1g) (b) 1. In this paragraph, “misdemeanor crime of domestic violence”  
11 has the meaning given in s. 973.136 (1) (e).

12           2. If the defendant under sub. (1) is found not guilty by reason of mental disease  
13 or defect of a misdemeanor crime of domestic violence, the court shall enter a finding  
14 to that effect in the record for purposes of determining whether the person is  
15 prohibited from possessing a firearm under s. 941.29 and shall inform the defendant  
16 of the requirements and penalties under s. 941.29.

17           **SECTION 16.** 973.136 of the statutes is created to read:

18           **973.136 Prohibition for certain misdemeanor crimes.** (1) In this section:

19           (a) “Caregiver” has the meaning given in s. 813.12 (1) (ad).

20           (b) “Dating relationship” has the meaning given in s. 813.12 (1) (ag).

21           (c) “Family member” has the meaning given in s. 813.12 (1) (b).

22           (d) “Household member” has the meaning given in s. 813.12 (1) (c).

23           (e) “Misdemeanor crime of domestic violence” means any of the following:

24           1. A violation or attempted violation of s. 940.19 (1), 940.195 (1), 940.225 (3m),  
25 941.20 (1), or 947.012 (1) when committed by an adult family member or adult

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1 household member against another adult family member or adult household  
2 member, by an adult caregiver against an adult who is under the caregiver's care, by  
3 an adult against his or her adult former spouse, by an adult against an adult with  
4 whom the person has or had a dating relationship, or by an adult against an adult  
5 with whom the person has a child in common.

6 2. A violation of s. 947.01 in which the person engaged in violent or abusive  
7 conduct to harm, intimidate, or threaten an adult who is the person's family member  
8 or household member, an adult for whom the person is a caregiver, the person's adult  
9 former spouse, an adult with whom the person has or had a dating relationship, or  
10 an adult with whom the person has a child in common.

11 3. A misdemeanor, except a misdemeanor listed in subd. 1. or 2., committed by  
12 an adult family member or adult household member against another adult family  
13 member or adult household member, by an adult caregiver against an adult who is  
14 under the caregiver's care, by an adult against his or her adult former spouse, by an  
15 adult against an adult with whom the person has or had a dating relationship, or by  
16 an adult against an adult with whom the person has a child in common, if the court  
17 has increased the maximum term of imprisonment under s. 939.63 (1) (a).

18 (2) If a person is convicted of a misdemeanor crime of domestic violence, the  
19 court shall enter a finding to that effect in the record for purposes of determining  
20 whether the person is prohibited from possessing a firearm under s. 941.29.

21 **SECTION 17.** 973.176 (1) of the statutes is amended to read:

22 973.176 (1) FIREARM POSSESSION. Whenever a court imposes a sentence or  
23 places a defendant on probation regarding a ~~felony~~ conviction for a felony or for a  
24 misdemeanor crime of domestic violence, as defined in s. 973.136 (1) (e), the court  
25 shall inform the defendant of the requirements and penalties under s. 941.29.

