



Concealed Weapons Licensure and Handgun Purchaser Background Checks

Informational Paper 99

Wisconsin Legislative Fiscal Bureau
January, 2013

Concealed Weapons Licensure and Handgun Purchaser Background Checks

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Introduction

Wisconsin's prohibition on carrying concealed weapons dates back to 1872. Under Chapter 7, Laws of 1872, the Wisconsin Legislature provided that:

"If any person shall go armed with a concealed dirk, dagger, sword, pistol, or pistols, revolver, slung-shot, brass knuckles, or other offensive and dangerous weapon, he shall, on conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the state prison for a term of not more than two years, or by imprisonment in the county jail of the proper county not more than twelve months, or by fine not exceeding five hundred dollars, together with the costs of prosecution, or by both said fine and costs and either of said imprisonments; and he may also be required to find sureties for keeping the peace and against the further violation of this act for a term not exceeding two years: *provided*, that so going armed shall not be deemed a violation of this act whenever it shall be made to appear that such person had reasonable cause to fear an assault or other injury or violence to his person, or to his family or property, or to any person under his immediate care or custody, or entitled to his protection or assistance, or if it be made to appear that his possession of such weapon was for a temporary purpose, and with harmless intent."

The Revised Statutes of 1878 restated the concealed weapons prohibition as follows: "Any person who shall go armed with any concealed and dangerous weapon shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding one hundred dollars: provided, this section shall not apply to any policeman or officer authorized to serve process."

On November 3, 1998, Wisconsin voters approved adding Article I, Section 25 to the Wisconsin Constitution which provides that, "The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose."

In July, 2003, the Wisconsin Supreme Court ruled in *State v. Hamdan* that the general prohibition on carrying concealed weapons in Wisconsin was unconstitutional when applied to a grocery and liquor store owner who had carried a concealed weapon at the store that had been the target of four armed robberies and the site of two fatal shootings. The Court's ruling invited the Legislature "to consider the possibility of a licensing or permit system for persons who have a good reason to carry a concealed weapon." However, the Court also concluded that "Article I, Section 25 does not establish an unfettered right to bear arms. Clearly, the State retains the power to impose reasonable regulations on weapons, including a general prohibition on the carrying of concealed weapons."

Prior to the enactment of 2011 Act 35, the concealed weapons prohibition remained similar to the prohibition that had been restated in the Revised Statutes of 1878 (although the penalty for carrying concealed weapons had changed over the years). Prior to the enactment of 2011 Act 35, the law continued to provide as it had since the 1870s, that apart from peace officers, any person going armed with a concealed and dangerous weapon was guilty of a crime.

Similarly, the sanction for going armed with a concealed and dangerous weapon under current

law remains similar to the sanction that was provided for under the Revised Statutes of 1878. While the sanction for going armed with a concealed and dangerous weapon was imprisonment in the county jail for not more than six months and a fine not exceeding \$100 in 1878, the current penalty for impermissibly going armed with a concealed and dangerous weapon is a Class A misdemeanor with a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both.

The provisions of 2011 Act 35, in addition to the prior exception for peace officers, created additional exceptions to the general rule that an individual may not carry a concealed and dangerous weapon. The following exceptions were created in Act 35 and are addressed in this informational paper: (a) licensed Wisconsin residents [Chapter 1]; (b) qualifying nonresidents licensed

to carry concealed weapons in another jurisdiction [Chapter 1]; (c) out-of-state law enforcement officers [Chapter 2]; (d) former law enforcement officers [Chapter 2]; and (e) an individual who carries a concealed and dangerous weapon in his or her own dwelling or place of business, or on land that he or she owns, leases, or legally occupies.

Chapter 3 summarizes the restrictions on the permissibility of individuals to carry a concealed and dangerous weapon in public. Chapter 4 summarizes the administrative duties of the Department of Justice under the new concealed weapons law. Finally, Chapter 5 summarizes the handgun purchaser record check program that is also administered by the Department of Justice. The state's handgun purchaser record check program ensures that handguns are not sold or transferred in violation of state or federal law.

AUTHORIZATION FOR RESIDENTS AND NONRESIDENTS TO CARRY CONCEALED WEAPONS

Prior to the passage of 2011 Act 35, since the 1870s Wisconsin law prohibited carrying concealed and dangerous weapons by anyone other than active law enforcement officers. Act 35 created an exception to this general prohibition for an individual who carries a concealed and dangerous weapon in his or her own dwelling or place of business, or on land that he or she owns, leases, or legally occupies. A license to carry a concealed and dangerous weapon is not required when the weapon does not leave the individual's dwelling, place of business, or land that the individual owns, leases, or legally occupies.

In addition, Act 35 permits Wisconsin residents to carry concealed and dangerous weapons in public (subject to certain restrictions specified in Chapter 3 of this paper) if they qualify for licensure and are licensed by the Department of Justice (DOJ). Finally, Act 35, permits qualified out-of-state licensees to carry concealed and dangerous weapons in public in Wisconsin. The remainder of this chapter discusses the licensure of Wisconsin residents to carry concealed and dangerous weapons in public, and the conditions under which out-of-state licensees may carry concealed weapons.

**Licensure of Wisconsin Residents
to Carry Concealed Weapons**

Under 2011 Act 35, DOJ must issue a license to carry a concealed weapon to any Wisconsin resident not disqualified under state or federal law who completes the required application process. An individual issued a concealed weapons

license may carry concealed a handgun, an electric weapon, a knife other than a switchblade knife, or a billy club. A Wisconsin concealed weapons license does not limit the licensee to the carrying of a particular weapon. Once issued a concealed weapons license, a licensee may carry any weapon permitted to be carried concealed under state statute.

Content of Concealed Weapons License.

Act 35 requires DOJ to design the concealed weapons license. The license must contain all of the following information on one side of the license: (a) the full name, date of birth, and residence address of the licensee; (b) a physical description of the licensee, including sex, height, and eye color; (c) the date of license issuance; (d) the date of license expiration; (e) the name of this state; and (f) a unique identification number for each licensee. The reverse side of the concealed weapons license must state the requirement that the licensee must inform DOJ of any address change no later than 30 days after any address change and the penalty for any violation of this requirement. The concealed weapons license may not include the licensee's social security number. A concealed weapons license must be similar to a state driver's license: (a) in how information is included on the license; and (b) in regards to its tamper proof qualities.

Unlike a certification card issued to former law enforcement officers to carry a concealed firearm (discussed in Chapter 2), a concealed weapons license does not require a photograph of the licensee to be included on the license. In addition, unlike a certification card issued to former law enforcement officers, a concealed weapons license does not specify the type of concealed

weapon the licensee is authorized to carry.

Requirements for Licensure. The Department must issue a concealed weapons license to an applicant unless the individual: (a) is less than 21 years of age; (b) is prohibited under federal law from possessing a firearm that has been transported in interstate or foreign commerce; (c) is prohibited under state law from possessing a firearm; (d) has been charged with a misdemeanor or felony violation, and as a condition of release the individual is prohibited from possessing a dangerous weapon; (e) is on release prior to or after a criminal conviction, and as a condition of release the individual is prohibited from possessing a dangerous weapon; (f) is not a Wisconsin resident; or (g) has not provided the required proof of firearms training.

Application. Act 35 requires DOJ to design the concealed weapons application. The application may only require the applicant to provide his or her name, address, date of birth, state identification card number, race, sex, height, and eye color. The application must also include statements: (a) that the applicant is ineligible for a license if one of the conditions in the prior paragraph applies to the applicant; (b) explaining self-defense and defense of others with a place for the applicant to sign to indicate that the applicant has read and understands the statement; (c) that an applicant may be prosecuted if the applicant intentionally gives a false answer to any question on the application or intentionally submits a falsified document with the application; (d) regarding the penalties for intentionally giving a false answer to any question on the application or intentionally submitting a falsified document with the application; and (e) regarding the places where a licensee is prohibited from carrying a weapon with a place for the applicant to sign to indicate that the applicant read and understands the statement. The Department must make concealed weapons applications available on the Internet and, upon request by an applicant, by mail.

A Wisconsin resident applying for a concealed weapons license must submit all of the following to DOJ: (a) a completed application form as developed by the Department; (b) a statement that the application and any document submitted with the application is true and complete to the best of the applicant's knowledge; (c) a license fee in an amount determined by DOJ by rule that is equal to the cost of license issuance but does not exceed \$37; (d) a \$13 background check fee; and (e) proof of required firearms training. By rule, DOJ has set the license fee at \$37.

Within 21 days after receiving a complete application, DOJ must either issue the concealed weapons license and promptly send the licensee his or her license by 1st class mail, or deny the application if any of the seven requirements for licensure identified above have not been met. As a part of determining whether or not the requirements for licensure have been satisfied by the applicant, DOJ must conduct a criminal background check on each applicant. If DOJ denies an applicant a concealed weapons license, the Department must inform the applicant, in writing, of this denial stating the reason and factual basis for the denial.

Training. The proof of training requirement under Act 35 may be satisfied with a copy of a document, or an affidavit from an instructor or organization that conducted the course or program, that indicates that the applicant for a concealed weapons license completed: (a) a hunter education program established under state law or recognized by Wisconsin's Department of Natural Resources; (b) a firearms safety or training course that is conducted by a national or state organization that certifies firearms instructors; (c) a firearms safety or training course that is available to the public and is offered by a law enforcement agency; (d) a firearms safety or training course taught by: (1) an instructor who is certified by DOJ or by a national or state organization that certifies firearms instructors; (2) a technical

college, a college or a university, a private or public institution or organization; or (3) a firearms training school; (e) a firearms safety or training course that is offered to law enforcement officers or to owners and employees of licensed private detective and security agencies; and (f) a firearms safety or training course that is conducted by a firearms instructor who is certified by either: (1) a national or state organization that certifies firearms instructors; or (2) DOJ.

The proof of training requirement may also be satisfied with: (a) documentation that the applicant completed military, law enforcement, or security training that gave the applicant experience with firearms that is substantially equivalent to a course or program in the previous paragraph; (b) a current or expired license, or a photocopy of a current or expired license, that the applicant holds or has held that indicates that the applicant is licensed or has been licensed to carry a firearm in this state or in another state or in a county or municipality of this state or of another state unless the license has been revoked for cause; and (c) documentation of completion of small arms training while serving in the U.S. armed forces, reserves, or national guard as demonstrated by an honorable discharge or general discharge under honorable conditions or a certificate of completion of basic training with a service record of successful completion of small arms training and certification.

Firearms instructors providing the required training under Act 35 may be certified by DOJ, but may also be certified by national or state organizations that certify firearms instructors. Not all approved training options require certified instructors.

The Department of Justice must maintain a list of all instructors that it certifies. To be certified by DOJ as an instructor, a person must not be disqualified for a concealed weapons license under state law, and must be able to demonstrate the ability and knowledge required for providing

firearms safety and training. The statutes do not specify any requirements that an instructor must meet who is certified by a national or state organization that certifies firearms instructors. The certification requirements for these instructors are left to be determined by these national and state organizations.

Act 35 does not specify any minimum content for the required firearms training. In reviewing draft administrative rules to implement the training requirement, the Legislature specifically eliminated DOJ's proposal for: (a) any minimum time requirement for a firearms safety and training course; (b) the word "test" from the definition of firearms safety and training course; (c) any minimum time requirement for firearms instructor training; (d) the requirement that an instructor sign the certificate affirming that he or she taught the course to the student; (e) the requirement that the instructor provide contact information on the certificate form submitted to DOJ; and (f) the requirement that the location of the training be provided on the certificate submitted to DOJ. In addition, Act 35 specifically provides that DOJ may not require firing live ammunition to satisfy the training requirement to carry concealed weapons.

An applicant may also satisfy the training requirement if he or she has been licensed to carry a firearm by another state, or by a county or municipality of another state unless the license has been revoked for cause. There need not have been a training requirement for this out-of-state firearms license in order for it to satisfy Wisconsin's concealed weapons training requirement.

Under its proposed permanent rules DOJ does not specify a minimum number of hours of training that must be completed to satisfy the training requirement. Instead, for most forms of approved training, the training must instruct on, and practice (but need not test) the student's comprehension of: (a) firearm safety rules; (b) safe firearm and ammunition use, handling, transport, and storage; (c) legally permissible possession, trans-

portation, and use of firearms, including use of deadly force; and (d) techniques for avoiding and controlling violent confrontations.

These minimum training requirements do not apply to applicants who satisfy the training requirement through: (a) successful completion of a hunter education program; (b) licensure to carry a firearm from another state, or from a county or municipality in another state; and (c) documentation of completion of small arms training while serving in the U.S. armed forces, reserves, or national guard.

Appeal of Licensure Denial. Under state law, DOJ must create an administrative review procedure to provide for the review of departmental actions denying concealed weapons license applications, or suspending or revoking concealed weapons licenses. Notwithstanding the requirement to develop this administrative review procedure, any individual whose concealed weapons license application is denied, and any licensee whose concealed weapons license is suspended or revoked, may bypass this administrative review procedure and appeal DOJ's decision directly to the circuit court of the county in which the individual resides.

To appeal to the circuit court, an individual must file a petition for review within 30 days of the appealed DOJ decision. The petition must state the DOJ action from which the individual is appealing and the reasons why the individual believes DOJ erred. The petition may include records or documents that bear on the reasons why the individual believes DOJ's actions to be erroneous.

A copy of the individual's petition to the court must be served upon DOJ either personally or by registered or certified mail within five days after the individual files the petition with the circuit court. The Department of Justice must file an answer to the individual's circuit court petition within 15 days after being served the petition.

The answer must include a brief statement of the actions taken by DOJ. The Department of Justice must include with its answer any documents or records on which it based its action.

The circuit court must review the individual's petition, DOJ's answer, and any records or documents submitted by either party. The review must be conducted by the circuit court without a jury, but the court is permitted to schedule a hearing and take testimony.

The circuit court must reverse DOJ's action if it determines that: (a) DOJ failed to follow any procedure, or take any action, required by state statute governing the concealed weapons program; (b) DOJ erroneously interpreted state law and a correct interpretation of state law leads to a different outcome for the appealing individual; (c) DOJ's action depended on a finding of fact that was not supported by substantial evidence in the record submitted to the court; (d) the license denial was based on factors other than those identified in this chapter under the "Requirements for Licensure" section; and (e) the license suspension or revocation was based on criteria other than those identified in this chapter under the "License Suspension and Revocation" section.

The circuit court's decision must provide whatever relief is appropriate regardless of the original form of the appealing individual's petition. If the circuit court reverses the action taken by DOJ, the court may order DOJ to pay the appealing individual's court costs and reasonable attorney fees.

Emergency Licensure. A Wisconsin resident may petition the circuit court in the county in which the applicant resides for an emergency concealed weapons license. Unless the court knows that the applicant is ineligible for a license for one of the seven reasons identified under the "Requirements for Licensure" section above, the court may issue an emergency concealed weapons license if the court determines that immediate licensure is warranted to protect the individual

from death or great bodily harm.

An emergency concealed weapons license is valid for 30 days unless it is revoked or voided. If the court issuing the emergency concealed weapons license subsequently determines that the individual is ineligible for a license for one of the seven reasons identified under the "Requirements for Licensure" section above, the court must revoke the emergency license. If the holder of an emergency concealed weapons license applies for and is denied a regular concealed weapons license for one of the seven reasons identified under the "Requirements for Licensure" section above, the emergency concealed weapons license is void.

Lost or Destroyed License. If a concealed weapons license is lost, destroyed, unreadable, or unusable, a licensee may request a replacement license for a \$12 fee. The Department of Justice must issue a replacement concealed weapons license within 14 days of receiving the request and the \$12 fee.

License Expiration and Renewal. A Wisconsin concealed weapons license is generally valid for five years from the date of issuance unless the license is suspended or revoked. However, the concealed weapons license of a member of the U.S. armed forces, a reserve unit of the armed forces, or the national guard who is deployed overseas while on active duty may not expire until at least 90 days after the end of the individual's overseas deployment unless the license is suspended or revoked.

At least 90 days before the expiration date of a concealed weapons license, DOJ must mail to the licensee a notice of expiration form and a license renewal form. The Department must design both forms. The required content and restrictions applicable to the original application form also apply to the renewal form.

Provided the required criminal background

check does not identify a license disqualifier, DOJ must renew a licensee's concealed weapons license if, no later than 90 days after the expiration date of the license, the licensee submits all of the following to DOJ: (a) a completed license renewal form as developed by the Department; (b) a statement that the license renewal form is true and complete to the best of the licensee's knowledge and that the licensee is not disqualified to be licensed under Wisconsin law; (c) a license renewal fee in an amount determined by DOJ by rule that is equal to the cost of license renewal but does not exceed \$12; and (d) a \$13 background check fee. Provided a licensee passes the criminal background check and submits the required documents and fees, DOJ must issue a renewal concealed weapons license by 1st class mail within 21 days of receipt of these items.

License Suspension and Revocation. The Department of Justice must suspend a concealed weapons license if a court has prohibited the licensee from possessing a dangerous weapon under state law. If the court prohibition from possessing a dangerous weapon is lifted, DOJ must generally restore the license within five business days of notification that the licensee is no longer subject to the prohibition.

The Department of Justice must revoke a concealed weapons license if it determines that the licensee: (a) is prohibited under federal law from possessing a firearm that has been transported in interstate or foreign commerce; (b) is prohibited under state law from possessing a firearm; (c) has been prohibited by a Wisconsin court from possessing a dangerous weapon; (d) is on release prior to a possible conviction, and as a condition of release the individual is prohibited from possessing a dangerous weapon; (e) is not a Wisconsin resident; or (f) has not provided the required proof of firearms training. While DOJ may not issue a concealed weapons license to an individual who is less than 21 years of age, the subsequent determination that an individual is, in fact, less than 21 years of age may not be utilized to

revoke the individual's concealed weapons license.

If DOJ suspends or revokes a concealed weapons license, it must mail to the affected licensee notice of the suspension or revocation within one day after the suspension or revocation. The suspension or revocation takes effect when the licensee receives the written notice of suspension or revocation from DOJ. Within seven days after receiving the notice of suspension or revocation of the concealed weapons license, the individual must either: (a) deliver the license document personally or by certified mail to the Department; or (b) mail a signed statement to DOJ stating that he or she no longer has possession of the license document and explaining why the individual no longer has possession.

Authorization of Out-of-State Licensees to Carry Concealed Weapons

As an additional exception to the general prohibition against carrying concealed and dangerous weapons, 2011 Act 35 provided that qualified out-of-state licensees may carry concealed and dangerous weapons. As with Wisconsin residents who have been issued a concealed weapons license, out-of-state licensees who are authorized to carry concealed and dangerous weapons may carry concealed a handgun, an electric weapon, a knife other than a switchblade knife, or a billy club. Wisconsin does not require out-of-state licensees authorized to carry a concealed weapon in Wisconsin to provide proof of firearms training completed in another state prior to issuance of their out-of-state license.

An out-of-state licensee is an individual who is at least 21 years old, is not a Wisconsin resident, and has been issued an out-of-state license. As a result, a Wisconsin resident cannot carry a concealed weapon in public in Wisconsin unless

he or she has been issued a Wisconsin concealed weapons license.

An out-of-state license is a valid permit, license, approval, or other authorization issued by another state, if: (a) the permit, license, approval, or other authorization is for the carrying of a concealed weapon; and (b) the state is listed in the rule promulgated by DOJ as it either requires a background search, or if the state does not require a background search the permit, license, approval, or authorization indicates that the holder chose to submit to a background search.

Act 35 requires DOJ to promulgate a rule listing states that issue a permit, license, approval, or other authorization to carry a concealed weapon if the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to the background search required under Wisconsin law before a resident can be issued a concealed weapons license. In its proposed final administrative rules DOJ provides that this background search requirement will be satisfied if the state requires, or the holder consented to, a background search that included a search of the National Instant Criminal Background Check System (NICS) of the Federal Bureau of Investigation. This background check requirement may be satisfied even if under another state's rules applicants are not disqualified from carrying concealed weapons for the same reasons that Wisconsin applicants are disqualified.

Under proposed final administrative rules issued by DOJ, the Department will post the list of states that conduct a background search that includes a search of the NICS on its website. Appendix I includes the 30 states, Puerto Rico, and the U.S. Virgin Islands that DOJ determined had satisfied this background check requirement as of June, 2012. Out-of-state licensees from these states and territories may carry concealed in Wisconsin if the licensee is a nonresident and is at least 21 years of age.

*CONCEALED CARRY BY LAW ENFORCEMENT AND
FORMER LAW ENFORCEMENT OFFICERS*

Since the 1870s, active law enforcement officers have been exempted from the general state law prohibition against carrying concealed and dangerous weapons.

In 2004, federal law expanded the right of law enforcement officers in Wisconsin and elsewhere to carry concealed firearms. Under the federal Law Enforcement Officers Safety Act of 2004, notwithstanding any state or local law to the contrary, qualified law enforcement officers and qualified retired law enforcement officers possessing required identification may carry concealed firearms that have been shipped or transported in interstate or foreign commerce. However, the federal act provides that its provisions may not be interpreted to supersede or limit the laws of any state that: (a) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; and (b) prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

The provisions of 2011 Wisconsin Act 35 created additional exemptions from the general state law prohibition against carrying concealed and dangerous weapons for out-of-state law enforcement officers and former law enforcement officers.

Out-of-State Law Enforcement Officers

A "qualified out-of-state law enforcement officer" may carry a concealed firearm in Wisconsin if: (a) the weapon is a firearm but not a ma-

chine gun or a destructive device as defined under federal law; (b) the officer is not carrying a firearm silencer; and (c) the officer is not under the influence of an intoxicant. When carrying a concealed firearm, a "qualified out-of-state law enforcement officer" must have with him or her an identification card issued by the officer's employing law enforcement agency that contains the officer's photograph.

An out-of-state law enforcement officer is a "qualified out-of-state law enforcement officer" if: (a) the officer is employed by a state or local government agency in another state; (b) the agency has authorized the officer to carry a firearm; (c) the officer is not the subject of any disciplinary action by the agency that could result in the suspension or loss of the person's law enforcement authority; (d) the officer meets all of the standards established by his or her agency to qualify on a regular basis to use a firearm; and (e) the officer is not prohibited under federal law from possessing a firearm.

Former Law Enforcement Officers

Required Documentation. While carrying a concealed firearm, a former law enforcement officer must have one of the following combinations of documentation:

- a. A photographic identification document issued by the former law enforcement officer's former law enforcement agency that indicates that, within the last 12 months the former officer

was tested or otherwise found by his or her former law enforcement agency to meet the standards for qualification in firearms training that the law enforcement agency sets for active law enforcement officers to carry a firearm of the same type as the firearm that the former officer is carrying.

b. For Wisconsin residents, a photographic identification document issued by the former officer's former law enforcement agency and a certification card issued pursuant to Wisconsin law and described below.

c. For nonresidents, a photographic identification document issued by the former officer's former law enforcement agency and a certification issued by the state in which the former officer resides that indicates that within the last 12 months the former officer has been found by the state in which the officer resides, or by a certified firearms instructor if such an instructor is qualified to conduct a firearms qualification test for active law enforcement officers in that state, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type he or she is carrying, that are established by the former officer's state of residence or, if that state does not establish standards, by any law enforcement agency in his or her state of residence.

Under 2011 Act 35, any law enforcement agency subject to Wisconsin law must issue certification cards to former law enforcement officers formerly employed by the agency to carry concealed firearms if the requirements of state law are satisfied. Unlike concealed weapons licenses issued to Wisconsin residents, certification cards must specify the type of firearm the former law enforcement officer is authorized to carry. A certification card to carry a concealed firearm is valid for 12 months from the date of issuance. Concealed weapons licenses issued to Wisconsin residents are valid for five years from the date of issuance.

Photographic Identification from Former Law Enforcement Agency. Given the new requirement that a former law enforcement officer must have photographic identification from his or her former law enforcement agency to carry concealed firearms, Act 35 provides that if a Wisconsin law enforcement agency issues photographic identification to its officers, it may not require an officer to surrender his or her ID card when the officer ends employment with the agency unless: (a) the officer may not possess a firearm under federal law; (b) the officer did not separate from service in good standing as a law enforcement officer with the agency; (c) the officer served as a law enforcement officer for less than 10 years, unless the officer after completing any probationary period of service with the agency separated from service with the agency due to a service-related disability, as determined by the agency; or (d) either of the following applied: (1) a qualified medical professional employed by the law enforcement agency found the officer to be unqualified to be a law enforcement officer for reasons related to the officer's mental health; or (2) the officer entered into an agreement with the law enforcement agency in which the officer acknowledged that the officer is not qualified to be a law enforcement officer for reasons related to the officer's mental health.

Unless one of the above disqualifiers applies, if a Wisconsin law enforcement agency does not issue photographic identification cards to its officers, it must issue such a card to an officer who leaves employment with the agency upon the law enforcement officer's request and at the officer's expense.

Content of Wisconsin Certification Card. Each certification card issued by a law enforcement agency to its former law enforcement officer, and each certification card issued by DOJ to a former federal law enforcement officer, must include all of the following information on one side of the certification card: (a) the full name, date of birth, and residence address of the person

who holds the certification card; (b) a photograph of the certification card holder and a physical description that includes sex, height, and eye color; and (c) the name of this state. The card must also include a statement that it does not confer any law enforcement authority on the card holder and does not make the card holder an employee or agent of the certifying law enforcement agency. As with a concealed weapons license, a certification card may not contain the card holder's social security number.

Each certification card issued by a law enforcement agency to its former law enforcement officer, and each certification card issued by DOJ to a former federal law enforcement officer, must state all of the following: (a) the type of firearm the former law enforcement officer is certified to carry; (b) that the former law enforcement officer has been found by the state, or by a certified firearms instructor if such an instructor is qualified to conduct a firearms qualification test for active law enforcement officers in the state, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type identified under (a) that are established by the state or, if the state does not establish standards, by the law enforcement agency from which the former law enforcement officer separated (or for former federal law enforcement officers by any law enforcement agency in the state); (c) the date on which the finding was made under (b) and an expiration date that is 12 months later than that date; and (d) that as a result of the finding under (b) that the former law enforcement officer is qualified to carry a firearm of the type under (a). A former law enforcement officer may not be certified to carry a machine gun, a firearm silencer, or a destructive device as defined under federal law.

Unlike certification cards issued to former law enforcement officers, concealed weapons licenses issued to Wisconsin residents do not require a photograph of the licensee to be included on the license. In addition, unlike a certification card

issued to former law enforcement officers, concealed weapons licenses issued to Wisconsin residents do not specify the type of concealed weapon the licensee is authorized to carry. While certification cards are valid for 12 months, concealed weapons licenses issued to Wisconsin residents are valid for five years.

Requirements for Wisconsin Certification Card. A law enforcement agency for its former law enforcement officer, and DOJ for former federal law enforcement officers, may not issue a certification card to carry a concealed weapon unless the agency determines that the following five requirements for certification have been met.

First, the former law enforcement officer must have left service in good standing.

Second, the former law enforcement officer must have either: (a) served as a law enforcement officer for at least 10 years; or (b) left law enforcement due to a service-connected disability, as determined by his or her law enforcement agency after completing any applicable probationary period.

Third, both of the following must be true: (a) a medical professional employed by the law enforcement agency has not found the former law enforcement officer to be unqualified to be a law enforcement officer for reasons related to the former officer's mental health; and (b) the former law enforcement officer has not entered into an agreement with his or her former law enforcement agency in which the former officer acknowledges that he or she is not qualified to be a law enforcement officer for reasons related to his or her mental health.

Fourth, federal law does not prohibit the former law enforcement officer from possessing a firearm.

Finally, the former law enforcement officer has, during the past 12 months, at his or her own

expense, been found by the state, or by a certified firearms instructor if such an instructor is qualified to conduct a firearms qualification test for active law enforcement officers in the state, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type the former officer would be authorized to carry under his or her certification card that are established by the state, or if the state does not establish standards, by the law enforcement agency from which the former officer separated (or for former federal law enforcement officers by any law enforcement agency in the state).

Under Act 35, a former law enforcement officer is required to reimburse the former law enforcement agency for the costs of issuing a certification card. Former federal law enforcement officers being issued Wisconsin certification

cards by DOJ are required to reimburse DOJ for the cost of issuing the certification card.

Requirements to Carry a Concealed Firearm. In addition to required documentation identified above, a former law enforcement officer may carry a concealed firearm if: (a) the concealed firearm is of the type described in the required documentation identified above; (b) within the preceding 12 months the former law enforcement officer has met the standards of the state in which he or she resides for training and qualification for active law enforcement officers to carry firearms; (c) the weapon is not a machine gun or a destructive device; (d) the former officer is not carrying a firearm silencer; (e) the former officer is not under the influence of an intoxicant; and (f) the former officer is not prohibited under federal law from possessing a firearm.

GOING ARMED IN PUBLIC WITH A CONCEALED WEAPON

The provisions of 2011 Act 35 newly permit Wisconsin residents who have applied for and been issued concealed weapons licenses, as well as out-of-state licensees, out-of-state law enforcement officers, and former law enforcement officers to carry concealed weapons in public. However, Act 35 prescribes some limitations to the right to carry concealed. The remainder of this chapter addresses these limitations.

Required Documentation

Unless a concealed weapons licensee or out-of-state licensee is carrying a concealed and dangerous weapon in his or her own dwelling, place of business, or on land that he or she owns, leases, or legally occupies, a concealed weapons licensee or out-of-state licensee must have with him or her the concealed weapons license document and a photographic identification card at all times during which he or she is carrying a concealed weapon. Similarly, while carrying a concealed firearm, an out-of-state law enforcement officer must have the officer's identification card that contains his or her photograph and that was issued by his or her employing law enforcement agency. Finally, while carrying a concealed firearm, a former law enforcement officer must have with him or her photographic identification issued by his or her former law enforcement agency and any applicable certification card.

Prohibited Activity

Generally, neither a licensee nor an out-of-state licensee may knowingly carry a concealed weapon, a weapon that is not concealed, or a firearm that is not a weapon in any of the following places: (a) any portion of a building that is a police station, sheriff's office, state patrol station, or the office of a Division of Criminal Investigation special agent of DOJ; (b) any portion of a building that is a prison, jail, house of correction, or secured correctional facility; (c) secure mental health facility for sexually violent persons; (d) Wisconsin Resource Center operated by the Departments of Health Services and Corrections on the grounds of the Winnebago Mental Health Institute; (e) any secured unit or secured portion of a mental health institute, including the Maximum Security Facility at Mendota Mental Health Institute; (f) any portion of a building that is a county, state, or federal courthouse; (g) any portion of a building that is a municipal courthouse if court is in session; and (h) a place beyond a security checkpoint in an airport. Under state statute, these restrictions do not apply to the carrying of concealed weapons by out-of-state law enforcement officers and former law enforcement officers. Department of Justice staff indicates that, as of this writing, former law enforcement officers may not carry a concealed firearm past an airport security checkpoint.

However, a licensee or out-of-state licensee may have a weapon in a vehicle driven or parked in a parking facility located in a building, or any portion of a building, that is used for one of the

purposes described above. In addition, a weapon may be permitted in a courthouse or courtroom (notwithstanding the general prohibition outlined in the previous paragraph) if either: (a) a judge who is a licensee is carrying the weapon; or (b) a licensee or out-of-state licensee is carrying the weapon, and the judge, in writing, has permitted the licensee or out-of-state licensee to carry a weapon. Finally, notwithstanding the general prohibition outlined in the previous paragraph, a district attorney or assistant district attorney who is a licensee may carry a weapon in a courthouse or courtroom.

Public and Private Property Restrictions

The provisions of 2011 Act 35 grant property owners certain rights to exclude individuals from carrying firearms on their property. Apart from single-family residences, these restrictions do not apply to a firearm in a vehicle driven or parked: (a) in a parking facility; or (b) to any part of a building, grounds, or land used as a parking facility.

Individuals carrying firearms may be excluded from the public and private properties identified below if appropriate notice of the firearms restriction is provided. For purposes of providing notice of firearms restrictions to individuals carrying firearms, a posted sign must be at least five inches by seven inches. In order to provide notice other than for single family residences and for individual units in a multi-family residence, signs must be posted near all of the entrances to the part of the building to which the restriction applies or near all probable access points to the grounds to which the restriction applies and any individual entering the building or the grounds can be reasonably expected to see the sign.

An individual carrying a firearm may not enter or remain:

a. At a "residence" that is not his or her own residence if the owner or occupant of the residence has notified the individual not to enter or remain at the residence while carrying a firearm or with that type of firearm. A single family "residence" includes the residence building and the land on which the building is located. A multi-family "residence" does not include any common areas of the building in which the residence is located nor any common areas of the rest of the parcel of land on which the multi-family residence building is located.

b. In a common area or on the grounds of a multi-family residence that is not his or her residence, if the owner of the multi-family residence has notified the individual not to enter or remain in the common area or on the grounds of the multi-family residence while carrying a firearm or with that type of firearm.

c. In any part of a nonresidential building, grounds of a nonresidential building, or land that the individual does not own or occupy if the owner or occupant of the nonresidential building, grounds, or land, has notified the individual not to enter or remain in that part of the building, grounds, or land while carrying a firearm or with that type of firearm. [This prohibition does not apply to a part of a building, grounds, or land occupied by the state or by a local governmental unit, to a privately or publicly owned building on the grounds of a university or college, or to the grounds of or land owned or occupied by a university or college.]

d. At a special event if the organizers of the special event have notified the individual not to enter or remain at the special event while carrying a firearm or with that type of firearm.

e. In any part of a building that is owned, occupied, or controlled by the state or any local governmental unit (other than government properties addressed under the prohibited activity section above), if the state or local governmental

unit has notified the individual not to enter or remain in the building while carrying a firearm or with that type of firearm. Under this provision, state and local units of government are not permitted to restrict licensees from carrying concealed on their grounds. Instead, state and local units of government may only restrict carrying concealed in their buildings.

f. In any privately or publicly owned building on the grounds of a university or college, if the university or college has notified the individual not to enter or remain in the building while carrying a firearm or with that type of firearm. Universities and colleges are not permitted to restrict licensees from carrying concealed on their grounds. Instead, universities and colleges may only restrict carrying concealed in their buildings.

Employer Restrictions

An employer may generally prohibit its employees who are licensees or out-of-state licensees from carrying a concealed weapon or a particular type of concealed weapon in the course of employment. However, an employer may not prohibit its employees who are licensees or out-of-state licensees, as a condition of employment, from carrying a concealed weapon or from storing a weapon or ammunition in the employee's own motor vehicle, regardless of whether the motor vehicle is used in the course of employment, or whether the motor vehicle is driven or parked on property used by the employer. The statutes do not address whether an employer may prohibit a former law enforcement officer from carrying a concealed weapon in the course of employment.

Gun-Free School Zones

While there are exceptions, generally any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is in or on the grounds of a school is guilty of a Class I felony. A Class I felony is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months (confinement in prison not to exceed one year and six months, and extended supervision not to exceed two years), or both. Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is within 1,000 feet of the grounds of a school is subject to a Class B forfeiture (a forfeiture not to exceed \$1,000).

Act 35 exempts concealed weapons licensees and out-of-state licensees (but not out-of-state law enforcement officers and former law enforcement officers) from the prohibition to knowingly possess a firearm within 1,000 feet of the grounds of a school. Licensees and out-of-state licensees generally remain subject to a Class I felony for possessing a firearm at a place that the licensee knows, or has reasonable cause to believe, is in or on the grounds of a school.

Alcohol Beverages

State law provides that whoever intentionally goes armed with a handgun on any premises for which an alcohol beverage license or permit has been issued is generally guilty of a Class A misdemeanor [a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both]. This prohibition does not apply to: (a) a law enforcement officer; (b) a correctional officer while going armed in the line of duty; (c) a member of

the U.S. armed forces or national guard while going armed in the line of duty; (d) certain private security individuals; and (e) the licensee, owner, or manager of the premises on which alcohol beverages are sold, or any employee or agent authorized to possess a handgun by the licensee, owner, or manager of the premises. This prohibition also does not apply to: (a) the possession of a handgun that is unloaded and encased in a vehicle in any parking lot area; (b) the possession or use of a handgun at a public or private gun or sportsmen's range or club; (c) the possession or use of a handgun on the premises if authorized for a specific event of limited duration by the owner or manager of the premises on which alcohol beverages are sold; (d) the possession of any handgun that is used for decoration if the handgun is encased, inoperable or secured in a locked condition; (e) the possession of a handgun in any portion of a hotel other than the portion of the hotel that is a tavern; and (f) the possession of a handgun in any portion of a combination tavern and store devoted to other business if the store is owned or operated by a firearms dealer, the other business includes the sale of handguns and the handgun is possessed in a place other than a tavern.

Act 35 created additional exceptions to the prohibition that whoever intentionally goes armed with a handgun on any premises for which an alcohol beverage license or permit has been issued is generally guilty of a Class A misdemeanor. Under Act 35, a concealed weapons licensee and an out-of-state concealed weapons licensee may carry a concealed handgun on any premises for which an alcohol beverage license or permit has been issued, provided that the licensee or out-of-state licensee is not consuming alcohol on the premises. In addition, qualified

out-of-state law enforcement officers and former law enforcement officers are permitted to carry concealed handguns on any premises for which an alcohol beverage license or permit has been issued, provided that the officer is not under the influence of an intoxicant.

Finally, state law (both before and after the passage of Act 35) provides that if an individual is under the influence of an intoxicant or has a detectable amount of a controlled substance in his or her blood and goes armed with a firearm, he or she is guilty of a Class A misdemeanor [a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both].

Disorderly Conduct

Prior to Act 35, whoever, in a public or private place, engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tended to cause or provoke a disturbance, could be charged and convicted of a Class B misdemeanor (a fine not to exceed \$1,000, or imprisonment not to exceed 90 days, or both). No exception was made from this disorderly conduct statute for individuals carrying firearms in public.

Under Act 35, an individual may not be charged with disorderly conduct for loading, carrying, or going armed with a firearm in private or public, regardless of whether the firearm is loaded, concealed, or openly carried, unless other facts and circumstances indicate a criminal or malicious intent on the part of the individual.

*ADMINISTRATION OF THE CONCEALED WEAPONS
LAW BY THE DEPARTMENT OF JUSTICE*

On July 22, 2011, 2011 Senate Bill 93 related to carrying concealed weapons was published as 2011 Act 35. Under Act 35, DOJ is the state agency responsible for administering the concealed weapons licensure and certification program. The provisions of Act 35 generally took effect on November 1, 2011, except for the following provisions which took effect on July 23, 2011: (a) amendment of the disorderly conduct statutes; (b) the requirement that DOJ promulgate rules regarding which states issue authorizations to carry firearms that will be recognized as out-of-state licenses in Wisconsin; (c) the requirement that DOJ and local law enforcement agencies design certification cards for former law enforcement officers; and (d) the requirement that DOJ design the concealed weapons license document and create license applications.

The provisions of Act 35 created new responsibilities for DOJ in three main areas: (a) the licensure of Wisconsin citizens to carry concealed weapons; (b) the issuance of certification cards to former federal law enforcement officers seeking to carry concealed firearms; and (c) development of a concealed weapons licensee database and associated interfaces with federal law enforcement databases, the DOJ Transaction Information for the Management of Enforcement (TIME) System, and the circuit court system's Consolidated Court Automation Program (CCAP). The remainder of this chapter discusses these administrative responsibilities of DOJ and the resources provided to the Department to carry out these new responsibilities.

Concealed Weapons Licensure

Initial Licensure. Under Act 35, DOJ is required to design an application form and license for Wisconsin residents seeking licensure to carry a concealed weapon. An individual may apply for a concealed weapons license with DOJ by submitting all of the following: (a) a completed application; (b) a statement that the information provided in the submitted application and any document submitted with the application is true and complete to the best of the applicant's knowledge; (c) a license fee in an amount, as determined by DOJ rule, that is equal to the cost of issuing the license but does not exceed \$37 (DOJ is required to determine the costs of issuing a license by using a five-year planning period); (d) a background check fee equal to the fee charged for a firearms restrictions record search (currently \$13); and (e) proof of firearms training. By rule, the Department has subsequently set the license fee for a concealed weapons license at \$37. The license and background check fees are deposited to a PR annual background check for licenses to carry concealed weapons appropriation. The Department is authorized to utilize this fee revenue to administer the concealed weapons licensure program.

The Department must conduct a background check to determine if an individual is qualified under state and federal law to possess a firearm. The Department must maintain a record of all completed application forms and a record of all approval or nonapproval numbers issued in regards to required background checks.

In order to satisfy the proof of firearms training requirement, among other approved methods, an individual may attend a firearms safety or training course conducted by a firearms instructor who is either certified by a national or state organization that certifies firearms instructors, or who is certified by DOJ. The Department is required to maintain a list of instructors that it certifies.

Under Act 35, DOJ is required to issue a concealed weapons license to an individual unless the individual is: (a) not at least 21 years of age; (b) prohibited under federal law from possessing a firearm that has been transported in interstate or foreign commerce; (c) prohibited from possessing a firearm under Wisconsin law; (d) charged with a misdemeanor or felony violation, and as a condition of release the individual is prohibited from possessing a dangerous weapon; (e) on release prior to or after a criminal conviction, and as a condition of release the individual is prohibited from possessing a dangerous weapon; (f) not a Wisconsin resident; or (g) lacking required proof of firearms training.

Under Act 35, for the month of November, 2011, the Department had 45 days after receiving a completed application to either issue the license or deny the application. After November, 2011, the Department has 21 days after receiving a completed application to either issue the license or deny the application.

A concealed weapons license must contain all of the following on one side: (a) the full name, date of birth, and residence address of the licensee; (b) a physical description of the licensee, including sex, height, and eye color; (c) the date on which the license was issued; (d) the date on which the license expires; (e) the name of this state; and (f) a unique identification number for each licensee. The contents of the concealed weapons license must be included on the physical license in substantially the same way that the contents of a Wisconsin driver's license are in-

cluded on that physical license. Further, the concealed weapons license must be tamper proof in substantially the same way that a Wisconsin driver's license is tamper proof.

Act 35 provided that DOJ may contract with the Department of Transportation (DOT) to produce and issue concealed weapons licenses. Neither DOT nor any employee of DOT may store, maintain, or access the information provided by DOJ for the production or issuance of concealed weapons licenses other than to the extent necessary to produce the licenses. The Department of Transportation currently utilizes a private vendor to produce and mail Wisconsin driver's licenses.

On September 16, 2011, the Department of Administration on behalf of DOJ, submitted a request to the Joint Committee on Finance for \$997,700 in additional expenditure authority in 2011-12, under DOJ's annual background check for licenses to carry concealed weapons appropriation. The request sought to utilize concealed weapons license fee and background check fee revenue to purchase a high-capacity license processing system, and pay for associated supplies and rent for the space in which the new equipment would be housed.

The Department of Justice did not utilize the DOT vendor to produce concealed weapons licenses as: (a) the vendor indicated that it would be unable to begin producing concealed weapons licenses on the timeline required by Act 35 (November 1, 2011); and (b) DOJ interpreted Act 35 to preclude it from being able to release applicant or licensee information to a third-party vendor, even if the information was released only to the extent necessary to produce and mail concealed weapons licenses.

On October 6, 2011, the Joint Committee on Finance approved the request for a high-capacity license processing system but reduced provided expenditure authority under the request by \$22,100 in 2011-12, to reflect: (a) reduced antic-

ipated costs for card stock supplies; and (b) a re-estimate of annual space costs at the Risser Justice Center associated with space for the new licensing system. As a result, the Committee approved \$975,600 in 2011-12, to provide resources to DOJ to produce concealed weapons licenses and certification cards.

Ongoing Administration. If a concealed weapons license is lost, a licensee no longer has possession of his or her license, or a license document is destroyed, unreadable, or unusable, a licensee may submit to DOJ a statement requesting a replacement concealed weapons license along with a \$12 replacement fee. The Department must issue a replacement license document within 14 days of receiving the statement and fee.

The Department of Justice must suspend a concealed weapons license if a licensee is charged with a misdemeanor or felony violation, and, as a condition of release, the individual is prohibited from possessing a dangerous weapon. The Department is required to revoke a concealed weapons license if the licensee is: (a) prohibited under federal law from possessing a firearm that has been transported in interstate or foreign commerce; (b) prohibited under state law from possessing a firearm; (c) charged with a misdemeanor or felony violation, and as a condition of release the individual is prohibited from possessing a dangerous weapon; (d) on release prior to or after a criminal conviction, and as a condition of release the licensee is prohibited from possessing a dangerous weapon; (e) not a Wisconsin resident; or (f) deficient in providing the required proof of training.

The Department of Justice is also required to design a notice of expiration and license renewal forms. Under Act 35, a concealed weapons license is generally valid for a period of five years from the date on which the license is issued unless the license is suspended or revoked. At least 90 days before the expiration date of a concealed

weapons license, DOJ is required to mail to the licensee a notice of expiration form and a form for renewing the license. The Department is required to renew the license if, no later than 90 days after the expiration date of the license, the licensee does all of the following: (a) submits the renewal application; (b) submits a statement reporting that the information provided in the renewal application is true and complete to the best of the applicant's knowledge and that the applicant is not disqualified from being licensed under the criteria outlined above; (c) pays a renewal fee in an amount, as determined by DOJ by rule, that is equal to the cost of renewing the license but does not exceed \$12 (the Department is required to determine the costs of renewing a license by using a five-year planning period); and (d) a background check fee equal to the fee charged for a firearms restrictions record search (currently \$13). The Department of Justice must also conduct a new background check of the licensee prior to renewing the license. As with the original application, within 21 days of receiving a renewal application, the required statement, and fees, DOJ must either issue the concealed weapons license and send the licensee his or her license by 1st class mail, or deny the renewal application.

The Department of Justice must promulgate rules providing for administrative review of any Department action denying a concealed weapons license application or suspending or revoking a concealed weapons license. Notwithstanding this administrative review process, any affected applicant or licensee may appeal directly to the circuit court of the county in which the individual resides, regardless of whether the individual has also sought administrative review of the Department action. The circuit court must review any such action without a jury, but the court may schedule a hearing and take testimony. If the court reverses the Department's action, the court may order DOJ to pay all court costs and reasonable attorney fees incurred by the affected individual.

By March 1 of each year, DOJ must submit a statistical report to the Legislature and to the Governor which indicates the number of concealed weapons licenses applied for, issued, denied, suspended, and revoked during the previous calendar year. For licenses denied, the report must indicate the reasons for the denials and the part of the application process in which the reasons for denial were discovered. For licenses suspended or revoked, the report must indicate the reasons for the suspensions and revocations.

Appendix II is the first such report filed by DOJ to the Legislature regarding its initial administration of the program from November 1, 2011, through December 31, 2011. During the initial two months of the program DOJ received 65,921 concealed weapons applications and issued 39,664 concealed weapons licenses.

During this initial two month period of administration, 7,200 applications were returned during the application review process. The two most common reasons for returned applications were insufficient training documentation (3,451 applications) and incomplete applications (2,243 applications).

During this initial two month period of administration, 847 applications were denied during the background check phase. The two most common reasons for denial were that the provided address on the application did not match the applicant's address on file with the Department of Transportation (482 applications) and that the applicant was not a Wisconsin resident (211 applications).

Of the applications that were submitted to DOJ in 2011, 18,210 were being processed at the close of the calendar year.

Finally, from November 1, 2011, through December 31, 2011, one license was revoked, one license was suspended, and eight licenses were cancelled.

Certification Cards for Former Federal Law Enforcement Officers

The Department of Justice is required to design a certification card to be issued by the Department to eligible former federal law enforcement officers seeking to carry concealed firearms. These certification cards are valid for 12 months from the date on which it is determined that the officer meets the standards for qualification in firearms training for active law enforcement officers for the firearm for which the officer would be certified.

A certification card must contain on one side all of the following: (a) the full name, date of birth, and residence address of the person who holds the certification card; (b) a photograph of the certification card holder and a physical description that includes sex, height, and eye color; and (c) the name of this state. Unlike concealed weapons licenses issued under Act 35, certification cards: (a) include the photograph of the certification card holder; and (b) do not have to be tamper proof in substantially the same way that a Wisconsin's driver's license is tamper proof.

Upon the request of a former federal law enforcement officer and at the former federal law enforcement officer's expense, DOJ may issue the officer a certification card to carry a concealed firearm provided that the Department first verifies all of the following: (a) the officer separated from service as a law enforcement officer with the law enforcement agency in good standing; (b) the officer served as a law enforcement officer for an aggregate of at least 10 years, or the officer separated from service due to a service-connected disability after completing any applicable probationary period; (c) the officer is not prohibited under federal law from possessing a firearm as indicated by a search of the DOJ TIME system and the national criminal background check system; and (d) the officer, during

the previous 12 months has been found by the state or by a certified firearms instructor (if such an instructor is qualified to conduct a firearms qualification test) to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type for which the officer would be certified that are established by the state, or if the state does not establish standards, for former federal law enforcement officers by any law enforcement agency in the state. Before issuing a former federal law enforcement officer a certification card to carry a concealed weapon, DOJ must also verify that: (a) a qualified medical professional employed by the law enforcement agency from which the officer separated had not found the officer to be unqualified to be a law enforcement officer for reasons related to the officer's mental health; and (b) the officer had not entered into an agreement with the law enforcement agency from which he or she separated from service in which the officer acknowledged that he or she was not qualified to be a law enforcement officer for reasons related to his or her mental health.

The Department of Justice may charge a fee to verify eligibility for a certification card, for the issuance of a certification card, or for the renewal of a certification card, but the fee may not exceed the costs the Department incurs to carry out these activities. These fees are deposited to a new program revenue continuing certification cards for carrying concealed weapons appropriation. This fee revenue may be utilized by DOJ to verify eligibility of, and to issue certification cards to, former federal law enforcement officers seeking to carry concealed weapons. Under proposed permanent rules issued by DOJ, the Department may charge \$12 for each of the following fees: (a) certification card application fee; (b) certification card renewal fee; and (c) lost or destroyed certification card replacement fee. In addition, the DOJ proposed permanent rules authorize DOJ to charge a \$13 background check fee as a part of the certification card application process.

Concealed Weapons Licensee Database

Every concealed weapons license is required to contain the following information: (a) the full name, date of birth, and residence address of the licensee; (b) a physical description of the licensee, including sex, height, and eye color; (c) the date on which the license was issued; (d) the date on which the license expires; (e) the name of the state; and (f) a unique identification number for each licensee. The Department is required to maintain a computer database containing this information for all individuals issued a concealed weapons license, as well as a listing of all former federal law enforcement officers issued certification cards to carry a concealed weapon. Neither DOJ nor any employee of the Department may store, maintain, format, sort, or access the information in any way other than by the names, dates of birth, or sex of licensees or individuals, or by the identification numbers assigned to licensees.

The Department is required to provide this information to law enforcement officers for the following purposes: (a) to confirm that a license or certification card produced by an individual at the request of a law enforcement officer is valid; (b) to confirm that an individual holds a valid license or certification card if an officer finds the individual carrying a concealed weapon but the individual is not carrying his or her license document or certification card; (c) to investigate whether an individual submitted an intentionally false statement with an application or renewal application for a concealed weapons license; and (d) to investigate whether a licensee complied with state law requirements following receipt of notice of the suspension or revocation of his or her concealed weapons license. To facilitate providing this information to law enforcement officers in the field, the Department has provided access to the concealed carry database by law enforcement nationwide through the Wisconsin

TIME system. The TIME system, administered by DOJ, provides law enforcement agencies across the state access to a variety of law enforcement related databases, including state and national criminal history information, and driver and vehicle registration files. As of August, 2012, the TIME system consists of 12,012 workstations located in 667 local, state and federal law enforcement agencies in Wisconsin. Approximately 5,750 of these terminals are mobile units that provide information directly to the patrol officer.

The Circuit Court Automation Program (CCAP) system is used by the circuit court system to track civil, criminal and delinquency court actions. The CCAP system is a state-funded program under the Supreme Court's Director of State Courts Office. Under Act 35, CCAP (or the clerk or register in probate if the information is not contained in or cannot be transmitted by CCAP) is required to promptly notify DOJ of the name of any individual with respect to whom any of the following occurred and the specific reason for the notification: (a) the individual is convicted of a felony or any other crime that would disqualify the individual from possessing a concealed weapons license; (b) the individual is found to be incompetent; (c) the individual is found not guilty of any crime by reason of mental disease or defect; (d) the individual is involuntarily committed for treatment; (e) the individual is subject to a domestic abuse or child abuse injunction; (f) the individual is ordered to not possess a firearm as a part of a harassment injunction; (g) the individual is charged with a misdemeanor or felony violation, and as a condition of release the individual is prohibited from possessing a dangerous weapon; (h) a Wisconsin court has prohibited the individual from possessing a firearm; or (i) the individual is on release prior to or after a criminal conviction, and as a condition of release the individual is prohibited from possessing a dangerous weapon. Upon receiving this information, the Department must immediately determine if the individual who is the subject of the notice is a licensee. If the individual is a licensee

and is no longer eligible to carry a concealed weapons license, DOJ must seek revocation or suspension of the license. In order to carry out these provisions, the Department has implemented an interface between CCAP and the concealed weapons database.

Resources for Concealed Weapons Program Administration

As a part of the concealed weapons licensure program, Act 35 authorizes DOJ to charge individuals fees associated with the administration of the program. These fees are deposited to the Department's annual background check for licenses to carry concealed weapons appropriation. For the first eight months of the program through June 30, 2012, the Department deposited \$5,797,800 in fee revenue to this appropriation.

In order to carry out its responsibilities to issue certification cards to former federal law enforcement officers, Act 35 also authorizes DOJ to charge former federal officers fees associated with the administration of this function. These fees are deposited to the Department's continuing certification cards for carrying concealed weapons appropriation. For the first eight months of the program through June 30, 2012, the Department deposited \$75 in fee revenue to this appropriation.

Under 2011 Act 35, the Legislature provided the following initial resources to implement the program under the annual background check for licenses to carry concealed weapons appropriation: (a) \$174,400 in 2011-12, to fund 10.0 limited term employee (LTE) positions for six months; (b) \$62,300 and 1.0 permanent position during each year of the 2011-13 biennium; and (c) \$77,100 during 2011-12 for supplies and services costs.

On October 6, 2011, the Joint Committee on Finance, acting under s. 16.515/16.505(2) of the statutes, provided \$975,600 in 2011-12, to acquire and pay costs associated with a high-capacity license processing system. On December 14, 2011, the Committee, again acting under s. 16.515/16.505(2) of the statutes, provided \$647,900 in 2011-12, and \$950,100 in 2012-13, to provide additional staffing resources for the concealed weapons licensing program. This provided funding for 8.5 permanent positions to supplement the 1.0 permanent position provided under Act 35, as well as 6.0 project positions through June 30, 2013, and LTE positions and overtime. Finally, on July 3, 2012, under s. 16.515/16.505(2) of the statutes, the Joint Committee on Finance provided \$788,600 in 2012-13, to provide the first year of funding for 8.0 two-year project positions. All of these passive review

requests were funded with program revenue under DOJ's PR annual background check for licenses to carry concealed weapons appropriation.

During the first fiscal year of the program in 2011-12, DOJ collected \$5,797,800 in fee revenue and expended \$1,734,100. As a result the concealed weapons program concluded 2011-12 with a balance of \$4,063,700.

The Department estimates that it will receive \$2,580,000 in additional fee revenue for the concealed carry program in 2012-13, expend \$3,886,600, and conclude the 2011-13 biennium with a balance of \$2,757,100. The revenue estimate for 2012-13 assumes that the Department will receive an estimated 51,600 additional concealed weapons applications during 2012-13.

HANDGUN PURCHASER RECORD CHECK PROGRAM

Statutory Authorization

Under current federal law, states may individually determine whether they will process background checks on purchasers prior to the transfer of handguns and long guns. States processing these background checks must ensure that the guns are not transferred in violation of federal or state law. If a state does not process background checks, either in whole or in part, the FBI processes those background checks not undertaken by the state.

In Wisconsin, staff in DOJ's Crime Information Bureau processes background checks on purchasers of handguns. The FBI continues to be responsible for background checks on purchasers of long guns in Wisconsin. States which process background checks are also authorized to extend their background checks beyond the requirements under federal law. Wisconsin handgun background checks include a review of databases not routinely searched by the FBI as a part of a federal background search such as CCAP and the DOJ database of juveniles found adjudicated delinquent for an offense that would have been a felony if committed by an adult.

Under s. 175.35 of the statutes, when a firearms dealer sells a handgun in Wisconsin, the dealer may not transfer possession of that handgun until all of the following events occur: (a) the dealer has inspected photographic identification from the purchaser; (b) the purchaser has completed a notification form with the purchaser's name, date of birth, gender, race and social security number so that DOJ may

perform an accurate record search; (c) the dealer has submitted the information to DOJ and has requested a firearms restrictions record search; and (d) 48 hours have lapsed (subject to certain extensions) and DOJ has not notified the dealer that the transfer would be a violation of state or federal law.

A \$13 fee is assessed on the dealer (who may pass the charge on to the purchaser) for each background check. These fee revenues are remitted to DOJ and are intended to fund the cost of operating the record check program.

Program Administration

The Bureau's handgun purchaser record check program operates a handgun hotline between the hours of 9:00 a.m. and 9:00 p.m. on weekdays, and between the hours of 9:00 a.m. and 5:00 p.m. on weekends, so as to be available to receive telephone calls during regular retail hours. The handgun hotline receives telephone inquiries from handgun dealers. The information provided by the dealers during the course of these calls enables Bureau staff to begin the required background checks on handgun purchases.

As a part of the background check approval process, handgun dealers must submit a written notification form to the Bureau. If the information on the written notification forms confirms the information that was provided to the Bureau during the initial telephone call, the background check can normally be completed, based on information that was provided in the initial tele-

phone contact to the Bureau. If the data on the written notification forms contains new information, additional limited or more involved follow-up review may be required before the purchase can be approved. Where an initial telephone inquiry or a subsequent follow-up review discloses a disqualification that would bar handgun ownership, the purchase request is denied.

The handgun hotline received 122,444 calls from dealers in 2011-12. The following table indicates the disposition of these background checks.

Handgun Hotline Background Checks (2011-12)

	Calls
Instant Approvals	37,595
Limited Follow-up Approvals	21,158
Involved Follow-up Approvals	62,645
Denials	<u>1,046</u>
Total	122,444

The handgun purchaser record check program's 2012-13 budget is \$444,600 and 8.0 positions, supported by the \$13 handgun purchaser record check fee. Until 2011-12, since its creation under 1991 Act 11 the program had ended each state fiscal year in deficit. However, under 2009 Act 28 the handgun purchaser record check fee was increased from \$8 to \$13. In recent years, the program has also seen a substantial increase in handgun purchaser record checks associated with increased handgun sales. The program began 2011-12 with a deficit of \$613,700. However, during 2011-12, the program received \$1,560,900 in handgun purchaser record check fees and expended \$492,900. As a result, the program concluded 2011-12 with a positive balance of \$454,300.

APPENDIX I

States and Territories Conducting Applicant Background Searches that Utilize the National Instant Criminal Background Check System (NICS) of the Federal Bureau of Investigation

Arizona	Montana
Arkansas	Nebraska
California	New Mexico
Colorado	New York
Connecticut	North Carolina
Georgia	North Dakota
Hawaii	Pennsylvania
Idaho	Tennessee
Indiana	Texas
Iowa	Utah
Kansas	Virginia*
Kentucky	Washington
Louisiana	West Virginia**
Maryland	Wyoming
Michigan	Puerto Rico
Minnesota	U.S. Virgin Islands

* A Virginia non-resident license states "non-resident" on the license. Only the Virginia non-resident license is currently recognized in Wisconsin.

** West Virginia passed a new law effective June 9, 2012, that requires a search of the National Instant Criminal Background Check System of the Federal Bureau of Investigation. West Virginia licenses issued under the new law will be recognized in Wisconsin.

APPENDIX II

Concealed Weapons Licenses Statistical Report



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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February 20, 2012

Office of Governor Scott Walker
115 East Capitol
Madison, WI 53702

Jeff Renk
Senate Chief Clerk
PO Box 7882
Madison, WI 53707

Patrick E. Fuller
Assembly Chief Clerk
17 West Main Street, Room 401
Madison, WI 53703

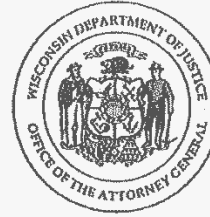
RE: 2012 Concealed Carry Statistical Report

Enclosed please find the annual concealed carry statistical report pursuant to Sec. 175.60 (19) Wis. Stats. The authority to issue concealed carry licenses became effective November 1, 2011 and although this is an annual report, only the statistical data for November and December of 2011 is contained herein. Should you have any questions, please do not hesitate to contact me via e-mail at okeefebr@doj.state.wi.us or phone 608-266-7052.

Sincerely,

A handwritten signature in black ink that reads "Brian R. O'Keefe".

Brian O'Keefe
Administrator
Division of Law Enforcement Services



Department of Justice Concealed Carry Annual Report – 175.60(19)

Date range: January 1 – December 31, 2011

Number of applications received: 65921

Number of licenses issued: 39664

Number of applications returned during application review process: 7200

3451	Insufficient training documentation
2243	Incomplete application (i.e. no signatures, missing data, missing yes/no answers)
988	Missing affirmation of status /out-of-state license
517	Incorrect or missing payment
1	Non-sufficient fund payment returned
7200	Total

Number of applications denied during the background check process: 847

482	Address does not match DOT address
211	Not Wisconsin resident
50	Misdemeanor conviction domestic abuse related - federal disqualifier
27	Applicant not 21 years of age
21	Felony conviction
15	Not valid DL or ID card
10	Name does not match DOT name
6	Adjudicated delinquent
6	Check refused by bank (NSF)
5	Unlawful use of drugs - federal disqualifier
5	Fugitive from justice - federal disqualifier
3	Harassment injunction
2	Court order
2	Under felony indictment or information - federal disqualifier
1	Domestic abuse injunction
1	Misdemeanor conviction over 2 years sentence – federal disqualifier
847	Total

Number of licenses revoked: 1

1	No longer Wisconsin resident
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Number of licenses suspended: 1

1	Bond condition imposed by a court under 969.01969.02(3)(c) or 969.03(1)(c)
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Number of licenses cancelled: 8

8	Non-sufficient funds check
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