



2013 ASSEMBLY BILL 727

February 4, 2014 – Introduced by Representative J. OTT, cosponsored by Senator PETROWSKI. Referred to Committee on Judiciary.

1 **AN ACT** *to renumber* 165.25 (12m); *to amend* 175.35 (1) (at), 175.60 (1) (f) 2.,
2 175.60 (9g) (a) 2., 175.60 (11) (a) 2. f., 813.12 (4m) (b) 2., 813.12 (6) (am) 1.,
3 813.12 (6) (am) 2., 813.122 (5m) (b) 2., 813.122 (9) (am) 1., 813.122 (9) (am) 2.,
4 813.125 (4m) (d) 2., 813.125 (5r) (a), 813.125 (5r) (b), 938.396 (2m) (b) 2., 938.396
5 (2m) (c) 1p. and 941.29 (1) (g); and *to create* 165.63, 813.123 (5m) and 813.123
6 (8m) of the statutes; **relating to:** a firearm prohibition for an individual subject
7 to an individuals-at-risk injunction and disclosure of and access to information
8 regarding individuals who are prohibited from possessing a firearm.

Analysis by the Legislative Reference Bureau

Under current law, a person is prohibited from possessing a firearm, and must surrender any firearm he or she possesses, if he or she is subject to a domestic abuse injunction, a child abuse injunction, or, if the court determines that he or she may use a firearm to harm another or endanger public safety, a harassment injunction. If a person surrenders a firearm due to an injunction, the firearm may not be returned to the person until a court determines that injunction has been vacated or has expired and that the person is not otherwise prohibited from possessing a firearm.

Under this bill, a person is prohibited from possessing a firearm, and must surrender any firearm he or she possesses, if he or she is subject to an

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individuals-at-risk injunction and the court determines that he or she may use a firearm to harm another or endanger public safety. As with other injunctions that result in a firearm prohibition, a surrendered firearm under an individuals-at-risk injunction may not be returned until a court determines that the injunction has been vacated or has expired and that the person who surrendered the firearm is not otherwise prohibited from possessing a firearm.

This bill requires a court, before returning a firearm surrendered under an injunction, to request the Department of Justice (DOJ) to provide information on whether the person who surrendered the firearm is otherwise prohibited from possessing a firearm. This bill also allows a law enforcement agency or officer to request DOJ to provide information about a person's eligibility to possess a firearm if the agency or officer is doing any of the following: determining if a person who possesses a firearm is illegally possessing the firearm following a mental health finding that rendered him or her ineligible to possess a firearm; determining if a candidate for employment as a law enforcement officer or a current law enforcement officer is prohibited from possessing a firearm; and determining if a former or current law enforcement officer is qualified for the identification that allows a former or current law enforcement officer to carry a concealed weapon. This bill authorizes DOJ to provide this information to courts and law enforcement upon their request.

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

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

1 **SECTION 1.** 165.25 (12m) of the statutes is renumbered 165.25 (16).

2 **SECTION 2.** 165.63 of the statutes is created to read:

3 **165.63 Access to firearm prohibition orders. (1) DEFINITION.** In this
4 section, "department" means the department of justice.

5 **(2) DEPARTMENT TO PROVIDE INFORMATION UPON REQUEST.** Upon a request under
6 sub. (3) or (4), the department shall provide to the person making the request
7 information regarding any of the following:

8 (a) Individuals ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45
9 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a).

10 (b) The cancellation under s. 51.20 (13) (cv) 1m. c., 51.45 (13) (i) 2. c., 54.10 (3)
11 (f) 2. c., or 55.12 (10) (b) 3. of an order not to possess a firearm.

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1 **(2m) PROCESS; DATA CONFIDENTIALITY.** The department, when providing
2 information under sub. (2), may use the transaction information for the management
3 of enforcement system or another method approved by the department to process
4 requests and responses in a secure manner to ensure confidentiality of the data.

5 **(3) REQUESTS FOR INJUNCTIONS.** A judge or court commissioner shall request
6 information under sub. (2) from the department to aid in making a determination
7 required under s. 813.12 (4m) (b), 813.122 (5m) (b), 813.123 (5m) (g), or 813.125 (4m)
8 (d).

9 **(4) LAW ENFORCEMENT REQUESTS.** A law enforcement agency or a law
10 enforcement officer may request information under sub. (2) from the department to
11 do any of the following:

12 (a) Enforce or investigate a violation of s. 941.29.

13 (b) Conduct a background check on an individual who is applying to become a
14 law enforcement officer or on a current law enforcement officer.

15 (c) Make a determination under s. 175.48 (2) (a) or 175.49 (2) (b) 4. or (5).

16 **SECTION 3.** 175.35 (1) (at) of the statutes is amended to read:

17 175.35 (1) (at) “Firearms restrictions record search” means a search of
18 department of justice records to determine whether a person seeking to purchase a
19 handgun is prohibited from possessing a firearm under s. 941.29. “Firearms
20 restrictions record search” includes a criminal history record search, a search to
21 determine whether a person is prohibited from possessing a firearm under s. 51.20
22 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
23 system to determine whether a person has been ordered not to possess a firearm
24 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
25 to determine whether the person is subject to an injunction under s. 813.12 or

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1 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
2 established by any federally recognized Wisconsin Indian tribe or band, except the
3 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
4 or she is subject to the requirements and penalties under s. 941.29 and that has been
5 filed with the circuit court under s. 806.247 (3), and a search to determine whether
6 the person is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125
7 (4m).

8 **SECTION 4.** 175.60 (1) (f) 2. of the statutes is amended to read:

9 175.60 (1) (f) 2. The state is listed in the rule promulgated by the department
10 under s. 165.25 (~~12m~~) (16) and, if that state does not require a background search for
11 the permit, license, approval, or authorization, the permit, license, approval, or
12 authorization designates that the holder chose to submit to a background search.

13 **SECTION 5.** 175.60 (9g) (a) 2. of the statutes is amended to read:

14 175.60 (9g) (a) 2. The department shall conduct a criminal history record
15 search and shall search its records and conduct a search in the national instant
16 criminal background check system to determine whether the applicant is prohibited
17 from possessing a firearm under federal law; whether the applicant is prohibited
18 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
19 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
20 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
21 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction
22 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
23 by a court established by any federally recognized Wisconsin Indian tribe or band,
24 except the Menominee Indian tribe of Wisconsin, that includes notice to the
25 respondent that he or she is subject to the requirements and penalties under s.

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1 941.29 and that has been filed with the circuit court under s. 806.247 (3); and
2 whether the applicant is prohibited from possessing a firearm under s. 813.123 (5m)
3 or 813.125 (4m); and to determine if the court has prohibited the applicant from
4 possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the
5 applicant is prohibited from possessing a dangerous weapon as a condition of release
6 under s. 969.01.

7 **SECTION 6.** 175.60 (11) (a) 2. f. of the statutes is amended to read:

8 175.60 **(11)** (a) 2. f. The individual becomes subject to an injunction described
9 in s. 941.29 (1) (f) or is ordered not to possess a firearm under s. 813.123 (5m) or
10 813.125 (4m).

11 **SECTION 7.** 813.12 (4m) (b) 2. of the statutes is amended to read:

12 813.12 **(4m)** (b) 2. That the person is not prohibited from possessing a firearm
13 under any state or federal law or by the order of any federal court or state court, other
14 than an order from which the judge or circuit court commissioner is competent to
15 grant relief. The court or commissioner shall use the information provided by the
16 department of justice under s. 165.63 (2) to aid in making the determination under
17 this subdivision.

18 **SECTION 8.** 813.12 (6) (am) 1. of the statutes is amended to read:

19 813.12 **(6)** (am) 1. If an injunction is issued or extended under sub. (4) or if a
20 tribal injunction is filed under s. 806.247 (3), the clerk of the circuit court shall notify
21 the department of justice of the injunction and shall provide the department of
22 justice with information concerning the period during which the injunction is in
23 effect and information necessary to identify the respondent for purposes of
24 responding to a request under s. 165.63 or for purposes of a firearms restrictions
25 record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

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1 **SECTION 9.** 813.12 (6) (am) 2. of the statutes is amended to read:

2 813.12 **(6)** (am) 2. Except as provided in subd. 3., the department of justice may
3 disclose information that it receives under subd. 1. only to respond to a request under
4 s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c)
5 or a background check under s. 175.60 (9g) (a).

6 **SECTION 10.** 813.122 (5m) (b) 2. of the statutes is amended to read:

7 813.122 **(5m)** (b) 2. That the person is not prohibited from possessing a firearm
8 under any state or federal law or by the order of any federal court or state court, other
9 than an order from which the judge or circuit court commissioner is competent to
10 grant relief. The court or commissioner shall use the information provided by the
11 department of justice under s. 165.63 (2) to aid in making the determination under
12 this subdivision.

13 **SECTION 11.** 813.122 (9) (am) 1. of the statutes is amended to read:

14 813.122 **(9)** (am) 1. If an injunction is issued or extended under sub. (5), the
15 clerk of the circuit court shall notify the department of justice of the injunction and
16 shall provide the department of justice with information concerning the period
17 during which the injunction is in effect and information necessary to identify the
18 respondent for purposes of responding to a request under s. 165.63 or for purposes
19 of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check
20 under s. 175.60 (9g) (a).

21 **SECTION 12.** 813.122 (9) (am) 2. of the statutes is amended to read:

22 813.122 **(9)** (am) 2. Except as provided in subd. 3., the department of justice
23 may disclose information that it receives under subd. 1. only to respond to a request
24 under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g)
25 (c) or a background check under s. 175.60 (9g) (a).

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1 **SECTION 13.** 813.123 (5m) of the statutes is created to read:

2 **813.123 (5m) RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.** (a)

3 If a judge or circuit court commissioner issues an injunction under sub. (5) and the
4 judge or circuit court commissioner determines, based on clear and convincing
5 evidence presented at the hearing on the issuance of the injunction, that the
6 respondent may use a firearm to cause physical harm to another or to endanger
7 public safety, the judge or circuit court commissioner may prohibit the respondent
8 from possessing a firearm.

9 (b) An order prohibiting a respondent from possessing a firearm issued under
10 par. (a) remains in effect until the expiration of the injunction issued under sub. (5).

11 (c) An order issued under par. (a) that prohibits a respondent from possessing
12 a firearm shall do all of the following:

13 1. Inform the respondent named in the petition of the requirements and
14 penalties under s. 941.29.

15 2. Except as provided in par. (d), require the respondent to surrender any
16 firearms that he or she owns or has in his or her possession to the sheriff of the county
17 in which the action under this section was commenced, to the sheriff of the county
18 in which the respondent resides, or to another person designated by the respondent
19 and approved by the judge or circuit court commissioner. The judge or circuit court
20 commissioner shall approve the person designated by the respondent unless the
21 judge or circuit court commissioner finds that the person is inappropriate and places
22 the reasons for the finding on the record. If a firearm is surrendered to a person
23 designated by the respondent and approved by the judge or circuit court
24 commissioner, the judge or circuit court commissioner shall inform the person to

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1 whom the firearm is surrendered of the requirements and penalties under s. 941.29
2 (4).

3 (d) If the respondent is a peace officer, an order issued under par. (a) may not
4 require the respondent to surrender a firearm that he or she is required, as a
5 condition of employment, to possess whether or not he or she is on duty.

6 (e) 1. When a respondent surrenders a firearm under par. (c) 2. to a sheriff, the
7 sheriff who is receiving the firearm shall prepare a receipt for each firearm
8 surrendered to him or her. The receipt shall include the manufacturer, model, and
9 serial number of the firearm surrendered to the sheriff and shall be signed by the
10 respondent and by the sheriff to whom the firearm is surrendered.

11 2. The sheriff shall keep the original of a receipt prepared under subd. 1. and
12 shall provide an exact copy of the receipt to the respondent. When the firearm
13 covered by the receipt is returned to the respondent under par. (g), the sheriff shall
14 surrender to the respondent the original receipt and all of his or her copies of the
15 receipt.

16 3. A receipt prepared under subd. 1. is conclusive proof that the respondent
17 owns the firearm for purposes of returning the firearm covered by the receipt to the
18 respondent under par. (g).

19 4. The sheriff may not enter any information contained on a receipt prepared
20 under subd. 1. into any computerized or direct electronic data transfer system in
21 order to store the information or disseminate or provide access to the information.

22 (f) A sheriff may store a firearm surrendered to him or her under par. (c) 2. in
23 a warehouse that is operated by a public warehouse keeper licensed under ch. 99.
24 If a sheriff stores a firearm at a warehouse under this paragraph, the respondent
25 shall pay the costs charged by the warehouse for storing that firearm.

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1 (g) A firearm surrendered under par. (c) 2. may not be returned to the
2 respondent until the judge or circuit court commissioner determines all of the
3 following:

4 1. That the injunction issued under sub. (5) has been vacated or has expired.

5 2. That person is not prohibited from possessing a firearm under any state or
6 federal law or by the order of any federal court or state court, other than an order from
7 which the judge or circuit court commissioner is competent to grant relief. The court
8 or commissioner shall use the information provided by the department of justice
9 under s. 165.63 (2) to aid in making the determination under this subdivision.

10 (h) If a respondent surrenders a firearm under par. (c) 2. that is owned by a
11 person other than the respondent, the person who owns the firearm may apply for
12 its return to the circuit court for the county in which the person to whom the firearm
13 was surrendered is located. The court shall order such notice as it considers
14 adequate to be given to all persons who have or may have an interest in the firearm
15 and shall hold a hearing to hear all claims to its true ownership. If the right to
16 possession is proved to the court's satisfaction, it shall order the firearm returned.
17 If the court returns a firearm under this paragraph, the court shall inform the person
18 to whom the firearm is returned of the requirements and penalties under s. 941.29
19 (4).

20 **SECTION 14.** 813.123 (8m) of the statutes is created to read:

21 813.123 (8m) NOTICE TO DEPARTMENT OF JUSTICE. (a) If an order prohibiting a
22 respondent from possessing a firearm is issued under sub. (5m), the clerk of the
23 circuit court shall notify the department of justice of the existence of the order
24 prohibiting a respondent from possessing a firearm and shall provide the
25 department of justice with information concerning the period during which the order

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1 is in effect and information necessary to identify the respondent for purposes of
2 responding to a request under s. 165.63 or for purposes of a firearms restrictions
3 record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

4 (b) Except as provided in par. (c), the department of justice may disclose
5 information that it receives under par. (a) only to respond to a request under s. 165.63
6 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a
7 background check under s. 175.60 (9g) (a).

8 (c) The department of justice shall disclose any information that it receives
9 under par. (a) to a law enforcement agency when the information is needed for law
10 enforcement purposes.

11 **SECTION 15.** 813.125 (4m) (d) 2. of the statutes is amended to read:

12 813.125 (**4m**) (d) 2. That the person is not prohibited from possessing a firearm
13 under any state or federal law or by the order of any federal court or state court, other
14 than an order from which the judge or circuit court commissioner is competent to
15 grant relief. The court or commissioner shall use the information provided by the
16 department of justice under s. 165.63 (2) to aid in making the determination under
17 this subdivision.

18 **SECTION 16.** 813.125 (5r) (a) of the statutes is amended to read:

19 813.125 (**5r**) (a) If an order prohibiting a respondent from possessing a firearm
20 is issued under sub. (4m), the clerk of the circuit court shall notify the department
21 of justice of the existence of the order prohibiting a respondent from possessing a
22 firearm and shall provide the department of justice with information concerning the
23 period during which the order is in effect and information necessary to identify the
24 respondent for purposes of responding to a request under s. 165.63 or for purposes

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1 of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check
2 under s. 175.60 (9g) (a).

3 **SECTION 17.** 813.125 (5r) (b) of the statutes is amended to read:

4 813.125 **(5r)** (b) Except as provided in par. (c), the department of justice may
5 disclose information that it receives under par. (a) only to respond to a request under
6 s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c)
7 or a background check under s. 175.60 (9g) (a).

8 **SECTION 18.** 938.396 (2m) (b) 2. of the statutes is amended to read:

9 938.396 **(2m)** (b) 2. Subdivision 1. does not authorize disclosure of any
10 information relating to the physical or mental health of an individual or that deals
11 with any other sensitive personal matter of an individual, including information
12 contained in a patient health care record, as defined in s. 146.81 (4), a treatment
13 record, as defined in s. 51.30 (1) (b), the record of a proceeding under s. 48.135, a
14 report resulting from an examination or assessment under s. 938.295, a court report
15 under s. 938.33, or a permanency plan under s. 938.38, except with the informed
16 consent of a person authorized to consent to that disclosure, by order of the court, to
17 a law enforcement agency, or as otherwise permitted by law.

18 **SECTION 19.** 938.396 (2m) (c) 1p. of the statutes is amended to read:

19 938.396 **(2m)** (c) 1p. A law enforcement agency shall keep any information
20 made available to the law enforcement agency under par. (b) ~~1.~~ confidential and may
21 use or allow access to that information only for the purpose of investigating alleged
22 criminal activity or activity that may result in a court exercising jurisdiction under
23 s. 938.12 or 938.13 (12). A law enforcement agency may allow that access regardless
24 of whether the person who is allowed that access is a party to or is otherwise involved
25 in the proceedings in which the electronic records containing that information were

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1 created. Information made available to a law enforcement agency under par. (b) is
2 not subject to the right of inspection and copying under s. 19.35 (1).

3 **SECTION 20.** 941.29 (1) (g) of the statutes is amended to read:

4 941.29 (1) (g) Ordered not to possess a firearm under s. 813.123 (5m) or 813.125
5 (4m).

6 **SECTION 21. Initial applicability.**

7 (1) RETURN OF FIREARMS. The treatment of sections 813.12 (4m) (b) 2., 813.122
8 (5m) (b) 2., and 813.125 (4m) (d) 2. of the statutes first applies to determinations
9 made on the effective date of this subsection.

10 (2) FIREARMS RESTRICTION FOR INDIVIDUALS-AT-RISK INJUNCTION. The treatment
11 of section 813.123 (5m) of the statutes first applies to injunctions issued on the
12 effective date of this subsection.

13 (END)