

2013 DRAFTING REQUEST

Bill

Received: 2/4/2014 Received By: chanaman
Wanted: As time permits Same as LRB:
For: Jim Ott (608) 266-0486 By/Representing: Ginger (Virginia Mueller)
May Contact: Drafter: chanaman
Subject: Criminal Law - guns and weapons Addl. Drafters:
Criminal Law - law enforcement
Justice - civil Extra Copies:

Submit via email: YES
Requester's email: Rep.OttJ@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Access to firearm prohibition orders

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 2/4/2014	scalvin 2/4/2014		_____			
/P1	chanaman 2/4/2014	scalvin 2/4/2014	rschluet 2/4/2014	_____	srose 2/4/2014		State S&L
/1			rschluet 2/4/2014	_____	mbarman 2/4/2014	mbarman 2/4/2014	State S&L

FE Sent For:

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INTRO

<END>

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02/04/2014

1 sac
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2/14

JACKET FOR ASSEMBLY

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Pre Topic:

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Topic:

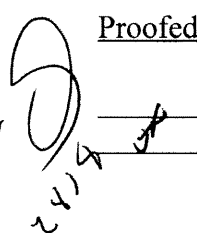
Access to firearm prohibition orders

Instructions:

See attached

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4183/p1

LRB-4136/1

CMH:sac:fs

Stacy

2013 ASSEMBLY BILL

ASAP please

refer

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

ASSEMBLY BILL

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 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) **DEFINITIONS.** 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).

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

INS 3-3

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

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

10 (a) Enforce or investigate a violation of s. 941.29 (1) (em).

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

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

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

15 175.35 (1) (at) "Firearms restrictions record search" means a search of
16 department of justice records to determine whether a person seeking to purchase a
17 handgun is prohibited from possessing a firearm under s. 941.29. "Firearms
18 restrictions record search" includes a criminal history record search, a search to
19 determine whether a person is prohibited from possessing a firearm under s. 51.20
20 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
21 system to determine whether a person has been ordered not to possess a firearm
22 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
23 to determine whether the person is subject to an injunction under s. 813.12 or
24 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
25 established by any federally recognized Wisconsin Indian tribe or band, except the

ASSEMBLY BILL**SECTION 3**

1 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
2 or she is subject to the requirements and penalties under s. 941.29 and that has been
3 filed with the circuit court under s. 806.247 (3), and a search to determine whether
4 the person is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125
5 (4m).

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

7 175.60 (1) (f) 2. The state is listed in the rule promulgated by the department
8 under s. 165.25 (~~12m~~) (16) and, if that state does not require a background search for
9 the permit, license, approval, or authorization, the permit, license, approval, or
10 authorization designates that the holder chose to submit to a background search.

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

12 175.60 (**9g**) (a) 2. The department shall conduct a criminal history record
13 search and shall search its records and conduct a search in the national instant
14 criminal background check system to determine whether the applicant is prohibited
15 from possessing a firearm under federal law; whether the applicant is prohibited
16 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
17 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
18 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
19 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction
20 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
21 by a court established by any federally recognized Wisconsin Indian tribe or band,
22 except the Menominee Indian tribe of Wisconsin, that includes notice to the
23 respondent that he or she is subject to the requirements and penalties under s.
24 941.29 and that has been filed with the circuit court under s. 806.247 (3); and
25 whether the applicant is prohibited from possessing a firearm under s. 813.123 (5m)

ASSEMBLY BILL

1 or 813.125 (4m); and to determine if the court has prohibited the applicant from
2 possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the
3 applicant is prohibited from possessing a dangerous weapon as a condition of release
4 under s. 969.01.

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

6 175.60 (11) (a) 2. f. The individual becomes subject to an injunction described
7 in s. 941.29 (1) (f) or is ordered not to possess a firearm under s. 813.123 (5m) or
8 813.125 (4m).

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

10 813.12 (4m) (b) 2. That the person is not prohibited from possessing a firearm
11 under any state or federal law or by the order of any federal court or state court, other
12 than an order from which the judge or circuit court commissioner is competent to
13 grant relief. The court or commissioner shall use the information provided by the
14 department of justice under s. 165.63 (2) to aid in making the determination under
15 this subdivision.

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

17 813.12 (6) (am) 1. If an injunction is issued or extended under sub. (4) or if a
18 tribal injunction is filed under s. 806.247 (3), the clerk of the circuit court shall notify
19 the department of justice of the injunction and shall provide the department of
20 justice with information concerning the period during which the injunction is in
21 effect and information necessary to identify the respondent for purposes of
22 responding to a request under s. 165.63 or for purposes of a firearms restrictions
23 record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

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

ASSEMBLY BILL

1 813.12 (6) (am) 2. Except as provided in subd. 3., the department of justice may
2 disclose information that it receives under subd. 1. only to respond to a request under
3 s. 165.⁶³~~60~~ or as part of a firearms restrictions record search under s. 175.35 (2g) (c)
4 or a background check under s. 175.⁶⁰~~63~~ (9g) (a).

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

6 813.122 (5m) (b) 2. That the person is not prohibited from possessing a firearm
7 under any state or federal law or by the order of any federal court or state court, other
8 than an order from which the judge or circuit court commissioner is competent to
9 grant relief. The court or commissioner shall use the information provided by the
10 department of justice under s. 165.63 (2) to aid in making the determination under
11 this subdivision.

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

13 813.122 (9) (am) 1. If an injunction is issued or extended under sub. (5), the
14 clerk of the circuit court shall notify the department of justice of the injunction and
15 shall provide the department of justice with information concerning the period
16 during which the injunction is in effect and information necessary to identify the
17 respondent for purposes of responding to a request under s. 165.63 or for purposes
18 of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check
19 under s. 175.60 (9g) (a).

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

21 813.122 (9) (am) 2. Except as provided in subd. 3., the department of justice
22 may disclose information that it receives under subd. 1. only to respond to a request
23 under s. 165.⁶³~~60~~ or as part of a firearms restrictions record search under s. 175.35 (2g)
24 (c) or a background check under s. 175.⁶²~~63~~ (9g) (a).

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

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1 813.123 **(5m)** RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS. (a)
2 If a judge or circuit court commissioner issues an injunction under sub. (5) and the
3 judge or circuit court commissioner determines, based on clear and convincing
4 evidence presented at the hearing on the issuance of the injunction, that the
5 respondent may use a firearm to cause physical harm to another or to endanger
6 public safety, the judge or circuit court commissioner may prohibit the respondent
7 from possessing a firearm.

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

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

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

14 2. Except as provided in par. (d), require the respondent to surrender any
15 firearms that he or she owns or has in his or her possession to the sheriff of the county
16 in which the action under this section was commenced, to the sheriff of the county
17 in which the respondent resides, or to another person designated by the respondent
18 and approved by the judge or circuit court commissioner. The judge or circuit court
19 commissioner shall approve the person designated by the respondent unless the
20 judge or circuit court commissioner finds that the person is inappropriate and places
21 the reasons for the finding on the record. If a firearm is surrendered to a person
22 designated by the respondent and approved by the judge or circuit court
23 commissioner, the judge or circuit court commissioner shall inform the person to
24 whom the firearm is surrendered of the requirements and penalties under s. 941.29
25 (4).

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

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

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

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

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

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

ASSEMBLY BILL

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

ASSEMBLY BILL

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

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) (e) of the statutes is repealed.

4 **SECTION 21.** 941.29 (1) (g) of the statutes is amended to read:

5 941.29 (1) (g) Ordered not to possess a firearm under s. 813.123 (5m) or 813.125
6 (4m).

7 **SECTION 22.** 941.29 (2) (d) of the statutes is amended to read:

8 941.29 (2) (d) The person possesses a firearm while subject to the court order,
9 as specified in sub. (1) (e), (em), or (g).

10 **SECTION 23.** 941.29 (9) (a) of the statutes is repealed.

11 **SECTION 24.** 941.29 (9) (b) of the statutes is amended to read:

12 941.29 (9) (b) This section does not apply to a person specified in sub. (1) (em)
13 if the order under s. 51.20 (13) (cv) 1. is canceled under s. 51.20 (13) (cv) 2., 2007 stats.,
14 or s. 51.20 (16) (gm), 2007 stats., or under s. 51.20 (13) (cv) 1m. c., if the order under
15 s. 51.45 (13) (i) 1. is canceled under s. 51.45 (13) (i) 2. c., if the order under s. 54.10
16 (3) (f) 1. is canceled under s. 54.10 (3) (f) 2. c., or if the order under s. 55.12 (10) (a)
17 is canceled under s. 55.12 (10) (b) 3.

18 **SECTION 25. Initial applicability.**

19 (1) RETURN OF FIREARMS. The treatment of sections 813.12 (4m) (b) 2., 813.122
20 (5m) (b) 2., and 813.125 (4m) (d) 2. of the statutes first applies to determinations
21 made on the effective date of this subsection.

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

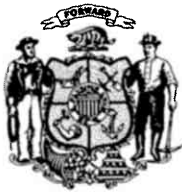
25 (END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4183/plins
CMH:.....

1 Insert 3-3

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



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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repeal cat

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

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) DEFINITIONS. 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.

PROCESS; DATA CONFIDENTIALITY.

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

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

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

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

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

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

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

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175.35 (1) (at) "Firearms restrictions record search" means a search of department of justice records to determine whether a person seeking to purchase a handgun is prohibited from possessing a firearm under s. 941.29. "Firearms restrictions record search" includes a criminal history record search, a search to determine whether a person is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check system to determine whether a person has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search 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.

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).

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).

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

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.

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

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

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

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 of
11 section 813.123 (5m) of the statutes first applies to injunctions issued on the effective
12 date of this subsection.

13 (END)

Barman, Mike

From: LRB.Legal
To: Rep.OttJ
Subject: Draft review: LRB -4183/1 Topic: Access to firearm prohibition orders
Attachments: 13-4183/1

State of Wisconsin - Legislative Reference Bureau
One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Cathlene M. Hanaman, Deputy Chief, at (608) 267-9810, at cathlene.hanaman@legis.wisconsin.gov, or at One East Main Street, Suite 200.

Per instructions from the drafting attorney ... we will jacket this draft for the Assembly and send it (by page) to your office this afternoon.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.