

## 2013 DRAFTING REQUEST

### Bill

Received: 3/21/2013 Received By: chanaman  
Wanted: As time permits Same as LRB:  
For: Garey Bies (608) 266-5350 By/Representing: Cory  
May Contact: Drafter: chanaman  
Subject: Courts - garn/injunct Addl. Drafters:  
Criminal Law - guns and weapons Extra Copies:

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

### Pre Topic:

No specific pre topic given

### Topic:

Firearm seizure process under certain injunctions

### Instructions:

2009 AB-559

### 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 3/29/2013	evinz 4/8/2013		_____			
/1			rschluet 4/9/2013	_____	srose 4/9/2013	srose 9/26/2013	State S&L

FE Sent For:

<END>

→ At  
Intro.

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/?	chanaman	1/eev 4/8/13	1/eev 4/2/13				

FE Sent For:

<END>



Handwritten signature and date: 4/13/13

## Hanaman, Cathlene

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**From:** Bruce, Cory  
**Sent:** Thursday, March 07, 2013 3:19 PM  
**To:** Hanaman, Cathlene  
**Subject:** FW: Changes to 09 AB 559  
**Attachments:** Changes to 2009 AB 559 final.docx

Cathlene,

We'd like to have 2009 AB 559 re-drafted with the changes included in the attached word document. I'm sending this to you because you drafted the 2009 bill, but let me know if I should send this to someone else. Let me know if you have any questions.

Thanks,  
Cory Bruce  
Office of Rep. Bies

From: Tony Gibart, Wisconsin Coalition Against Domestic Violence  
 To: Rep. Garey Bies  
 Re: Changes to 2009 AB 559

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Thank you for your commitment to improve surrender of firearms in restraining order cases. Below are our recommended changes to 2009 Assembly Bill 559. These recommendations are informed by pilot projects in Outagamie, Winnebago, Waushara and Sauk counties and input from the office of court operations. Please contact me if you have any questions.

During the pilot projects, an additional form was created and used. We would like to integrate this form into the bill. The form is *Notice to the Petitioner of Hearing to Return to Firearms*.

- Provide an explicit statement that the respondent must petition the court for return of firearms from the sheriff or a court approved third party.
- Provide that the court shall give the petitioner notice of the respondent's request for the return of firearms and that the petitioner may inform the court of a reason that the respondent should not have the firearms returned to him or her.
- Here are examples of the applicable forms:
  - [http://oja.state.wi.us/sites/default/files/CV-433\\_enfirearms%5B1%5D.pdf](http://oja.state.wi.us/sites/default/files/CV-433_enfirearms%5B1%5D.pdf)
  - <http://oja.state.wi.us/sites/default/files/Right%20to%20Object%20to%20Return%20of%20Firearms%20%28CV-802V%29.pdf>

✓ Page 3, section; pages 7 and 8, section 11; pages 8 and 9, sections 18 and 19.

We request that these sections be reworded so that the information specified in subdivisions 1, 3 and 4 be provided *with* the petition, but not included *in* the petition itself. The courts have informed us that this method is more workable. We request that subdivision 2 be eliminated because the legislation should not provide the courts with the option of scheduling the surrender hearing before the issuance of the injunction. Again, this change is being requested based on feedback from the courts. Please make similar modifications to sections 18 and 19 (relating to harassment injunctions) to effect these changes.

✓ Pages 3 and 4, section 3; page 7, section 12; pages 8 and 9, sections 18, 20

Please remove these modifications to the current statutes. The courts have requested that the option of scheduling the hearing in advance be removed from the bill.

✓ Page 5, lines 8-9.

Modify this section as follows to require the respondent to take a copy of the receipt to the court, rather than the sheriff transmitting the receipt. This is in part being requested because current law strictly limits how the sheriff can possess and share information about the respondent's firearms.

(b) The sheriff shall keep the original of a receipt prepared under ~~subd. 1. par. (a)~~ and shall provide ~~an~~ two exact copy copies of the receipt to the respondent, ~~and a certified copy of the receipt to the court that issued the injunction that required the surrender.~~ The respondent shall provide one copy of the receipt to the clerk of courts within 48 hours of the order to surrender. When the firearm covered by the receipt is returned to the respondent under ~~par. (b) sub. (7)~~, the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

Page 11, lines 17-22.

Please give the petitioner the option to provide information about firearms in writing. The courts have developed a form to facilitate this process.

(b) If the respondent is not present at the injunction hearing, the court shall provide the petitioner with an opportunity to state whether he or she believes that the respondent possesses a firearm. If the petitioner states that the respondent possesses a firearm, the court shall ask the petitioner how many firearms he or she believes the respondent possesses and the make and model of any firearm he or she believes the respondent possesses. Alternatively, the petitioner may provide this information to the court in writing.

Page 12, lines 3-16.

The change to (2)(c)2. makes this section consistent with (3)(a) which grants the courts flexibility in determining other circumstances make the surrender hearing necessary.

2. If the firearm possession form submitted to the court under par. (a) or the petitioner's statement under par. (b) indicates that the respondent possesses a firearm or if the court is not satisfied that the respondent does not possess a firearm, the court shall schedule a hearing to surrender firearms to occur within one week of the injunction hearing ~~unless the hearing to surrender firearms was scheduled under s. 813.12 (2m), 813.122 (3) (a), or 813.125 (4) (a) 2.~~ The court may schedule a hearing to surrender firearms for any other reason related to the surrender of firearms.

(3) SURRENDER OF FIREARMS. (a) If the respondent surrenders his or her firearm in a manner consistent with par. (b) or (c), the court shall dismiss the hearing to surrender firearms scheduled under sub. (2) (c) 2. ~~or under s. 813.12 (2m), 813.122 (3) (a), or 813.125 (4) (a) 2.~~ unless the court has noted another reason that is relevant to the surrender of firearms that would require the hearing to occur.

(b) A respondent for whom a hearing to surrender firearms has been scheduled under sub. (2) (c) 2. ~~or under s. 813.12 (2m), 813.122 (3) (a), or 813.125 (4) (a) 2.~~ may surrender his or her firearm to another person if all of the following apply:

Page 12, lines 20-21.

Please modify the draft to require that the third party attest to the required facts under oath, rather than submit an affidavit.

2. At the injunction hearing, the person ~~submits an affidavit confirming receipt of~~ testifies under oath that the person has received the firearms listed on the respondent's firearm possession form.

Page 12, 22-23

3. At the injunction hearing, the court ~~is satisfied that~~ determines the person is not prohibited from possessing a firearm.

Page 13, line 1.

5. After considering all relevant factors including any input from the petitioner, ~~The court~~ approves the surrender of the firearm.

Page 13, lines 2-5.

(c) In accordance with sub. (6), the respondent surrenders his or her firearm to a sheriff no later than 48 hours after the injunction hearing ordering the respondent to surrender his or her firearm and ~~the sheriff's department transmits a certified copy of receipt to the court and the respondent provides the clerk with a receipt confirming surrender of all the firearms listed on the firearm possession form not later than 48 hours after the injunction hearing.~~ under sub. (6) (b).

Page 13, lines 6-15.

This section of 2009 AB 559 seems to create an unnecessary redundancy with other sections of the bill. We suggest simplifying the bill by stating that a respondent must attend a scheduled surrender hearing that has not been dismissed.

(4) HEARING TO SURRENDER FIREARMS. (a) Unless the court dismisses under sub. ~~(2) (e) 1.~~ or (3) (a) the hearing to surrender firearms, a respondent for whom a hearing to surrender firearms has been scheduled under sub. (2) (c) 2. ~~or under s. 813.12 (2m), 813.122 (3) (a), or 813.125 (4) (a) 2.~~ must attend the hearing to surrender firearms. if any of the following applies:

1. ~~The respondent did not appear at the injunction hearing under s. 813.12 (4), 813.122 (5), or 813.125 (4), whichever is appropriate.~~

2. ~~The respondent wants to surrender his or her firearm to a person who did not appear at the injunction hearing under s. 813.12 (4), 813.122 (5), or 813.125 (4), whichever is appropriate.~~

Page 14, lines 12-13.

This change make explicit that after the respondent is arrested procedures governing contempt of court will apply.

(d) If the respondent fails to comply with the order under par. (c) 2. the court shall issue a warrant for the respondent's arrest and the respondent shall be in contempt of court.

Related to this, please add an amendment to s. 785.01 to define contempt of court as a failure appear under s. 813.129 (4)(b) or failure to obey an order under s. 813.129 (4)(c)2. This is similar to how violations of s. 767.117 (1) are treated.

Page 14, lines 14-17.

(5) FIREARM POSSESSION FORM. The ~~clerk of court or the~~ director of state courts shall develop a firearm possession form. Any information provided on the form by the respondent is subject to a penalty of false swearing under s. 946.32. The firearm possession form shall do all of the following:

Page 15, lines 21-22.

Some amount of time will be required for the courts to implement the procedures.

- Delete and instead provide 6 months for an effective date.



STATE OF WISCONSIN, CIRCUIT COURT, \_\_\_\_\_ COUNTY

For Official Use

IN RE THE RETURN OF FIREARMS TO:

Petition to Return Firearm(s)

Case No. \_\_\_\_\_

A person required to surrender firearms in an injunction action

Requesting person's

Date of Birth	Sex	Race	Height	Weight	Hair color	Eye color
Address					Telephone Number	

Under oath I state that:

1. The court issued an injunction against me on \_\_\_\_\_ Date. The injunction was issued based on a:

domestic abuse petition.

child abuse petition.

harassment petition.

2. The court ordered me to surrender any firearms I owned or had in my possession to:

the sheriff of this county.

the sheriff of the county in which I resided: \_\_\_\_\_ Name of County

to the following person: \_\_\_\_\_

\_\_\_\_\_ Name

\_\_\_\_\_ Address

3. I surrendered the following firearms to that person: [Attach a copy of the receipt provided by the sheriff when the firearm(s) were surrendered. If the firearm(s) were surrendered to a third person, attach a copy of the receipt from that person or a complete description of the firearm(s).]  See attached receipt or list.

4. The injunction has  been vacated.  expired and has not been extended.

5. I  have  have not been convicted of a misdemeanor crime of domestic violence.

6. I  have  have not been convicted of a felony.

7. I am not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which a judge or family court commissioner is competent to grant relief.

I REQUEST THAT THE COURT enter an order directing that the person named in paragraph 2 (above) return to me those firearms that were surrendered pursuant to the order of the court.

Subscribed and sworn to before me on \_\_\_\_\_

Signature of Person Requesting Return of Firearms

Notary Public, State of Wisconsin

Date

My commission expires: \_\_\_\_\_

DISTRIBUTION:

- 1. Court - Original
- 2. Petitioner in injunction action
- 3. Person to whom firearm(s) were surrendered



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1365/1  
CMH:eev:jm

-1962

Stays

2013 BILL

by 4/9

repeal

1 **AN ACT to repeal** 813.122 (5m) (am), 813.122 (5m) (aw), 813.122 (5m) (b) and (c),  
2 813.125 (4m) (cm), 813.125 (4m) (cw) and 813.125 (4m) (d) and (e); **to renumber**  
3 813.122 (2); **to renumber and amend** 813.12 (4m) (am), 813.12 (4m) (aw),  
4 813.12 (4m) (b) and 813.12 (4m) (c); **to amend** 48.25 (6), 813.12 (2m), 813.12  
5 (4m) (a) 1., 813.12 (4m) (a) 2., 813.122 (3) (a), 813.122 (5m) (a) 1., 813.122 (5m)  
6 (a) 2., 813.125 (4) (a) 2., 813.125 (4m) (a), 813.125 (4m) (c) 1., 813.125 (4m) (c)  
7 2., 813.125 (6) (c), 938.25 (6) and 972.085; and **to create** 813.12 (2) (c), 813.122  
8 (2) (b), 813.125 (4) (a) 2m. a., b. and c. and 813.1285 of the statutes; **relating**  
9 **to:** providing notice of firearm prohibition when serving notice for certain  
10 injunction hearings and process for surrendering firearms following the  
11 granting of certain injunctions.

**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

**BILL**

(injunction). A person who is subject to an injunction (respondent) must surrender his or her firearm to a sheriff or to a third party approved by the court and is guilty of a Class G felony if convicted of possessing a firearm while subject to the injunction. This bill creates a procedure for notifying a person, when the person is served with a petition for an injunction hearing, of the prohibition against possessing a firearm and of the requirement to surrender any firearm.

The bill also creates a procedure for surrendering firearms after the court grants an injunction. If the respondent is present at the injunction hearing, he or she must provide the court with a completed firearm possession form, which requests information such as whether the respondent possesses, or has possessed in the previous six months, any firearm and, if so, the quantity and the make and model of the firearm.

If the respondent is not present at the injunction hearing, the court must provide the petitioner with the opportunity to state if he or she believes that the respondent possesses a firearm and, if so, the quantity and make and model of any firearm. If the petitioner states that the respondent does not possess a firearm and the court is satisfied, the court must dismiss the firearm surrender hearing.

If the court is not satisfied that the respondent does not possess a firearm, the court must schedule, if it has not already done so, a firearm surrender hearing; the date of the hearing must be no later than 14 days after the injunction hearing. Subject to certain conditions, the court must dismiss the hearing to surrender firearms in either of the following situations: 1) the respondent appeared at the injunction hearing and surrenders all firearms to a third party who also appeared at the injunction hearing, who submitted an affidavit confirming receipt of the firearms, who is not prohibited from possessing a firearm, and who has been informed about the current law penalties for furnishing a person with a firearm if the person is prohibited from possessing one and the court has approved the surrender; or 2) the respondent surrenders his or her firearms to a sheriff within 48 hours.

If the court does not dismiss the firearm surrender hearing, the respondent must attend the hearing. If a respondent is required to attend the hearing but does not, the court must issue an arrest warrant for the respondent. At a firearm surrender hearing, the court must do one of the following: 1) allow the respondent to surrender firearms to a third party who appears at the firearm surrender hearing, who submits an affidavit confirming receipt of the firearms, who is not prohibited from possessing a firearm, and who has been informed about the current law penalties for furnishing a person with a firearm if the person is prohibited from possessing one and the court approves the surrender; or 2) order the respondent to surrender his or her firearms to a sheriff within 48 hours. If the respondent fails to comply with the order, the court must issue an arrest warrant for the respondent.

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

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

**BILL**

1           **SECTION 1.** 48.25 (6) of the statutes is amended to read:

2           48.25 (6) If a proceeding is brought under s. 48.13, any party to or any  
3 governmental or social agency involved in the proceeding may petition the court to  
4 issue a temporary restraining order and injunction as provided in s. 813.122 or  
5 813.125. The court exercising jurisdiction under this chapter shall follow the  
6 procedure under s. 813.122 or 813.125 except that the court may combine hearings  
7 authorized under s. 813.122 or 813.125 and this chapter, the petitioner for the  
8 temporary restraining order and injunction is not subject to the limitations under s.  
9 813.122 (2) (a) or 813.125 (2) and no fee is required regarding the filing of the petition  
10 under s. 813.122 or 813.125.

11           **SECTION 2.** 813.12 (2) (c) of the statutes is created to read:

12           813.12 (2) (c) When the respondent is served under this subsection, the petitioner  
13 shall ~~include~~ <sup>also provide</sup> all of the following: <sup>information</sup>

14           1. Notice of the requirements and penalties under s. 941.29 (1) (f) and (2) (e)  
15 and notice of any similar applicable federal laws and penalties.

16           2. If the court has scheduled a hearing to surrender firearms under sub. (2m),  
17 notice of the hearing.

18           2   3. An explanation of s. 813.1285, including the procedures for surrendering a  
19 firearm and the circumstances listed under s. 813.1285 under which a respondent  
20 must appear at a hearing to surrender firearms.

21           3   4. A firearm possession form developed under s. 813.1285 (5) <sup>(a)</sup>, with instructions  
22 for completing and returning the form.

23           **SECTION 3.** 813.12 (2m) of the statutes is amended to read:

24           813.12 (2m) TWO-PART PROCEDURE. Procedure for an action under this section  
25 is in 2 parts. First, if the petitioner requests a temporary restraining order the court

INS  
3-11

*the respondent*  
*with the petition*  
*person who serves the respondent*  
*information*

*9*

*2*

*3*

**BILL****SECTION 3**

1 shall issue or refuse to issue that order. Second, the court shall hold a hearing under  
2 sub. (4) on whether to issue an injunction, which is the final relief. If the court issues  
3 a temporary restraining order, the order shall set forth the date for the hearing on  
4 an injunction and may set forth the date for a hearing to surrender firearms. If the  
5 court sets forth a date for a hearing to surrender firearms, the date may not be more  
6 than 14 days after the injunction hearing. If the court does not issue a temporary  
7 restraining order, the date for the hearing on an injunction shall be set upon motion  
8 by either party and, upon motion by either party, the court may set forth a date for  
9 a hearing to surrender firearms. If the court sets forth a date for a hearing to  
10 surrender firearms, the date may not be more than 14 days after the injunction  
11 hearing.

12 **SECTION 4.** 813.12 (4m) (a) 1. of the statutes is amended to read:

13 813.12 (4m) (a) 1. Inform the respondent named in the petition of the  
14 requirements and penalties under s. 941.29 and any similar applicable federal laws  
15 and penalties.

16 **SECTION 5.** 813.12 (4m) (a) 2. of the statutes is amended to read:

17 813.12 (4m) (a) 2. Except as provided in par. (ag), require in writing the  
18 respondent to surrender any firearms that he or she owns or has in his or her  
19 possession to the sheriff of the county in which the action under this section was  
20 commenced, to the sheriff of the county in which the respondent resides or to another  
21 person designated by the respondent and approved by the judge or circuit court  
22 commissioner. The judge or circuit court commissioner shall approve the person  
23 designated by the respondent unless the judge or circuit court commissioner finds  
24 that the person is inappropriate and places the reasons for the finding on the record.  
25 If a firearm is surrendered to a person designated by the respondent and approved

**BILL**

1 ~~by the judge or circuit court commissioner, the judge or circuit court commissioner~~  
2 ~~shall inform the person to whom the firearm is surrendered of the requirements and~~  
3 ~~penalties under s. 941.29 (4) in accordance with s. 813.1285.~~

4 SECTION 6. 813.12 (4m) (am) of the statutes is renumbered 813.1285 (6) and  
5 amended to read:

6 813.1285 (6) (a) When a respondent surrenders a firearm under ~~par. (a) 2. sub.~~  
7 (3) (b) or (4) (c) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare  
8 a receipt for each firearm surrendered to him or her. The receipt shall include the  
9 date on which the firearm was surrendered and the manufacturer, model, and serial  
10 number of the firearm surrendered to the sheriff and shall be signed by the  
11 respondent and by the sheriff to whom the firearm is surrendered.

12 (b) The sheriff shall keep the original of a receipt prepared under subd. 1. par.  
13 (a) and shall provide an exact copy of the receipt to the respondent and a certified  
14 copy of the receipt to the court that issued the injunction that required the surrender.  
15 When the firearm covered by the receipt is returned to the respondent under ~~par. (b)~~  
16 sub. (7), the sheriff shall surrender to the respondent the original receipt and all of  
17 his or her copies of the receipt.

18 (c) A receipt prepared under ~~subd. 1. par. (a)~~ is conclusive proof that the  
19 respondent owns the firearm for purposes of returning the firearm covered by the  
20 receipt to the respondent under ~~par. (b) sub. (7)~~.

21 (d) The sheriff may not enter any information contained on a receipt prepared  
22 under ~~subd. 1. par. (a)~~ into any computerized or direct electronic data transfer system  
23 in order to store the information or, except as provided in par. (b), disseminate or  
24 provide access to the information.

*the respondent shall provide a*

*INJ 5-18*

**BILL**

1           **SECTION 7.** 813.12 (4m) (aw) of the statutes is renumbered 813.1285 (6) (e) 1.  
2 and amended to read:

3           813.1285 (6) (e) 1. A sheriff <sup>b</sup> may store a firearm surrendered to him or her  
4 under ~~par. (a) 2. sub. (3) (b) or (4) (c) 2.~~ in a warehouse that is operated by a public  
5 warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse  
6 under this ~~paragraph subdivision~~, the respondent shall pay the costs charged by the  
7 warehouse for storing that firearm.

8           **SECTION 8.** 813.12 (4m) (b) of the statutes is renumbered 813.1285 (7) (a), and  
9 813.1285 (7) (a) (intro.) and 1., as renumbered, are amended to read:

10           813.1285 (7) (a) (intro.) A firearm surrendered under ~~par. (a) 2.~~ this section may  
11 not be returned to the respondent until a judge or circuit court commissioner  
12 determines all of the following:

- 13           1. That the injunction issued under ~~sub. (4) s. 813.12 (4), 813.122 (5), or 813.125~~  
14 (4), whichever required the surrender of the firearm, has been vacated or has expired  
15 and not been extended.

16           **SECTION 9.** 813.12 (4m) (c) of the statutes is renumbered 813.1285 (7) (b) and  
17 amended to read:

18           813.1285 (7) (b) If a respondent surrenders a firearm under ~~par. (a) 2.~~ this  
19 section that is owned by a person other than the respondent, the person who owns  
20 the firearm may apply for its return to the circuit court for the county in which the  
21 person to whom the firearm was surrendered is located. The court shall order such  
22 notice as it considers adequate to be given to all persons who have or may have an  
23 interest in the firearm and shall hold a hearing to hear all claims to its true  
24 ownership. If the right to possession is proved to the court's satisfaction, it shall  
25 order the firearm returned. If the court returns a firearm under this paragraph, the

INSERT 6-11

**BILL**

1 court shall inform the person to whom the firearm is returned of the requirements  
2 and penalties under s. 941.29 (4).

3 **SECTION 10.** 813.122 (2) of the statutes is renumbered 813.122 (2) (a).

4 **SECTION 11.** 813.122 (2) (b) of the statutes is created to read:

5 813.122 (2) (b) When the respondent is served under this subsection, the

6 petition shall include all of the following information

*person who serves the respondent*

7 1. Notice of the requirements and penalties under s. 941.29 (1) (f) and (2) (e)  
8 and notice of any similar applicable federal laws and penalties.

9 2. If the court has scheduled a hearing to surrender firearms under sub. (3) (a),  
10 notice of the hearing.

11 2 <sup>3</sup> 3. An explanation of s. 813.1285, including the procedures for surrendering a  
12 firearm and the circumstances listed under s. 813.1285 under which a respondent  
13 must appear at a hearing to surrender firearms.

14 3 <sup>4</sup> 4. A firearm possession form developed under s. 813.1285 (5), with instructions  
15 for completing and returning the form.

16 **SECTION 12.** 813.122 (3) (a) of the statutes is amended to read:

17 813.122 (3) (a) Procedure for an action under this section is in 2 parts. First,  
18 if the petitioner requests a temporary restraining order, the court or circuit court  
19 commissioner shall issue or refuse to issue that order. Second, the court shall hold  
20 a hearing under sub. (5) on whether to issue an injunction, which is the final relief.  
21 If the court or circuit court commissioner issues a temporary restraining order, the  
22 order shall set forth the date for the hearing on an injunction and may set forth the  
23 date for a hearing to surrender firearms. If the court sets forth a date for a hearing  
24 to surrender firearms, the date may not be more than 14 days after the injunction  
25 hearing. If the court or circuit court commissioner does not issue a temporary

*with the petition*

*also provide the respondent with*

*information*



**BILL****SECTION 12**

1 ~~restraining order, the date for the hearing on an injunction shall be set upon motion~~  
2 ~~by either party and, upon motion by either party, the court may set forth a date for~~  
3 ~~a hearing to surrender firearms. If the court sets forth a date for a hearing to~~  
4 ~~surrender firearms, the date may not be more than 14 days after the injunction~~  
5 ~~hearing.~~

6 **SECTION 13.** 813.122 (5m) (a) 1. of the statutes is amended to read:

7 813.122 (5m) (a) 1. Inform the respondent named in the petition of the  
8 requirements and penalties under s. 941.29 and any similar applicable federal laws  
9 and penalties.

10 **SECTION 14.** 813.122 (5m) (a) 2. of the statutes is amended to read:

11 813.122 (5m) (a) 2. Except as provided in par. (ag), require in writing the  
12 respondent to surrender any firearms that he or she owns or has in his or her  
13 possession to the sheriff of the county in which the action under this section was  
14 commenced, to the sheriff of the county in which the respondent resides or to another  
15 person designated by the respondent and approved by the judge or circuit court  
16 commissioner. ~~The judge or circuit court commissioner shall approve the person~~  
17 ~~designated by the respondent unless the judge or circuit court commissioner finds~~  
18 ~~that the person is inappropriate and places the reasons for the finding on the record.~~  
19 ~~If a firearm is surrendered to a person designated by the respondent and approved~~  
20 ~~by the judge or circuit court commissioner, the judge or circuit court commissioner~~  
21 ~~shall inform the person to whom the firearm is surrendered of the requirements and~~  
22 ~~penalties under s. 941.29 (4) in accordance with s. 813.1285.~~

23 **SECTION 15.** 813.122 (5m) (am) of the statutes is repealed.

24 **SECTION 16.** 813.122 (5m) (aw) of the statutes is repealed.

25 **SECTION 17.** 813.122 (5m) (b) and (c) of the statutes are repealed.

**BILL**

1           **SECTION 18.** 813.125 (4) (a) 2. of the statutes is amended to read:

2           813.125 (4) (a) 2. The petitioner serves upon the respondent a copy of a  
3           restraining order obtained under sub. (3) and notice of the time for the hearing on  
4           the issuance of the injunction under sub. (3) (c). The court may set forth a date for  
5           a hearing to surrender firearms. If the court sets forth a date for a hearing to  
6           surrender firearms, the date may not be more than 14 days after the injunction  
7           hearing. If the court sets a date under this subdivision, the notice of the hearing to  
8           surrender firearms shall be served upon the respondent with the copy of the  
9           restraining order.

10           2m. The restraining order or notice of hearing served under this subdivision  
11           subd. 2. shall inform the respondent that, if the judge or circuit court commissioner  
12           issues an injunction, the judge or circuit court commissioner may also order the  
13           respondent not to possess a firearm while the injunction is in effect. The order or  
14           notice shall include all of the following: also provide the respondent with information

15           **SECTION 19.** 813.125 (4) (a) 2m. a., b. and c. of the statutes are created to read:

16           813.125 (4) (a) 2m. a. Notice of the requirements and penalties under s. 941.29  
17           (1) (g) and (2) (d) and notice of any similar applicable federal laws and penalties.

18           b. An explanation of s. 813.1285, including the procedures for surrendering a  
19           firearm and the circumstances listed under s. 813.1285 under which a respondent  
20           must appear at a hearing to surrender firearms.

21           c. A firearm possession form developed under s. 813.1285 (5), with instructions  
22           for completing and returning the form.

23           **SECTION 20.** 813.125 (4m) (a) of the statutes is amended to read:

24           813.125 (4m) (a) If a judge or circuit court commissioner issues an injunction  
25           under sub. (4) and the judge or circuit court commissioner determines, based on clear

10/9/11

person who serves the respondent with the

**BILL**

1 and convincing evidence presented at the hearing on the issuance of the injunction,  
2 that the respondent may use a firearm to cause physical harm to another or to  
3 endanger public safety, the judge or circuit court commissioner may prohibit the  
4 respondent from possessing a firearm. If the respondent is not prohibited from  
5 possessing a firearm and the court had scheduled under sub. (4) (a) 2. a hearing to  
6 surrender firearms, the court shall dismiss the hearing to surrender firearms.

7 **SECTION 21.** 813.125 (4m) (c) 1. of the statutes is amended to read:

8 813.125 (4m) (c) 1. Inform the respondent named in the petition of the  
9 requirements and penalties under s. 941.29 and any similar applicable federal laws  
10 and penalties.

11 **SECTION 22.** 813.125 (4m) (c) 2. of the statutes is amended to read:

12 813.125 (4m) (c) 2. Except as provided in par. (cg), require in writing the  
13 respondent to surrender any firearms that he or she owns or has in his or her  
14 possession to the sheriff of the county in which the action under this section was  
15 commenced, to the sheriff of the county in which the respondent resides or to another  
16 person designated by the respondent and approved by the judge or circuit court  
17 commissioner. The judge or circuit court commissioner shall approve the person  
18 designated by the respondent unless the judge or circuit court commissioner finds  
19 that the person is inappropriate and places the reasons for the finding on the record.  
20 If a firearm is surrendered to a person designated by the respondent and approved  
21 by the judge or circuit court commissioner, the judge or circuit court commissioner  
22 shall inform the person to whom the firearm is surrendered of the requirements and  
23 penalties under s. 941.29 (4) in accordance with s. 813.1285.

24 **SECTION 23.** 813.125 (4m) (cm) of the statutes is repealed.

25 **SECTION 24.** 813.125 (4m) (cw) of the statutes is repealed.

**BILL**

1           **SECTION 25.** 813.125 (4m) (d) and (e) of the statutes are repealed.

2           **SECTION 26.** 813.125 (6) (c) of the statutes is amended to read:

3           813.125 (6) (c) A respondent who does not appear at a hearing at which the  
4 court orders an injunction under sub. (4) but who has been served with a copy of the  
5 petition and notice of the time for hearing under sub. (4) (a) 2. that includes the  
6 information required under sub. (4) (a) 2m. <sup>a, b, and c.</sup> has constructive knowledge of the  
7 existence of the injunction and shall be arrested for violation of the injunction  
8 regardless of whether he or she has been served with a copy of the injunction.

9           **SECTION 27.** 813.1285 of the statutes is created to read:

10           **813.1285 Notice and process for firearm surrender.** (1) DEFINITIONS. In  
11 this section:

12           (a) "Firearm possession form" means the form developed under sub. (5) <sup>(a)</sup>

13           (b) "Petitioner" means an individual who is applying for, or for whom a court  
14 has granted, an injunction under s. 813.12 (4), 813.122 (5), or 813.125 (4).

15           (c) "Respondent" means the individual who is the subject of an injunction  
16 issued under s. 813.12 (4), 813.122 (5), or 813.125 (4), which requires the individual  
17 under s. 813.12 (4m), 813.122 (5m), or 813.125 (4m) to surrender his or her firearms.

18           (2) FIREARM POSSESSION DETERMINATION. (a) If the respondent is present at the  
19 injunction hearing, the respondent shall provide the court a completed firearm  
20 possession form. The court shall verify the information on the firearm possession  
21 form and shall make an inquiry on the record as to the contents of the firearm  
22 possession form.

23           (b) If the respondent is not present at the injunction hearing, the court shall  
24 provide the petitioner with an opportunity to ~~state~~

inform the court orally or in writing

INS  
11-18

**BILL**

*to inform the court orally or in writing*  
*informs the court*

1 the respondent possesses a firearm or a license issued under s. 175.60 and shall do  
2 one of the following:

3 *no 9* (1) If the petitioner ~~states~~ *ask the court shall request* that the respondent possesses a firearm, the  
4 petitioner how many firearms he or she believes the respondent possesses and the  
5 make and model of any firearm he or she believes the respondent possesses.

6 2. If the petitioner states that the respondent does not possess a firearm and  
7 the court is satisfied that the respondent does not possess a firearm, dismiss the  
8 hearing to surrender firearms scheduled under s. 813.12 (2m), 813.122 (3) (a), or  
9 813.125 (4) (a) 2.

10 (c) 1. If the firearm possession form submitted to the court under par. (a)  
11 indicates the respondent does not possess a firearm and the court, after an inquiry,  
12 is satisfied that the respondent does not possess a firearm, the court shall file the  
13 firearm possession form and, if a hearing to surrender firearms was scheduled under  
14 s. 813.12 (2m), 813.122 (3) (a), or 813.125 (4) (a) 2., dismiss the hearing.

15 2. If the firearm possession form submitted to the court under par. (a) *or the*  
16 petitioner *statement* under par. (b) indicates that the respondent possesses a  
17 firearm or *if* the court is not satisfied that the respondent does not possess a firearm,  
18 the court shall schedule a hearing to surrender firearms to occur within *one week* 14 days of  
19 the injunction hearing unless the hearing to surrender firearms was scheduled  
20 under s. 813.12 (2m), 813.122 (3) (a), or 813.125 (4) (a) 2. *INS 12-20*

21 (3) SURRENDER OF FIREARMS. Unless the court has noted another reason that is  
22 relevant to the surrender of firearms that would require the hearing to surrender  
23 firearms to occur, the court shall dismiss the hearing to surrender firearms  
24 scheduled under sub. (2) (c) 2. or under s. 813.12 (2m), 813.122 (3) (a), or 813.125 (4)

25 (a) 2. if the respondent surrenders his or her firearm in one of the following manners:

**BILL**

1 (a) <sup>the</sup> respondent surrenders his or her firearm to another person and all of the  
2 following apply:

3 1. The respondent and the person to whom the respondent is surrendering his  
4 or her firearm appear at the injunction hearing under s. 813.12 (4), 813.122 (5), or  
5 813.125 (4), whichever is appropriate.

6 2. At the injunction hearing, the person <sup>testifies under oath that the person has received</sup> submits an affidavit confirming receipt  
7 of the firearms listed on the respondent's firearm possession form.

8 3. At the injunction hearing, the court <sup>determines</sup> is satisfied that the person is not  
9 prohibited from possessing a firearm.

10 4. The court informs the person to whom the firearm is surrendered of the  
11 requirements and penalties under s. 941.29 (4).

12 5. The court approves the surrender of the firearm.

13 (b) In accordance with sub. (6), the respondent surrenders his or her firearm  
14 to a sheriff no later than 48 hours after the injunction hearing ordering the  
15 respondent to surrender his or her firearm and the sheriff's department transmits  
16 a certified copy of receipt to the court under sub. (6) (b).

17 (4) HEARING TO SURRENDER FIREARMS. (a) Unless the court dismisses the hearing  
18 to surrender firearms, a respondent for whom a hearing to surrender firearms has  
19 been scheduled must attend the hearing.

20 (b) The court shall issue an arrest warrant for a respondent who fails to attend  
21 the hearing to surrender firearms.

22 (c) At the hearing to surrender firearms, the court shall ensure that the  
23 respondent has completed a firearm possession form, shall verify the information  
24 provided on the firearms possession form if the information was not already verified

move text

INSERT 13-12

INS 13-15

INS 13-21

If the

**BILL**

1 under sub. (2) (a), shall make an inquiry on the record as to the contents of the  
2 firearm possession form, and shall do one of the following:

3 1. If the respondent wants to surrender his or her firearms to a person who is  
4 not the sheriff, permit the surrender if all of the following apply:

5 a. The respondent and the person to whom the respondent is surrendering his  
6 or her firearm appear at the hearing to surrender firearms.

7 b. At the hearing, <sup>to surrender firearms</sup> the person submits an affidavit confirming receipt of the  
8 firearms listed on the respondent's firearm possession form.

9 c. At the hearing, <sup>to surrender firearms</sup> the court is <sup>determined</sup> satisfied that the person is not prohibited from  
10 possessing a firearm.

11 d. The court informs the person to whom the firearm is surrendered of the  
12 requirements and penalties under s. 941.29 (4).

13 e. The court <sup>INS 13-12</sup> approves the surrender of the firearm.

14 2. Order the respondent to surrender any firearm on the respondent's firearm  
15 possession form to a sheriff in accordance with sub. (6) within 48 hours. NO 9

16 ~~(4)~~ If the respondent fails to comply with the order under par. (c) 2 the court  
17 shall issue a warrant for the respondent's arrest. INS 14-17

18 (5) FIREARM POSSESSION FORM <sup>INS 14-17</sup> (The clerk of court or the director of state courts  
19 (a) shall develop a firearm possession form. Any false information provided on the form  
20 by the respondent may be subject to a penalty of false swearing under s. 946.32. The  
21 clerk of court or the director of state courts, whichever is appropriate, shall ensure  
22 that the firearm possession form does all of the following:

23 1. ~~(a)~~ Requires the respondent to list his or her name and address.

24 2. ~~(b)~~ Includes space for the respondent's signature and date signed.

*testifies under oath that the person has received the*

**BILL**

1     <sup>3</sup> ~~(c)~~ Requires the respondent to indicate whether he or she owns or possesses any  
2     firearm or has owned or possessed any firearm in the 6 months immediately  
3     preceding the issuance of the injunction, and, if the answer is yes, to list the quantity  
4     and the make and model of each firearm and to note whether the firearm was sold  
5     or surrendered and whether he or she has a receipt for the firearm sale or surrender.

6     <sup>4</sup> ~~(d)~~ Gives notice of the penalty for false swearing under s. 946.32.

7     ~~(5m) INCRIMINATING STATEMENTS COMPELLED; IMMUNITY. (a) If a respondent~~  
8     ~~refuses to complete a firearm possession form, or to respond to the court's inquiry~~  
9     ~~under sub. (2) (a) or (4) (c), because the completed firearm possession form or~~  
10    ~~response may incriminate him or her or subject him or her to a forfeiture or penalty,~~  
11    ~~the court may order the respondent to complete the firearm possession form or~~  
12    ~~respond to the inquiry. A completed firearm possession form or response compelled~~  
13    ~~by a court order under this paragraph may not be used, directly or indirectly, against~~  
14    ~~the respondent in a criminal case except to prosecute the respondent for perjury,~~  
15    ~~contempt, or false swearing committed on the firearm possession form or in the~~  
16    ~~response.~~

17     ~~(b) The immunity provided under par. (a) is subject to the restrictions under~~  
18     ~~s. 972.085.~~

19     **(6) SURRENDER OF FIREARM TO SHERIFF.**

20     (e) 2. If an injunction expires and is not extended, or an injunction is vacated,  
21     a sheriff may charge the respondent for any costs incurred 30 days after the  
22     injunction expires for storage of the firearm surrendered to the sheriff due to that  
23     injunction. A sheriff may dispose of a firearm surrendered to the sheriff due to that  
24     injunction 12 months after the injunction expires or is vacated and, if the sheriff



**BILL**

1 disposes of the firearm, the sheriff may charge the respondent for the costs of  
2 disposal.

3 (7) RETURN OF FIREARM.

4 **SECTION 28.** 938.25 (6) of the statutes is amended to read:

5 938.25 (6) TEMPORARY RESTRAINING ORDER AND INJUNCTION. If a proceeding is  
6 brought under s. 938.13, any party to or any governmental or social agency involved  
7 in the proceeding may petition the court to issue a temporary restraining order and  
8 injunction as provided in s. 813.122 or 813.125. The court shall follow the procedure  
9 under s. 813.122 or 813.125 except that the court may combine hearings authorized  
10 under s. 813.122 or 813.125 and this chapter, the petitioner for the temporary  
11 restraining order and injunction is not subject to the limitations under s. 813.122 (2)  
12 (a) or 813.125 (2) and no fee is required regarding the filing of the petition under s.  
13 813.122 or 813.125.

14 **SECTION 29.** 972.085 of the statutes is amended to read:

15 **972.085 Immunity; use standard.** Immunity from criminal or forfeiture  
16 prosecution under ss. 13.35, 17.16 (7), 77.61 (12), 93.17, 111.07 (2) (b), 128.16, 133.15,  
17 139.20, 139.39 (5), 195.048, 196.48, 551.602 (5), 553.55 (3), 601.62 (5), 767.87 (4),  
18 813.1285 (5m), 885.15, 885.24, 885.25 (2), 891.39 (2), 968.26, 972.08 (1) and 979.07  
19 (1) and ch. 769, provides immunity only from the use of the compelled testimony or  
20 evidence in subsequent criminal or forfeiture proceedings, as well as immunity from  
21 the use of evidence derived from that compelled testimony or evidence.

22 **SECTION 30. Initial applicability.**

23 (1) This act first applies to a petition filed on the effective date of this  
24 subsection.

25

(END)

NJ  
16-25

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1962/plins  
CMH:.....

1

Insert A

(no #)

to  
surrender  
firearms

✓  
If the respondent is not present at the injunction hearing, the court must provide the petitioner the opportunity to inform the court, orally or in writing, whether he or she believes that the respondent possesses a firearm. If the court is satisfied that the respondent does not possess a firearm, the court must file the firearm possession form. If the firearm's possession form or the petitioner indicates that the respondent possesses a firearm, or if the court is not satisfied that the respondent does not possess a firearm, the court must schedule a hearing to surrender firearms to occur with one week of the injunction hearing. The court must dismiss the hearing if the respondent surrenders his or her firearms to a sheriff within 48 hours or, if the respondent appeared at the injunction hearing and the court approves of the surrender, to another person who also appeared at the injunction hearing, who testifies under oath that the person received all of the firearms on the firearm possession form, who is not prohibited by law from possessing a firearm, and who is informed of the penalties for furnishing a firearm to a person who is prohibited by law from possessing a firearm (qualified person).

If the court does not dismiss the hearing, the respondent must attend the hearing. A respondent who fails is in contempt of court and the court must issue an arrest warrant. At the hearing to surrender firearms the court must verify all of the information on the firearm's possession form and either permit the surrender to a qualified person or order the respondent to surrender his or her firearms to the sheriff within 48 hours. A respondent who fails to comply with an order to surrender his or her firearms to a sheriff is in contempt of court and the court must issue an arrest warrant.

2

3

Insert 3-11

4

✓  
SECTION 1. 785.01 (1) (bp) and (br) of the statutes are created to read:

5

785.01 (1) (bp) Failure to attend a hearing to surrender firearms as required

6

under s. 813.1285 (4) (a);

7

(br) Violation of an order under s. 813.1285 (4) (c) 2.;

8

9

Insert 5-18

10

✓  
(b) The sheriff shall keep the original of a receipt prepared under ~~subd. 1.~~ par.

11

(a) and shall provide ~~an exact copy~~ 2 copies of the receipt to the respondent. The

1 respondent shall provide one copy of the receipt to the clerk of courts within 48 hours  
 2 of the order to surrender firearms. When the firearm covered by the receipt is  
 3 ✓ returned to the respondent under ~~par. (b)~~ sub. (7), the sheriff shall surrender to the  
 4 respondent the original receipt and all of his or her copies of the receipt.

5

6 ✓ Insert 6-11 (no paragraph)  
 7 the respondent completes a petition for the return of firearms and

8

9 Insert 11-18

10 (c) "Petition for the return of firearms" means a petition developed under sub.  
 11 ✓ (5) (b).

12 (d) "Respondent" means the individual who is the subject of an injunction  
 13 issued under s. 813.12 (4) or 813.122 (5), or, if the court has required the individual  
 14 to surrender his or her firearms under s. 813.125 (4m), under s. 813.125 (4).

15

16 Insert 12-20 (no paragraph)

17 ✓ The court may schedule a hearing to surrender firearms for any other reason  
 18 relevant to the surrender of firearms.

19

20 ✓ ✓ Insert 13-12 (use twice)  
 21 , after considering all relevant factors and any input from the petitioner,

22

23 Insert 13-15

24 ✓ provides a copy of the receipt to the clerk of courts as provided in sub. (6) (b)

25

1           Insert 13-21

2       ✓     the respondent and shall proceed under ch. 785 against him or her for contempt  
3     of court

4  
5       ✓     Insert 14-17

6     and shall proceed under ch. 785 against him or her for contempt of court

7  
8           Insert 14-18

9           AND PETITION FOR THE RETURN OF FIREARMS

10

11       Insert 15-7 (editor: please see attached form if you need formatting guidance)

12       ✓     (b) The director of state courts shall develop a petition for the return of firearms  
13     in substantially the following form:

14           STATE OF WISCONSIN

15           IN CIRCUIT COURT FOR ... COUNTY

16           Petition to Return Firearm(s)

17       In re the Return of Firearms to (name of person <sup>3</sup> required to surrender firearms  
18     in an injunction action)

19       Requesting person's information: ~~Date of Birth, Sex, Race, Height, Weight,~~

20     ~~Hair color, Eye Color, Address, and phone number.~~

21           Under oath I state that:

22           1. The court issued an injunction against me on (date of injunction). The  
23     injunction was issued based on a:

24           Domestic Abuse petition.

25           Child Abuse petition.

1 Harassment petition.

2 2. The court ordered me to surrender any firearms I owned or had in my  
3 possession to:

4 the sheriff of this county.

5 the sheriff of the county in which I resided, which is (name of county) <sup>o</sup>

6 to the following person:

7 name:

8 address:

9 3. I surrendered the following firearms as provided in item 2. and have attached  
10 a receipt from the sheriff or from the third person (if the person did not provide a  
11 receipt, attach a description of the firearm(s)):

12 4. The injunction has (been vacated) (expired and has not been extended).

13 5. I (have) (have not) been convicted of a misdemeanor crime of domestic  
14 violence.

15 6. I (have) (have not) been convicted of a felony.

16 7. I am not prohibited from possessing a firearms <sup>y</sup> under any state or federal law  
17 or by the order of any federal court or state court, other than an order from which a  
18 judge or family court commissioner is competent to grant relief.

19 I request that the court enter an order directing that the person named under  
20 item 2. return to me those firearms that were surrendered under the order of the  
21 court.

22 Subscribed and sworn to before me on (date)

23 (Signature of person requesting return of firearms)

24 (Signature of notary public, state of Wisconsin)

25 My commission expires on (date)

1 Dated this .... day of ....., .... (year)

2 Distribution:

3 1. Court - original 2. Petitioner in injunction action 3. Person to whom  
4 firearm(s) were surrendered)

5

6 Insert 16-25

7 **SECTION 2. Effective date.**

8 ~~Q~~ This act takes effect on the first day of the 7th month beginning after  
9 publication.

**Rose, Stefanie**

---

**From:** Bruce, Cory  
**Sent:** Thursday, September 26, 2013 8:55 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1962/1 Topic: Firearm seizure process under certain injunctions

Please Jacket LRB -1962/1 for the ASSEMBLY.