

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB464)

Received: 1/30/2014 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: tonyg@wcadv.org

Pre Topic:

No specific pre topic given

Topic:

Firearm seizure process under certain injunctions; stay injunction

Instructions:

AB464, with amendment and to address NRA concerns

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 2/2/2014	wjackson 2/3/2014		_____			
/P1	chanaman 2/5/2014	wjackson 2/5/2014	rschluet 2/5/2014	_____	srose 2/5/2014		
/P2	chanaman 2/6/2014	wjackson 2/6/2014	jmurphy 2/5/2014	_____	mbarman 2/5/2014		
/P3	chanaman		jmurphy	_____	sbasford		

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	2/7/2014		2/6/2014	_____	2/6/2014		
/P4	chanaman 2/7/2014	wjackson 2/7/2014	jmurphy 2/7/2014	_____ _____	lparisi 2/7/2014		
/P5	chanaman 2/11/2014	wjackson 2/7/2014	jmurphy 2/7/2014	_____ _____	srose 2/7/2014		
/1		wjackson 2/11/2014	jmurphy 2/11/2014	_____ _____	srose 2/11/2014	srose 2/11/2014	

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Jm 2/10

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/p5 WJ 2/7

jm 2/7

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RS

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/P2		<i>/P3 Wlj 2/6</i> wjackson 2/5/2014	jmurphy 2/5/2014	_____	mbarman 2/5/2014		

*jm + vrs
2/6*

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/P1	chanaman 2/4/2014	wjackson 2/5/2014	rschluet 2/5/2014	_____	srose 2/5/2014		

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/p2 wj 2/5 *wj* *wj 2/5*

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/?	chanaman	/pl bluesheet Wij 2/3					
FE Sent For:		/pl Wij 2/5	2/5/14	2/5			

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The NRA is objecting to AB 464 based on the argument that the procedures called for under the bill might theoretically require a respondent to incriminate himself under 18 U.S.C. § 922(g)(8), which, in general, prohibits an individual from possessing a firearm when subject to a qualifying order of protection.

Importantly, 18 U.S.C. § 922(g)(8) only applies to court orders that are, "issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate[.]" Therefore, in the context of Wisconsin law, temporary restraining orders are not qualifying orders because they are issued ex parte. Domestic abuse, child abuse and harassment injunctions may, under certain conditions, be qualifying orders.

To overcome the NRA's objection and still afford victims protection, the bill could be amended to require that the injunction be suspended at the hearing to surrender firearms and be considered suspended for a period of time up to 48 hours. However, to afford victims protection at these points in time, the temporary restraining order would be extended. Therefore, the respondent would be able to comply with the firearm surrender procedures without any risk of violating § 922(g)(8) because, as a matter of state law, the respondent would not be subject to a qualifying order when complying with the procedures. Victims would still have the typical protection order safeguards in place because the temporary restraining order would be effective.

The following amendment accomplishes these objectives:

Page 10:

(2) FIREARM POSSESSION DETERMINATION. (a) If the respondent is present at the injunction hearing, the court shall stay the injunction for a period not to exceed 48 hours and extend the TRO for 48 hours for the purposes of firearm surrender. The respondent shall provide the court a completed firearm possession form. The court shall verify the information on the firearm possession form and shall make an inquiry on the record as to the contents of the firearm possession form.

(b) If the respondent is not present at the injunction hearing, the court shall provide the petitioner with an opportunity to inform the court orally or in writing whether he or she believes that the respondent possesses a firearm. If the petitioner informs the court that the respondent possesses a firearm, the court shall request the petitioner to inform the court orally or in writing 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.

(c) 1. If the firearm possession form submitted to the court under par. (a) indicates the respondent does not possess a firearm and the court, after an inquiry, is satisfied that the respondent does not possess a firearm, the court shall file the firearm possession form, and the court shall lift the stay of the injunction and dismiss the TRO.

Page 11:

2. If the firearm possession form submitted to the court under par. (a) indicates the respondent possesses a firearm and (3)(a) does not apply, the court shall continue to stay the injunction for up to 48 hours for the purposes of firearm surrender. The court shall issue an order to surrender firearms and to extend the TRO and the court shall schedule a hearing to surrender firearms to occur within one week of the injunction hearing.

3. If the petitioner indicates under par. (b) 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. The court may schedule a hearing to surrender firearms for any other reason relevant to the surrender of firearms. The court shall do one of the following:

(y) continue the stay of the injunction for a period not to exceed 48 hours and issue an order to surrender firearms and to extend the TRO for the purposes of firearm surrender; or

(z) lift the stay of the injunction.

(3) SURRENDER OF FIREARMS. Unless the court has noted another reason that is relevant to the surrender of firearms that would require the hearing to surrender firearms to occur, the court shall dismiss the hearing to surrender firearms scheduled under sub. (2) (c) 2. if the respondent surrenders his or her firearm in one of the following manners:

(a) The respondent surrenders his or her firearm to another person and all of the following apply:

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

2. At the injunction hearing, the person testifies under oath that the person has received the firearms listed on the respondent's firearm possession form.

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

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

5. The court, after considering all relevant factors and any input from the petitioner, approves the surrender of the firearm.

6. The court does not use the process in...

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

(bm) If the court approves the surrender to another person under (a), the court shall lift the stay of the injunction and dismiss the TRO.

2.

(c)...

(4) HEARING TO SURRENDER FIREARMS. (a) Unless the court dismisses the hearing to surrender firearms, a respondent for whom a hearing to surrender firearms has been scheduled must attend the hearing. If the respondent fails to attend the hearing to surrender firearms, the court shall issue an arrest warrant for the respondent and shall ...

(b) At the hearing to surrender firearms, the court shall stay the injunction for a period not to exceed 48 hours and extend the TRO for 48 hours. The court shall ensure that the respondent has completed a firearm possession form, shall verify the information provided on the firearm possession form if the information was not already verified under sub. (2) (a), shall make an inquiry on the record as to the contents of the firearm possession form, and shall do one of the following:

1. If the respondent wants to surrender his or her firearms to a person who is not the sheriff and who appears at the hearing to surrender firearms and if the court, after considering all relevant factors and input from the petitioner, approves the surrender and informs the person to whom the firearms are surrendered of the requirements and penalties under s. 941.29 (4), order to the respondent to surrender his or her firearms in one of the following ways:

a. To the person, after the person testifies under oath that he or she has received the firearms listed on the respondent's firearm possession form and after the court determines that the person is not prohibited from possessing a firearm.

b. To the sheriff, who shall transfer the firearms to the person after determining that the person is not prohibited from possessing a firearm.

2. Order the respondent to surrender any firearms that the court finds the respondent owns or possesses to a sheriff in accordance with sub. (6). If the respondent has not provided to the court, within 48 hours of ~~the order~~ the hearing to surrender firearms, a receipt as specified in sub. (6) (b) that shows surrender of all of the firearms that were subject to the order, the court shall presume the respondent is violating the order and the injunction and may do any of the following:

a. Notify the sheriff of the violation for investigation and appropriate action.

b. Schedule another hearing to surrender firearms under sub. (4).

c. Issue a warrant to the sheriff ordering that the respondent be brought before the court to show cause why the respondent should not be held in contempt.

3. If the court makes an order under 1.b. or 2. for the respondent to surrender firearms to the sheriff, the court shall issue an order to surrender firearms and to extend the TRO.

4. If the court makes an order under 1.a., the court shall lift the stay of the injunction and dismiss the TRO.

5. If the respondent claims to have surrendered all of the firearms subject to the order to the sheriff in accordance with sub. (6), verify that the respondent has surrendered all such firearms and lift the stay of the injunction and dismiss the TRO.

[Need a section to say:]

6. If the firearm possession form submitted to the court under par. (b) indicates the respondent does not possess a firearm and the court, after an inquiry, is satisfied that the respondent does not possess a firearm, the court shall file the firearm possession form, and the court shall lift the stay of the injunction and dismiss the TRO.

New Sections:

(w) If the court is required to extend a TRO under this section and temporary restraining order was not previously granted, the court shall on its own motion reconsider and grant the temporary restraining before issuing the order to surrender firearms and extend the TRO.

(v) As used in this section, an order to surrender firearms and extend the TRO is an order that shall:

1. Order the respondent to surrender all firearms he or she owns or possesses to the sheriff by a time certain, not more than 48 hours, or, in the court's discretion, to another person by a time certain, not more than 48 hours.

2. Order that the respondent may only possess or transport firearms for purpose of complying with this order.

3. Inform the respondent that the respondent is subject to a temporary restraining order during the stay of the injunction.

4. Inform the respondent when the injunction will be in effect, which will be a time certain not to exceed 48 hours from time of the order, and notifies the respondent that it will be a class G felony to possess firearms while the injunction is in effect.

5. Include instructions describing how the firearms are to be surrendered.

6. Order the respondent to attend the hearing to surrender firearms, if necessary.

7. Extend the TRO for 48 hours.

(z) A respondent who knowingly violates an order to surrender firearms and extend the TRO shall be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

New Sections

(x) Within one business day after an order or injunction is issued, extended, or modified under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending or modifying an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the petitioner's premises.

(y) No later than 24 hours after receiving the information under par.(a), the sheriff or other appropriate local law enforcement agency under par. (a) shall enter the information concerning an order or injunction issued, extended or modified under this section into the transaction information for management of enforcement system. The sheriff or other appropriate local law enforcement agency shall also make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

NOTE: we want to ensure that the injunctions under 813.12, 813.122 and 813.125 still include surrender requirements, as they do under current law.



MONDAY



SD 259/PI

LRB-1962/1
CMH:eev:rs

ASA to

2013 ASSEMBLY BILL 464

October 25, 2013 - Introduced by Representatives BIES, BERCEAU, BERNARD SCHABER, BERNIER, BEWLEY, BILLINGS, BROOKS, HEBL, HINTZ, JACQUE, JOHNSON, MURPHY, A. OTT and RICHARDS, cosponsored by Senators L. TAYLOR, CARPENTER, HANSEN, HARRIS, LEHMAN, RISSER and SHILLING. Referred to Committee on Public Safety and Homeland Security.

repeal act

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 (4m) (a) 1.,
 5 813.12 (4m) (a) 2., 813.122 (5m) (a) 1., 813.122 (5m) (a) 2., 813.125 (4) (a) 2.,
 6 813.125 (4m) (c) 1., 813.125 (4m) (c) 2., 813.125 (6) (c) and 938.25 (6); and **to**
 7 **create** 785.01 (1) (bp) and (br), 813.12 (2) (e), 813.122 (2) (b), 813.125 (4) (a) 2.
 8 a., b. and c. and 813.1285 of the statutes; **relating to:** providing notice of
 9 firearm prohibition when serving notice for certain injunction hearings and
 10 process for surrendering firearms following the granting of certain injunctions

and providing a penalty

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 (injunction). A person who is subject to an injunction (respondent) must surrender

ASSEMBLY BILL 464

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 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 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 to surrender firearms, 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 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.

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.** 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

ASSEMBLY BILL 464

1 issue a temporary restraining order and injunction as provided in s. 813.122 or
2 813.125. The court exercising jurisdiction under this chapter shall follow the
3 procedure under s. 813.122 or 813.125 except that the court may combine hearings
4 authorized under s. 813.122 or 813.125 and this chapter, the petitioner for the
5 temporary restraining order and injunction is not subject to the limitations under s.
6 813.122 (2) (a) or 813.125 (2) and no fee is required regarding the filing of the petition
7 under s. 813.122 or 813.125.

8 **SECTION 2.** 785.01 (1) (bp) and (br) of the statutes ^{is} (are) created to read:

9 ~~785.01 (1) (br) Failure to attend a hearing to surrender firearms as required~~
10 ~~under s. 813.1285 (4) (a);~~

11 (br) Violation of an order under s. 813.1285 (4) (b) 2.; —move (br)

12 **SECTION 3.** 813.12 (2) (c) of the statutes is created to read:

13 813.12 (2) (c) When the respondent is served with the petition under this
14 subsection, the person who serves the respondent shall also provide the respondent
15 all of the following information:

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

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

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

WJ
3-23

ASSEMBLY BILL 464

SECTION 4

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

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

5 813.12 (4m) (a) 2. Except as provided in par. (ag), require in writing the
6 respondent to surrender any firearms ~~(that he or she owns or has in his or her~~
7 ~~possession to the sheriff of the county in which the action under this section was~~ *plain*
8 ~~commenced, to the sheriff of the county in which the respondent resides or to another~~
9 ~~person designated by the respondent and approved by the judge or circuit court~~
10 ~~commissioner.~~ The judge or circuit court commissioner shall approve the person
11 designated by the respondent unless the judge or circuit court commissioner finds
12 that the person is inappropriate and places the reasons for the finding on the record.
13 If a firearm is surrendered to a person designated by the respondent and approved
14 by the judge or circuit court commissioner, the judge or circuit court commissioner
15 shall inform the person to whom the firearm is surrendered of the requirements and
16 penalties under s. 941.29 (4) ² in accordance with s. 813.1285.

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

19 813.1285 (6) (a) When a respondent surrenders a firearm under par. (a) 2. sub.
20 (3) (b) or (4) (b) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare
21 a receipt for each firearm surrendered to him or her. The receipt shall include the
22 date on which the firearm was surrendered and the manufacturer, model, and serial
23 number of the firearm surrendered to the sheriff and shall be signed by the
24 respondent and by the sheriff to whom the firearm is surrendered.

ASSEMBLY BILL 464

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

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

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

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

16 813.1285 (6) (e) 1. A sheriff may store a firearm surrendered to him or her
17 under ~~par. (a) 2. sub. (3) (b) or (4) (b) 2.~~ in a warehouse that is operated by a public
18 warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse
19 under this ~~paragraph~~ subdivision, the respondent shall pay the costs charged by the
20 warehouse for storing that firearm.

21 **SECTION 8.** 813.12 (4m) (b) of the statutes is renumbered 813.1285 (7) (a), and
22 813.1285 (7) (a) (intro.) and 1., as renumbered, are amended to read:

23 813.1285 (7) (a) (intro.) A firearm surrendered under ~~par. (a) 2.~~ this section may
24 not be returned to the respondent until the respondent completes a petition for the

ASSEMBLY BILL 464**SECTION 8**

1 return of firearms and a judge or circuit court commissioner determines all of the
2 following:

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

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

8 813.1285 (7) (b) If a respondent surrenders a firearm under ~~par. (a) 2.~~ this
9 section that is owned by a person other than the respondent, the person who owns
10 the firearm may apply for its return to the circuit court for the county in which the
11 person to whom the firearm was surrendered is located. The court shall order such
12 notice as it considers adequate to be given to all persons who have or may have an
13 interest in the firearm and shall hold a hearing to hear all claims to its true
14 ownership. If the right to possession is proved to the court's satisfaction, it shall
15 order the firearm returned. If the court returns a firearm under this paragraph, the
16 court shall inform the person to whom the firearm is returned of the requirements
17 and penalties under s. 941.29 (4).

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

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

20 813.122 (2) (b) When the respondent is served with the petition under this
21 subsection, the person who serves the respondent shall also provide the respondent
22 with all of the following information:

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

ASSEMBLY BILL 464

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

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

INS
7-6

6 **SECTION 12.** 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 13.** 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.~~

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23 **SECTION 14.** 813.122 (5m) (am) of the statutes is repealed.

24 **SECTION 15.** 813.122 (5m) (aw) of the statutes is repealed.

25 **SECTION 16.** 813.122 (5m) (b) and (c) of the statutes are repealed.

INS
7-25

ASSEMBLY BILL 464

SECTION 17

1 **SECTION 17.** 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 restraining order or notice of
5 hearing served under this subdivision shall inform the respondent that, if the judge
6 or circuit court commissioner issues an injunction, the judge or circuit court
7 commissioner may also order the respondent not to possess a firearm while the
8 injunction is in effect. The person who serves the respondent with the order or notice
9 shall also provide the respondent with all of the following information:

10 **SECTION 18.** 813.125 (4) (a) 2. a., b. and c. of the statutes are created to read:

11 813.125 (4) (a) 2. a. Notice of the requirements and penalties under s. 941.29
12 (1) (g) and (2) (d) and notice of any similar applicable federal laws and penalties.

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

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

18 **SECTION 19.** 813.125 (4m) (c) 1. of the statutes is amended to read:

19 813.125 (4m) (c) 1. Inform the respondent named in the petition of the
20 requirements and penalties under s. 941.29 and any similar applicable federal laws
21 and penalties.

22 **SECTION 20.** 813.125 (4m) (c) 2. of the statutes is amended to read:

23 813.125 (4m) (c) 2. Except as provided in par. (cg), require in writing the
24 respondent to surrender any firearms that he or she owns ~~or has in his or her~~
25 ~~possession to the sheriff of the county in which the action under this section was~~

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ASSEMBLY BILL 464

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1 commenced, to the sheriff of the county in which the respondent resides or to another
 2 person designated by the respondent and approved by the judge or circuit court
 3 commissioner. The judge or circuit court commissioner shall approve the person
 4 designated by the respondent unless the judge or circuit court commissioner finds
 5 that the person is inappropriate and places the reasons for the finding on the record.
 6 If a firearm is surrendered to a person designated by the respondent and approved
 7 by the judge or circuit court commissioner, the judge or circuit court commissioner
 8 shall inform the person to whom the firearm is surrendered of the requirements and
 9 penalties under s. 941.29 (4) ² in accordance with s. 813.1285.

10 SECTION 21. 813.125 (4m) (cm) of the statutes is repealed.

11 SECTION 22. 813.125 (4m) (cw) of the statutes is repealed.

12 SECTION 23. 813.125 (4m) (d) and (e) of the statutes are repealed.

13 SECTION 24. 813.125 (6) (c) of the statutes is amended to read:

14 813.125 (6) (c) A respondent who does not appear at a hearing at which the
 15 court orders an injunction under sub. (4) but who has been served with a copy of the
 16 petition and notice of the time for hearing under sub. (4) (a) 2. that includes the
 17 information required under sub. (4) (a) 2. a., b., and c. has constructive knowledge
 18 of the existence of the injunction and shall be arrested for violation of the injunction
 19 regardless of whether he or she has been served with a copy of the injunction.

20 SECTION 25. 813.1285 of the statutes is created to read:

21 **813.1285 Notice and process for firearm surrender.** (1) DEFINITIONS. In

22 this section:

23 (a) ^{arm} "Firearm possession form" means the form developed under sub. (5) (a).

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

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ASSEMBLY BILL 464

SECTION 25

1 (c) "Petition for the return of firearms" means a petition developed under sub.

2 (5) (b).

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

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106

6 (2) FIREARM POSSESSION DETERMINATION. (a) If the respondent is present at the
7 injunction hearing, the respondent shall provide the court a completed firearm
8 possession form. The court shall verify the information on the firearm possession
9 form and shall make an inquiry on the record as to the contents of the firearm
10 possession form.

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11 (b) If the respondent is not present at the injunction hearing, the court shall
12 provide the petitioner with an opportunity to inform the court orally or in writing
13 whether he or she believes that the respondent possesses a firearm. If the petitioner
14 informs the court that the respondent possesses a firearm, the court shall request the
15 petitioner to inform the court orally or in writing how many firearms he or she
16 believes the respondent possesses and the make and model of any firearm he or she
17 believes the respondent possesses.

INS - 10-17
a.1279

18 (c) 1. If the firearm possession form submitted to the court under par. (a)
19 indicates the respondent does not possess a firearm and the court, after an inquiry,
20 is satisfied that the respondent does not possess a firearm, the court shall file the
21 firearm possession form.

22 2. If the firearm possession form submitted to the court under par. (a) indicates
23 the respondent possesses a firearm, if the petitioner indicates under par. (b) that the
24 respondent possesses a firearm, or if the court is not satisfied that the respondent
25 does not possess a firearm, the court shall schedule a hearing to surrender firearms

ASSEMBLY BILL 464

1 to occur within one week of the injunction hearing. The court may schedule a hearing
2 to surrender firearms for any other reason relevant to the surrender of firearms.

3 (3) SURRENDER OF FIREARMS. Unless the court has noted another reason that is
4 relevant to the surrender of firearms that would require the hearing to surrender
5 firearms to occur, the court shall dismiss the hearing to surrender firearms
6 scheduled under sub. (2) (c) 2. if the respondent surrenders his or her firearm in one
7 of the following manners: or 3.

8 (a) ^{1.} The respondent surrenders his or her firearm to another person and all of
9 the following apply:

10 ^{a.} The respondent and the person to whom the respondent is surrendering his
11 or her firearm appear at the injunction hearing under s. 813.12 (4), 813.122 (5), or
12 813.125 (4), whichever is appropriate.

13 ^{b.} At the injunction hearing, the person testifies under oath that the person has
14 received the firearms listed on the respondent's firearm possession form.

15 ^{c.} At the injunction hearing, the court determines that the person is not
16 prohibited from possessing a firearm.

17 ^{d.} The court informs the person to whom the firearm is surrendered of the
18 requirements and penalties under s. 941.29 (4).

19 ^{e.} The court, after considering all relevant factors and any input from the
20 petitioner, approves the surrender of the firearm.

21 (b) The respondent surrenders his or her firearm to a sheriff no later than 48
22 hours after the injunction hearing ordering the respondent to surrender his or her
23 firearm and provides a copy of the receipt to the clerk of courts as provided in sub.

24 (6) (b).

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11-21B

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11-24
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ASSEMBLY BILL 464

SECTION 25

1 (4) HEARING TO SURRENDER FIREARMS. (a) Unless the court dismisses the hearing
2 to surrender firearms, a respondent for whom a hearing to surrender firearms has
3 been scheduled must attend the hearing. If the respondent fails to attend the
4 hearing to surrender firearms, the court shall issue an arrest warrant for the
5 respondent and shall proceed under ch. 785 against him or her for contempt of court.

6 (b) At the hearing to surrender firearms, the court shall ensure that the
7 respondent has completed a firearm possession form, shall verify the information
8 provided on the firearm possession form if the information was not already verified
9 under sub. (2) (a), shall make an inquiry on the record as to the contents of the
10 firearm possession form, and shall do one of the following:

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

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

15 b. At the hearing to surrender firearms, the person testifies under oath that the
16 person has received the firearms listed on the respondent's firearm possession form.

17 c. At the hearing to surrender firearms, the court determines that the person
18 is not prohibited from possessing a firearm.

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

21 e. The court, after considering all relevant factors and any input from the
22 petitioner, approves the surrender of the firearm.

23 2. Order the respondent to surrender any firearm on the respondent's firearm
24 possession form to a sheriff in accordance with sub. (6) within 48 hours. If the
25 respondent fails to comply with the order, the court shall issue a warrant for the

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ASSEMBLY BILL 464

1 respondent's arrest and shall proceed under ch. 785 against him or her for contempt
2 of court.

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3 (5) FIREARM POSSESSION FORM AND PETITION FOR THE RETURN OF FIREARMS. (a) The
4 director of state courts shall develop a firearm possession form. Any false
5 information provided on the form by the respondent may be subject to a penalty of
6 false swearing under s. 946.32. The director of state courts shall ensure that the
7 firearm possession form does all of the following:

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- 8 1. Requires the respondent to list his or her name and address.
- 9 2. Includes space for the respondent's signature and date signed.
- 10 3. Requires the respondent to indicate whether he or she owns or possesses any
11 firearm or has owned or possessed any firearm in the 6 months immediately
12 preceding the issuance of the injunction, and, if the answer is yes, to list the quantity
13 and the make and model of each firearm and to note whether the firearm was sold
14 or surrendered and whether he or she has a receipt for the firearm sale or surrender.
- 15 4. Gives notice of the penalty for false swearing under s. 946.32.

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

18 STATE OF WISCONSIN

19 IN CIRCUIT COURT FOR COUNTY

20 Petition to Return Firearm(s)

21 In re the Return of Firearms to (name of person required to surrender firearms
22 in an injunction action)

23 Requesting person's information: date of birth, sex, race, height, weight, hair
24 color, eye color, address, and phone number.

25 Under oath I state that:

ASSEMBLY BILL 464

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

3 Domestic Abuse petition.

4 Child Abuse petition.

5 Harassment petition.

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

8 the sheriff of this county.

9 the sheriff of the county in which I resided, which is (name of county).

10 to the following person: (N) 14-10 a 1279

11 name:

12 address:

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

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

17 5. I (have) (have not) been convicted of a misdemeanor crime of domestic
18 violence.

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

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

23 I request that the court enter an order directing that the person named under
24 item 2. return to me those firearms that were surrendered under the order of the
25 court.

ASSEMBLY BILL 464

1 Subscribed and sworn to before me on (date)

2 (Signature of person requesting return of firearms)

3 (Signature of notary public, state of Wisconsin)

4 My commission expires on (date)

5 Dated this day of, (year)

6 Distribution:

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

LPS:
This spacing is intentional.

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15-9

9 (6) SURRENDER OF FIREARM TO SHERIFF.

10 (e) 2. If an injunction expires and is not extended, or an injunction is vacated,
 11 a sheriff may charge the respondent for any costs incurred 30 days after the
 12 injunction expires for storage of the firearm surrendered to the sheriff due to that
 13 injunction. A sheriff may dispose of a firearm surrendered to the sheriff due to that
 14 injunction 12 months after the injunction expires or is vacated and, if the sheriff
 15 disposes of the firearm, the sheriff may charge the respondent for the costs of
 16 disposal.

17 (7) RETURN OF FIREARM.

18 **SECTION 26.** 938.25 (6) of the statutes is amended to read:

19 938.25 (6) TEMPORARY RESTRAINING ORDER AND INJUNCTION. If a proceeding is
 20 brought under s. 938.13, any party to or any governmental or social agency involved
 21 in the proceeding may petition the court to issue a temporary restraining order and
 22 injunction as provided in s. 813.122 or 813.125. The court shall follow the procedure
 23 under s. 813.122 or 813.125 except that the court may combine hearings authorized
 24 under s. 813.122 or 813.125 and this chapter, the petitioner for the temporary
 25 restraining order and injunction is not subject to the limitations under s. 813.122 (2)

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a 1279

ASSEMBLY BILL 464

SECTION 26



1 (a) or 813.125 (2) and no fee is required regarding the filing of the petition under s.
2 813.122 or 813.125.

3 **SECTION 27. Initial applicability.**

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

6 **SECTION 28. Effective date.**

7 (1) This act takes effect on the first day of the 7th month beginning after
8 publication.

9 (END)

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

LRBs0259/plins
CMH:.....

1 Insert 3-23

2 **SECTION 1.** 813.12 (3) (c) of the statutes is amended to read:

3 813.12 (3) (c) The temporary restraining order is in effect until a hearing is held
4 on issuance of an injunction under sub. (4), except that the court may extend the
5 temporary restraining order under s. 813.1285. The temporary restraining order is
6 not voided if the respondent is admitted into a dwelling that the order directs him
7 or her to avoid. A judge or circuit court commissioner shall hold a hearing on issuance
8 of an injunction within 14 days after the temporary restraining order is issued,
9 unless the time is extended upon the written consent of the parties or extended once
10 for 14 days upon a finding that the respondent has not been served with a copy of the
11 temporary restraining order although the petitioner has exercised due diligence.

History: 1983 a. 204, 540; 1985 a. 29, 135; 1989 a. 193; 1993 a. 319; 1995 a. 71, 306; 1999 a. 162; 2001 a. 61, 109; 2003 a. 321; 2005 a. 387; 2005 a. 443 s. 265; 2007 a. 20, 124; 2009 a. 262; 2011 a. 35, 266.

****NOTE: Tony, please review this. See parallel provisions in SECTIONS 2 and 3.

OK?

12

13 Insert 7-6

14 **SECTION 2.** 813.122 (4) (c) of the statutes is amended to read:

15 813.122 (4) (c) The temporary restraining order is in effect until a hearing is
16 held on issuance of an injunction under sub. (5), except that the court may extend the
17 temporary restraining order under s. 813.1285. A judge shall hold a hearing on
18 issuance of an injunction within 14 days after the temporary restraining order is
19 issued, unless the time is extended upon the written consent of the parties or
20 extended once for 14 days upon a finding that the respondent has not been served

1 with a copy of the temporary restraining order although the petitioner has exercised
2 due diligence.

3 **History:** 1985 a. 234; 1987 a. 332 s. 64; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 276; 1993 a. 227, 318; 1995 a. 71, 275, 306, 456; 1997 a. 292; 2001 a. 61; 2005 a. 155, 272; 2005 a. 443 s. 265; 2007 a. 20, 124; 2009 a. 262; 2011 a. 35.

4 Insert 7-25

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

6 813.125 (3) (c) The temporary restraining order is in effect until a hearing is
7 held on issuance of an injunction under sub. (4), except that the court may extend the
8 temporary restraining order under s. 813.1285. A judge or circuit court
9 commissioner shall hold a hearing on issuance of an injunction within 14 days after
10 the temporary restraining order is issued, unless the time is extended upon the
11 written consent of the parties or extended once for 14 days upon a finding that the
12 respondent has not been served with a copy of the temporary restraining order
13 although the petitioner has exercised due diligence.

14 **History:** 1983 a. 336; 1991 a. 39, 194; 1995 a. 71, 306; 2001 a. 16, 61, 105; 2003 a. 321; 2005 a. 272; 2007 a. 124; 2009 a. 262; 2011 a. 35, 266; 2013 a. 20.

15 Insert 9-23

16 (a) "Extend the temporary restraining order" includes granting a temporary
17 restraining order if a temporary restraining order is not currently in effect.

19 Insert 10-6

20 (e) "Surrender and extend order" means an order described under sub. (1m) (a).

21 **(1m) SURRENDER AND EXTEND ORDER.** (a) If the court issues a surrender and
22 extend order, the court shall do all of the following:

1 1. Order the respondent to surrender, within a period that is no longer than 48
2 hours, any firearm that he or she owns or possesses to the sheriff or, in the court's
3 discretion, to another person.

4 2. Inform the respondent that he or she may possess or transport a firearm only
5 for the purpose of complying with subd. 1.

6 3. If the court stays the injunction, inform the respondent that he or she is
7 subject to a temporary restraining order during the stay of the injunction and extend
8 the temporary restraining order for a period not to exceed 48 hours for the purpose
9 of ~~surrendering~~ ^{surrendering} firearms.

10 4. Inform the respondent when the injunction will take effect and the penalty
11 for possessing a firearm while the injunction is in effect.

12 5. Instruct the respondent how to surrender any firearm.

13 6. If appropriate, order the respondent to attend a hearing to surrender
14 firearms.

15 (b) 1. If the court issues a surrender and extend order under par. (a), the
16 respondent shall comply with any order, condition, information, or instruction under
17 par. (a).

18 2. A respondent who violates subd. 1. is subject to a fine of not more than
19 \$10,000 or imprisonment for not more than 9 months or both in addition to any other
20 penalty to which he or she is subject.

21

22 Insert 10-11

****NOTE: ^{par.} ~~think~~ instead of "continuing the stay" under (c) 2., we could just stay
the injunction (if) ^{par.} under (c), the form indicates possession, the petitioner indicates
possession, etc. So I didn't stay the injunction here because there may be no reason to.

23



hearing to surrender
firearms

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a 12792
continued

1 respondent owns or possesses to a sheriff in accordance with sub. (6). If the
2 respondent has not provided to the court, within 48 hours of the order, a receipt as
3 specified in sub. (6) (b) that shows surrender of all of the firearms that were subject
4 to the order, the court shall presume the respondent is violating the order and may
5 do any of the following: and the injunction

- 6 a. Notify the sheriff of the violation for investigation and appropriate action.
- 7 b. Schedule another hearing to surrender firearms under sub. (4).
- 8 c. Issue a warrant to the sheriff ordering that the respondent be brought before
9 the court to show cause why the respondent should not be held in contempt."

10 **19.** Page 14, line 10: after "person" insert "(whether directly or indirectly
11 through a sheriff)".

12 **20.** Page 15, line 17: after that line insert:

13 "~~SECTION 251.~~ 818.02 (9) of the statutes is created to read:
14 818.02 (9) In a proceeding under s. 813.1285."

15 (END)

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14-10
a 1279

INS
15-18
a 1279

1 Insert 11-3

2 2. If, under par. (a), the firearm possession form submitted to the court
3 indicates the respondent possesses a firearm, and the respondent has not
4 surrendered his or her firearm as described under sub. (3) (a), the court shall stay
5 the injunction for a period not to exceed 48 hours. The court shall issue a surrender
6 and extend order and shall schedule a hearing to surrender firearms to occur within
7 one week of the injunction hearing.

 ****NOTE: What if the respondent wants to surrender to a third party ^{who} ~~that~~ does not
appear at the injunction hearing? What happens during that week when the 48-hour
extension of the TRO expires?

8 3. If, under par. (b), the petitioner indicates that the respondent possesses a
9 firearm or if the court is not satisfied that the respondent does not possess a firearm,
10 the court shall schedule a hearing to surrender firearms to occur within one week of
11 the injunction hearing. The court may schedule a hearing to surrender firearms for
12 any other reason relevant to the surrender of firearms. The court may issue a
13 surrender and extend order and may stay the injunction for a period not to exceed
14 48 hours.

 ****NOTE: Since I did not stay the injunction under sub. (2), I did not provide the
option to continue the stay. If the court does not stay the injunction here, isn't that the
problem the NRA identified?

15

16 Insert 11-21B

17 2. If the court has issued a surrender and extend order and has stayed the
18 injunction, the court shall lift the stay and dismiss the temporary restraining order
19 if the court approves the surrender under subd. 1.

20

21 Insert 13-3

1 3. a. If, under subd. 1. b. or 2., the court orders the respondent to surrender his
2 or her firearms to the sheriff, the court shall issue a surrender and extend order.

3 b. If, under subd. 1. a., the court orders the respondent to surrender his or her
4 firearms to a person who is not the sheriff, the court shall lift the stay and dismiss
5 the temporary restraining order.

6
7 Insert 15-9

8 **(5m)** NOTIFICATION TO LOCAL LAW ENFORCEMENT. (a) Within one business day
9 after the court issues an order, extends or modifies a temporary restraining order, or
10 stays or lifts a stay on an injunction under this section, the clerk of the circuit court
11 shall send a copy of the order, extension or modification, or stay or lift to the sheriff
12 or to any other local law enforcement agency that is the repository for such actions
13 and that has jurisdiction over the premises of the petitioner.

14 (b) No later than 24 hours after receiving the information under par. (a), the
15 sheriff or other appropriate local law enforcement agency under par. (a) shall enter
16 the information concerning an order injunction issued, extension, modification, stay,
17 or lift under par. (a) into the transaction information for management of enforcement
18 system. The sheriff or other appropriate local law enforcement agency shall also
19 make available to other law enforcement agencies, through a verification system, the
20 information received and entered under this paragraph. The information need not
21 be maintained after the order or injunction is no longer in effect.

22

1 **7.** Page 7, line 12: delete the material beginning with “~~that~~” and ending with
 2 “~~commissioner.~~” on line 16 and substitute “that he or she owns or has in his or her
 3 possession to the sheriff of the county in which the action under this section was
 4 commenced, to the sheriff of the county in which the respondent resides, or to another
 5 person designated by the respondent and approved by the judge or circuit court
 6 commissioner.”.

7 **8.** Page 7, line 22: delete “in” and substitute “, in”.

8 **9.** Page 8, line 24: delete the material beginning with “that he or she owns ~~or~~
 9 has” and ending with “~~commissioner.~~” on page 9, line 3, and substitute “that he or she
 10 owns or has in his or her possession to the sheriff of the county in which the action
 11 under this section was commenced, to the sheriff of the county in which the
 12 respondent resides, or to another person designated by the respondent and approved
 13 by the judge or circuit court commissioner.”.

14 **10.** Page 9, line 9: delete “in” and substitute “, in”.

15 **11.** Page 10, line 16: delete “possesses and the” and substitute “possesses,
 16 the”.

17 **12.** Page 10, line 17: after “possesses” insert “, and the location of any firearm
 18 he or she believes the respondent possesses”.

19 **13.** Page 11, line 20: after that line insert:

20 **6.** The court ~~has not~~ ^{does not} ~~opted to~~ use the process under par. (c).
 21 *f.*

22 **14.** Page 11, line 24: after that line insert:

23 “(c) The respondent surrenders his or her firearm to a sheriff as provided under
 par. (b), and a person who appeared at the injunction hearing under s. 813.12 (4),

↑
INS 10-17
a1279

INS
11-20
a1279

INS
11-29
a1279

1 813.122 (5), or 813.125 (4), whichever is appropriate, takes possession of the firearm
2 from the sheriff, if all of the following apply:

- 3 1. Paragraph (a) ~~and b~~ apply. *1. d. and e.*
- 4 2. The sheriff determines that the person is not prohibited from possessing a
5 firearm.

6 **15.** Page 12, line 5: delete that line and substitute "respondent."

7 **16.** Page 12, line 11: delete lines 11 to 22 and substitute:

8 "1. If the respondent wants to surrender his or her firearms to a person who is
9 not the sheriff and who appears at the hearing to surrender firearms and if the court,
10 after considering all relevant factors and input from the petitioner, ^{approve} approves the
11 surrender and informs the person to whom the firearms are surrendered of the
12 requirements and penalties under s. 941.29 (4), order the respondent to surrender
13 his or her firearms in one of the following ways:

14 a. To the person, after the person testifies under oath that he or she has received
15 the firearms listed on the respondent's firearm possession form and after the court
16 determines that the person is not prohibited from possessing a firearm.

17 b. To the sheriff, who shall transfer the firearms to the person after determining
18 that the person is not prohibited from possessing a firearm. *OK*

19 **17.** Page 12, line 22: after that line insert:

20 1m. If the respondent claims to have surrendered all of the firearms subject
21 to the order to the sheriff in accordance with sub. (6), verify that the respondent has
22 surrendered all such firearms."

23 **18.** Page 12, line 23: delete the material beginning with "on the respondent's"
24 and ending with "court." on page 13, line 2, and substitute "that the court finds the

*12-23
9/27/9*

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13-2
9/27/9*

