



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 321
[2013 Assembly Bill 464]

**Procedure for Persons
Subject to Certain Injunctions
to Surrender Firearms**

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. 2013 Wisconsin Act 321 creates a standardized procedure for the surrender of firearms by persons subject to a domestic abuse or child abuse injunction, or subject to an order prohibiting the respondent from possessing firearms issued in connection with a harassment injunction.

NOTICE

Under the Act, the procedure for surrendering firearms begins when the respondent is served with the petition for an injunction. The person serving the respondent must provide the respondent with notice of the applicable firearm possession restrictions, the penalties for violating these restrictions, an explanation of the procedures for surrendering a firearm, and a firearm possession form, as described below.

FIREARM POSSESSION FORM

The Act requires the Director of State Courts to develop a firearm possession form, which must do all of the following:

- Require the respondent to list his or her name and address.
- Include space for the respondent's signature and date signed.
- Require the respondent to indicate whether he or she owns or possesses any firearm or has owned or possessed any firearm in the six months immediately preceding the issuance of the injunction, and if the answer is yes, to list the quantity and the make

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

and model of each firearm and to note whether the firearm was sold or surrendered and whether he or she has a receipt for the firearm sale or surrender.

- Give notice of the penalty for false swearing under s. 946.32, Stats.

When the respondent is served with the petition for an injunction, the person serving the petition must provide a copy of the firearm possession form to the respondent with instructions for completing and returning the form.

INJUNCTION HEARING

The next step in the process for surrendering firearms, under the Act, takes place at the injunction hearing. The procedure at this hearing varies depending on whether the respondent is present.

Respondent Present

If the respondent is present, the court shall stay the injunction for a period not to exceed 48 hours and shall extend the temporary restraining order, if one was previously granted, for 48 hours for the purpose of firearm surrender. If a temporary restraining order was not previously granted, the court shall reconsider and grant the temporary restraining order. The respondent must provide the court with a completed firearm possession form.

If the firearm possession form indicates the respondent possesses a firearm and the respondent has not surrendered his or her firearm, the court shall continue to stay the injunction, issue an order directing the respondent to surrender any firearm he or she possesses, and schedule a hearing to surrender firearms to occur within one week of the injunction hearing.

If the firearm possession form indicates the respondent does not possess a firearm and the court, after an inquiry, is satisfied the respondent does not possess a firearm, the court shall file the firearm possession form, lift the stay of the injunction, and dismiss the temporary restraining order.

Respondent Not Present

If the respondent is not present at the injunction hearing, the court must provide the person seeking the injunction (the petitioner) the opportunity to inform the court, orally or in writing, whether he or she believes the person possesses a firearm. If the petitioner informs the court the respondent possesses a firearm, the court shall request the petitioner to inform the court, orally or in writing, of how many firearms he or she believes the respondent possesses, and the make, model, and location of any firearm he or she believes the respondent possesses. The court shall then schedule a hearing to surrender firearms within one week of the injunction hearing.

SURRENDER OF FIREARMS

The court must dismiss the hearing to surrender firearms if the respondent surrenders his or her firearm in one of the manners described below.

Surrender to a Person Designated by the Respondent

A respondent may surrender any firearm in his or her possession to a person designated by the respondent if all of the following apply:

- The respondent and the person designated by the respondent appear at the injunction hearing.
- The person designated by the respondent testifies under oath the person has received any firearm listed on the respondent's firearm possession form.
- The court determines at the injunction hearing that the person designated by the respondent is not prohibited from possessing a firearm.
- The court informs the person designated by the respondent of the prohibition against and penalties for possessing a firearm while a domestic abuse, child abuse, or harassment injunction is in effect.
- The court, after considering all relevant factors and any input from the petitioner, approves the firearm surrender.

Surrender to a Sheriff

A respondent may surrender, within 48 hours of the injunction hearing, any firearm in his or her possession to the sheriff of the county in which the action is brought or of the county in which the respondent resides. The respondent must provide a copy of the receipt prepared by the sheriff receiving the surrendered firearm to the clerk of courts.

Surrender to a Sheriff and a Person Designated by Respondent Takes Possession

A respondent may also surrender his or her firearm to a sheriff and a person who appeared at the injunction hearing may take possession of the firearm from the sheriff, if all of the following apply:

- The court informs the person to whom the firearm is surrendered of the requirements and penalties related to possessing a firearm while a domestic abuse or child abuse injunction is in effect.
- The court, after considering all relevant factors and any input from the petitioner, approves the surrender of the firearm.
- The sheriff determines that the person taking possession of the firearm is not prohibited from possessing a firearm.

HEARING TO SURRENDER FIREARMS

Unless the court dismisses the hearing to surrender firearms, the respondent must attend the hearing. If the respondent fails to attend, the court must issue an arrest warrant for the respondent.

At the hearing to surrender firearms, the court must stay the injunction for a period not to exceed 48 hours, extend the temporary restraining order for 48 hours, ensure the respondent

has completed a firearm possession form, verify the information provided on the form, and make an inquiry on the record as to the contents of the firearm possession form.

If the firearm possession form indicates that 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, lift any stay of the injunction, and dismiss the temporary restraining order. If the respondent possesses a firearm, the court must order the respondent to surrender his or her firearms, within 48 hours, either to a person designated by the respondent who appears at the hearing to surrender firearms or to a sheriff.

Surrender to a Person Designated by the Respondent

A court may order a respondent to surrender his or her firearms to a person who is not the sheriff and who appears at the hearing to surrender firearms, if the court approves the surrender and informs the person of the requirements and penalties related to possessing a firearm while a domestic abuse or child abuse injunction is in effect. A respondent may surrender his or her firearms to a person who is not the sheriff either by surrendering them:

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

Surrender to the Sheriff

If the court orders the respondent to surrender his or her firearms to a sheriff, the court shall order the person to surrender any firearm the court finds the respondent possesses or owns. If the respondent does not provide the court, within 48 hours of the order, a receipt from a sheriff 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 may do any of the following:

- Notify the sheriff of the violation for investigation and appropriate action.
- Schedule another hearing to surrender firearms.
- 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.

PETITION FOR THE RETURN OF FIREARMS

Under the Act, the Director of State Courts must develop a petition to return firearm form. The petition must request the person's date of birth, sex, race, height, weight, hair color, eye color, address, and phone number, and require the person seeking the return of his or her firearm to provide certain information under oath. The form must be signed and notarized; copies must be provided to the court, the person who initially sought the injunction, and the person to whom the firearm was surrendered. The Act provides that a surrendered firearm may not be returned to the respondent until the respondent completes the petition to return

firearm form and a judge or court commissioner determines that the injunction has been vacated, or has expired and not been extended.

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