



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2013 Assembly Bill 464**

**Assembly  
Amendment 1**

*Memo published: January 13, 2014*

*Contact: David Moore, Staff Attorney (266-1946)*

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. The requirements pertaining to the surrender of firearms, under current law, are separately set forth in each of the statutes pertaining to domestic abuse injunctions, child abuse injunctions, and harassment injunctions.

The requirements are generally the same for each of the three types of injunctions, and provide as follows:

- The injunction must inform the person against whom it is entered (the respondent) of the prohibition against possessing a firearm and the penalties for doing so while the injunction is in effect. With respect to harassment injunctions, this information is provided in an order prohibiting the respondent from possessing a firearm while the injunction is in effect.
- The injunction or order must require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action was commenced, to the sheriff in the county where the respondent resides, or to another person designated by the respondent and approved by the judge or circuit court commissioner.
- When a respondent surrenders a firearm to a sheriff, the sheriff must prepare a receipt for each firearm surrendered. The receipt must include the manufacturer, model, and serial number of the firearm and must be signed by the respondent and the sheriff to whom the firearm is surrendered.
- A firearm may not be returned to the respondent until a judge or court commissioner determines: (1) that the injunction has been vacated, or has expired and not been extended; and (2) that the person is not prohibited from possessing a firearm under any state or federal law.

## **2013 ASSEMBLY BILL 464**

2013 Assembly Bill 464 creates a new statute that provides 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 bill, the procedure for surrendering firearms begins when the respondent is served with the petition for an injunction. The bill requires that the person serving the respondent 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 bill 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 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.

Under the bill, 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 bill, takes place at the injunction hearing. If the respondent is present at the injunction hearing, he or she must provide the court with a completed firearm possession form. If the respondent is not present, 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 and model of any firearm he or she believes the respondent possesses.

If the court issues an injunction or order prohibiting the respondent from possessing firearms, the injunction or order must require, in writing, the respondent to surrender any firearms in accordance with the procedure described below. If the firearm possession form or the petitioner indicates 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 within a week of the injunction hearing.

### **Surrender of Firearms**

Under the bill, 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***

Alternatively, a respondent may surrender any firearm in his or her possession to a sheriff. Under the bill, if the respondent surrenders his or her firearm to a sheriff, he or she must provide a copy of the receipt prepared by the sheriff receiving the surrendered firearm to the clerk of courts.

### **Hearing to Surrender Firearms**

Under the bill, a respondent must attend a hearing to surrender firearms unless the court dismisses the hearing. If the respondent fails to attend the hearing, the bill provides that the person is in contempt of court and the court is required to issue an arrest warrant for the respondent.

At the hearing to surrender firearms, the court must ensure the respondent has completed a firearm possession form and verify the information provided on the firearm possession form. The court must then either permit the respondent to surrender his or her firearms to a person designated by the respondent under the circumstances described above, or order the respondent to surrender any firearm on the firearm possession form to a sheriff within 48 hours. If the respondent fails to surrender his or her firearms, the person is in contempt of court and the court must issue an arrest warrant for the respondent.

### **Petition for the Return of Firearms**

The bill directs the director of state courts to 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 bill 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.

### **ASSEMBLY AMENDMENT 1**

Assembly Amendment 1 makes the following changes to Assembly Bill 464.

#### **Injunction Hearing**

The amendment requires the petitioner to provide the court with the location of any firearm he or she believes the respondent possesses if the respondent is not present at the injunction hearing.

#### **Surrender of Firearms**

The amendment permits a person to surrender a firearm to a person designated by the respondent by first surrendering the firearm to a sheriff. Under the amendment, the court shall dismiss the firearm surrender hearing if the respondent surrenders his or her firearm to the sheriff, a person who appeared at the injunction hearing takes possession of the firearm from the sheriff, and 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.

The amendment also reinserts existing statutory language, deleted by the bill, stating that firearms may be surrendered to the sheriff of the county in which the action is brought, the county in which the respondent resides, or to another person designated by the respondent and approved by the judge or circuit court commissioner.

#### **Hearing to Surrender Firearms**

The amendment modifies the process, provided under the bill, for surrendering firearms if a hearing to surrender firearms is held as follows.

##### ***Surrender to a Person Designated by the Respondent***

Under the amendment, if a hearing to surrender firearms is not dismissed, a court may order a respondent to surrender his or her firearms to a person who is not the sheriff either by ordering the respondent to surrender the firearms:

- 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, under the amendment, the court shall order the person to surrender any firearm the court finds the respondent possesses or owns. (By contrast, the bill requires the court to order the person to surrender any firearm on the respondent's firearm possession form.) 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.

### **BILL HISTORY**

Representative Bies offered Assembly Amendment 1 on December 6, 2013. On December 18, 2013, the Assembly Committee on Public Safety and Homeland Security voted to recommend adoption of Amendment 1 and passage of Assembly Bill 464, as amended, both on votes of Ayes, 6; Noes, 0.

DM:jal