



## 1995 ASSEMBLY BILL 293

April 4, 1995 - Introduced by Representatives TRAVIS, BALDWIN, LEHMAN, HARSDORF, RYBA, KRUG, KAUFERT, OWENS, PLACHE, BLACK, F. LASEE, URBAN, R. YOUNG, ROBSON, BELL and RILEY, cosponsored by Senators ROSENZWEIG, WINEKE, BURKE and CHVALA, by request of Wisconsin Coalition Against Domestic Violence. Referred to Committee on Criminal Justice and Corrections.

1     **AN ACT to repeal** 175.35 (1) (bg); **to renumber and amend** 941.29 (2); **to amend**  
2             48.396 (8), 175.35 (2) (c), 175.35 (2) (d), 175.35 (2f), 175.35 (2g) (b), 175.35 (2g)  
3             (c) (intro.), 175.35 (2g) (c) 3., 175.35 (2g) (c) 4., 175.35 (2i), 175.35 (2j), 175.35  
4             (2k) (a) 2., 175.35 (2k) (b) 2. a. and 175.35 (2L); and **to create** 175.35 (1) (at),  
5             813.12 (4m), 813.12 (6) (am), 813.12 (9) (a) 4., 813.122 (5m), 813.122 (9) (am),  
6             813.125 (4m), 813.125 (5r), 941.29 (1) (f), 941.29 (2) (d) and 941.29 (2) (e) of the  
7             statutes; **relating to:** the possession of firearms by persons who are subject to  
8             certain injunctions and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, a person may not possess a firearm if he or she has been found guilty of a felony, has been adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult, or has been found not guilty of a felony by reason of mental disease, defect or illness. Also, under current law a person who is involuntarily committed for treatment in a civil commitment proceeding may be prohibited from possessing a firearm. If a person who is prohibited from possessing a firearm thereafter possesses a firearm, he or she may be fined not more than \$10,000 or imprisoned for not more than 2 years or both. Current law also provides procedures by which a person may regain the right to possess a firearm.

This bill prohibits the possession of a firearm by a person against whom an abuse or harassment injunction has been issued. The bill also expands the current handgun purchaser background check to include a check for records of abuse or harassment injunctions. The bill makes the following specific changes to current law:

***Firearm prohibition for persons subject to abuse and harassment injunction proceedings***

Under current law, a court may issue an injunction against a person who engages in domestic abuse (abuse of an adult member of the family or household, an adult former spouse or an adult with whom the person has a child in common), abuse of a child or harassment of another person. The bill prohibits firearm possession by a person against whom an abuse or harassment injunction has been issued as long as the injunction is in effect. The bill also requires the person to surrender firearms that he or she owns or has in his or her possession. A firearm surrendered by a person against whom an abuse or harassment injunction has been issued may not be returned to the person until a court determines that the injunction is no longer in effect and that the person is not prohibited from possessing a firearm by any other order or by state or federal law. Finally, the court that issues an abuse or harassment injunction against a person must inform the person of the penalties for violating the prohibition. If the person possesses a firearm while the prohibition is in effect, he or she may be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

***Background check for abuse and harassment injunctions***

Under current law, the department of justice (DOJ) is responsible for conducting a criminal history record search and an involuntary commitment record search to determine whether a prospective purchaser of a handgun is prohibited from possessing a firearm because of: 1) a felony conviction; 2) a delinquency adjudication for an act that would have been a felony if committed by an adult; 3) a finding of not guilty by reason of mental disease or defect in a felony case; or 4) a firearm prohibition order issued in an involuntary civil commitment proceeding. The prospective purchaser of a handgun must provide identifying information, such as name, date of birth and social security number, so that DOJ can conduct a criminal history record search and an involuntary commitment record search.

This bill requires DOJ to conduct, in addition to a criminal history record search and an involuntary commitment record search, a record search to determine whether a prospective purchaser of a handgun is prohibited from purchasing a firearm because an abuse or harassment injunction has been issued against the person. The bill requires the clerk of the circuit court in which an abuse or harassment injunction is issued to inform DOJ about the period of time for which the injunction is in effect and to provide DOJ with information identifying the person against whom the injunction is issued so that DOJ may conduct an accurate record search. Finally, if a prospective purchaser of a handgun provides false identifying information for use in conducting a record search for abuse or harassment injunctions, he or she must be fined not less than \$500 nor more than \$10,000 and may be imprisoned for not more than 9 months.

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:*

1           **SECTION 1.** 48.396 (8) of the statutes is amended to read:

2           48.396 (8) Notwithstanding sub. (2), if a child is adjudged delinquent for an act  
3 that would be a felony if committed by an adult, the court clerk shall notify the  
4 department of justice of that fact. No other information from the child's court records  
5 may be disclosed to the department of justice except by order of the court. The  
6 department of justice may disclose any information provided under this subsection  
7 only as part of a ~~criminal history~~ firearms restrictions record search under s. 175.35  
8 (2g) (c).

9           **SECTION 2.** 175.35 (1) (at) of the statutes is created to read:

10          175.35 (1) (at) "Firearms restrictions record search" means a search of  
11 department of justice records to determine whether a person seeking to purchase a  
12 handgun is prohibited from possessing a firearm under s. 941.29. "Firearms  
13 restriction record search" includes a criminal history record search, a search to  
14 determine whether a person is prohibited from possessing a firearm under s. 51.20  
15 (13) (cv) and a search to determine whether the person is subject to an injunction  
16 under s. 813.12, 813.122 or 813.125 or a tribal injunction filed with the circuit court  
17 under s. 813.12 (9) (a).

18          **SECTION 3.** 175.35 (1) (bg) of the statutes is repealed.

19          **SECTION 4.** 175.35 (2) (c) of the statutes is amended to read:

20          175.35 (2) (c) The firearms dealer has conveyed the information from the  
21 completed notification form to the department of justice as required by rule under

1 sub. (2g) (b) and requested a ~~criminal history record search and involuntary~~  
2 ~~commitment~~ firearms restrictions record search.

3 **SECTION 5.** 175.35 (2) (d) of the statutes is amended to read:

4 175.35 (2) (d) Forty-eight hours, subject to extension under sub. (2g) (c) 4. c.,  
5 have elapsed from the time that the firearms dealer has received a confirmation  
6 number regarding the ~~criminal history record search and involuntary commitment~~  
7 firearms restrictions record search under sub. (2g) (c) from the department of justice  
8 and the firearms dealer has not been notified that the transfer would be in violation  
9 of s. 941.29.

10 **SECTION 6.** 175.35 (2f) of the statutes is amended to read:

11 175.35 (2f) When a firearms dealer requests that the department of justice  
12 provide a ~~criminal history record search and involuntary commitment~~ firearms  
13 restrictions record search under sub. (2g), he or she shall provide truthful  
14 information about his or her status as a firearms dealer and shall provide an accurate  
15 firearms dealer identification number obtained under sub. (2h). A person may  
16 request that the department provide a ~~criminal history record search and~~  
17 ~~involuntary commitment~~ firearms restrictions record search under sub. (2g) only if  
18 he or she is a firearms dealer.

19 **SECTION 7.** 175.35 (2g) (b) of the statutes is amended to read:

20 175.35 (2g) (b) The department of justice shall promulgate rules prescribing  
21 a notification form for use under sub. (2) requiring the transferee to provide his or  
22 her name, date of birth, gender, race and social security number and other  
23 identification necessary to permit an accurate ~~criminal history record search and~~  
24 ~~involuntary commitment~~ firearms restrictions record search under par. (c) 3. and the

1 required notification under par. (c) 4. The department of justice shall make the forms  
2 available at locations throughout the state.

3 **SECTION 8.** 175.35 (2g) (c) (intro.) of the statutes is amended to read:

4 175.35 **(2g)** (c) (intro.) The department of justice shall promulgate rules for  
5 ~~criminal history record searches and involuntary commitment~~ firearms restrictions  
6 record searches regarding transferees under sub. (2), including procedures for all of  
7 the following:

8 **SECTION 9.** 175.35 (2g) (c) 3. of the statutes is amended to read:

9 175.35 **(2g)** (c) 3. The department to conduct the ~~criminal history record search~~  
10 ~~and involuntary commitment~~ firearms restrictions record search regarding the  
11 transferee. The rules shall include, but not be limited to, a requirement that the  
12 department use the transaction information for management of enforcement system  
13 and the national crime information center system.

14 **SECTION 10.** 175.35 (2g) (c) 4. of the statutes is amended to read:

15 175.35 **(2g)** (c) 4. The department to notify the dealer, either during the initial  
16 telephone call or as soon thereafter as practicable, of the results of the ~~criminal~~  
17 ~~history record search and involuntary commitment~~ firearms restrictions record  
18 search as follows:

19 a. If the ~~searches indicate~~ search indicates that the transferee is prohibited  
20 from possessing a firearm under s. 941.29, the department shall provide the firearms  
21 dealer with a unique nonapproval number. The department may not disclose to the  
22 firearms dealer the reason the transferee is prohibited from possessing a firearm  
23 under s. 941.29.

1           b. If the ~~searches indicate~~ search indicates that the transferee is not prohibited  
2 from possessing a firearm under s. 941.29, the department shall provide the firearms  
3 dealer with a unique approval number.

4           c. If the ~~criminal history record~~ search indicates a felony charge without a  
5 recorded disposition, the deadline under sub. (2) (d) is extended to the end of the 3rd  
6 complete working day commencing after the day on which the finding is made. The  
7 department shall notify the firearms dealer of the extension as soon as practicable.  
8 During the extended period, the department shall make every reasonable effort to  
9 determine the disposition of the charge and notify the firearms dealer of the results  
10 as soon as practicable.

11           **SECTION 11.** 175.35 (2i) of the statutes is amended to read:

12           175.35 **(2i)** The department shall charge a firearms dealer an \$8 fee for each  
13 ~~combined criminal history record search and involuntary commitment~~ firearms  
14 restrictions record search that the firearms dealer requests under sub. (2) (c). The  
15 firearms dealer may collect the fee from the transferee. The department may refuse  
16 to conduct ~~criminal history record searches and involuntary commitment~~ firearms  
17 restrictions record searches for any firearms dealer who fails to pay any fee under  
18 this subsection within 30 days after billing by the department.

19           **SECTION 12.** 175.35 (2j) of the statutes is amended to read:

20           175.35 **(2j)** A firearms dealer shall maintain the original record of all completed  
21 notification forms and a record of all confirmation numbers and corresponding  
22 approval or nonapproval numbers that he or she receives regarding ~~criminal history~~  
23 ~~record searches and involuntary commitment~~ firearms restrictions record searches  
24 under sub. (2g). The firearms dealer shall mail the duplicate copy of each completed  
25 notification form to the department of justice.

1           **SECTION 13.** 175.35 (2k) (a) 2. of the statutes is amended to read:

2           175.35 **(2k)** (a) 2. Check each duplicate notification form received under sub.  
3 (2j) against the information recorded by the department regarding the corresponding  
4 request for a ~~criminal history record search and involuntary commitment~~ firearms  
5 restrictions record search under sub. (2g). If the department previously provided a  
6 unique approval number regarding the request and nothing in the duplicate  
7 completed notification form indicates that the transferee is prohibited from  
8 possessing a firearm under s. 941.29, the department shall destroy all records  
9 regarding that ~~criminal history record search and involuntary commitment~~ firearms  
10 restrictions record search within 30 days after receiving the duplicate form.

11           **SECTION 14.** 175.35 (2k) (b) 2. a. of the statutes is amended to read:

12           175.35 **(2k)** (b) 2. a. Except as provided in subd. 2. b., a log of dates of requests  
13 for ~~criminal history record searches and involuntary commitment~~ firearms  
14 restrictions record searches under sub. (2g) together with confirmation numbers,  
15 unique approval and nonapproval numbers and firearms dealer identification  
16 numbers corresponding to those dates.

17           **SECTION 15.** 175.35 (2L) of the statutes is amended to read:

18           175.35 **(2L)** The department of justice shall promulgate rules providing for the  
19 review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right  
20 to purchase a handgun because the firearms dealer received a nonapproval number  
21 under sub. (2g) (c) 4. a. may request a ~~criminal history record search and involuntary~~  
22 ~~commitment~~ firearms restrictions record search review under those rules. If the  
23 person disagrees with the results of that review, the person may file an appeal under  
24 rules promulgated by the department.

25           **SECTION 16.** 813.12 (4m) of the statutes is created to read:

1           813.12 **(4m)** NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF  
2 FIREARMS. (a) An injunction issued under sub. (4) shall do all of the following:

3           1. Inform the respondent named in the petition of the requirements and  
4 penalties under s. 941.29.

5           2. Require the respondent to surrender any firearms that he or she owns or has  
6 in his or her possession to the sheriff of the county in which the action under this  
7 section was commenced, to the sheriff of the county in which the respondent resides  
8 or to another person designated by the respondent and approved by the judge or  
9 family court commissioner. If a firearm is surrendered to a person designated by the  
10 respondent and approved by the judge or family court commissioner, the judge or  
11 family court commissioner shall inform the person to whom the firearm is  
12 surrendered of the requirements and penalties under s. 941.29 (4).

13           (b) A firearm surrendered under par. (a) 2. may not be returned to the  
14 respondent until a judge or family court commissioner determines all of the  
15 following:

16           1. That the injunction issued under sub. (4) has been vacated or has expired and  
17 not been extended.

18           2. That the person is not prohibited from possessing a firearm under any state  
19 or federal law or by the order of any federal court or state court, other than an order  
20 from which the judge or family court commissioner is competent to grant relief.

21           (c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a  
22 person other than the respondent, the person who owns the firearm may apply for  
23 its return to the circuit court for the county in which the person to whom the firearm  
24 was surrendered is located. The court shall order such notice as it considers  
25 adequate to be given to all persons who have or may have an interest in the firearm



1 and shall hold a hearing to hear all claims to its true ownership. If the right to  
2 possession is proved to the court's satisfaction, it shall order the firearm returned.  
3 If the court returns a firearm under this paragraph, the court shall inform the person  
4 to whom the firearm is returned of the requirements and penalties under s. 941.29  
5 (4).

6 **SECTION 17.** 813.12 (6) (am) of the statutes is created to read:

7 813.12 (6) (am) If an injunction is issued or extended under sub. (4) or if a tribal  
8 injunction is filed under sub. (9) (a), the clerk of the circuit court shall notify the  
9 department of justice of the injunction and shall provide the department of justice  
10 with information concerning the period during which the injunction is in effect and  
11 information necessary to identify the respondent for purposes of a firearms  
12 restrictions record search under s. 175.35 (2g) (c).

13 **SECTION 18.** 813.12 (9) (a) 4. of the statutes is created to read:

14 813.12 (9) (a) 4. The tribal injunction includes notice to the respondent that he  
15 or she is subject to the requirements and penalties under s. 941.29.

16 **SECTION 19.** 813.122 (5m) of the statutes is created to read:

17 813.122 (5m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF  
18 FIREARMS. (a) An injunction issued under sub. (5) shall do all of the following:

19 1. Inform the respondent named in the petition of the requirements and  
20 penalties under s. 941.29.

21 2. Require the respondent to surrender any firearms that he or she owns or has  
22 in his or her possession to the sheriff of the county in which the action under this  
23 section was commenced, to the sheriff of the county in which the respondent resides  
24 or to another person designated by the respondent and approved by the judge or court  
25 commissioner. If a firearm is surrendered to a person designated by the respondent

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

4 (b) A firearm surrendered under par. (a) 2. may not be returned to the  
5 respondent until a judge or court commissioner determines all of the following:

6 1. That the injunction issued under sub. (5) has been vacated or has expired and  
7 not been extended.

8 2. That the person is not prohibited from possessing a firearm under any state  
9 or federal law or by the order of any federal court or state court, other than an order  
10 from which the judge or court commissioner is competent to grant relief.

11 (c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a  
12 person other than the respondent, the person who owns the firearm may apply for  
13 its return to the circuit court for the county in which the person to whom the firearm  
14 was surrendered is located. The court shall order such notice as it considers  
15 adequate to be given to all persons who have or may have an interest in the firearm  
16 and shall hold a hearing to hear all claims to its true ownership. If the right to  
17 possession is proved to the court's satisfaction, it shall order the firearm returned.  
18 If the court returns a firearm under this paragraph, the court shall inform the person  
19 to whom the firearm is returned of the requirements and penalties under s. 941.29  
20 (4).

21 **SECTION 20.** 813.122 (9) (am) of the statutes is created to read:

22 813.122 (9) (am) If an injunction is issued or extended under sub. (5), the clerk  
23 of the circuit court shall notify the department of justice of the injunction and shall  
24 provide the department of justice with information concerning the period during

1 which the injunction is in effect and information necessary to identify the respondent  
2 for purposes of a firearms restrictions record search under s. 175.35 (2g) (c).

3 **SECTION 21.** 813.125 (4m) of the statutes is created to read:

4 813.125 (4m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF  
5 FIREARMS. (a) An injunction issued under sub. (4) shall do all of the following:

6 1. Inform the respondent named in the petition of the requirements and  
7 penalties under s. 941.29.

8 2. Require the respondent to surrender any firearms that he or she owns or has  
9 in his or her possession to the sheriff of the county in which the action under this  
10 section was commenced, to the sheriff of the county in which the respondent resides  
11 or to another person designated by the respondent and approved by the judge or court  
12 commissioner. If a firearm is surrendered to a person designated by the respondent  
13 and approved by the judge or court commissioner, the judge or court commissioner  
14 shall inform the person to whom the firearm is surrendered of the requirements and  
15 penalties under s. 941.29 (4).

16 (b) A firearm surrendered under par. (a) 2. may not be returned to the  
17 respondent until a judge or court commissioner determines all of the following:

18 1. That the injunction issued under sub. (4) has been vacated or has expired and  
19 not been extended.

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

23 (c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a  
24 person other than the respondent, the person who owns the firearm may apply for  
25 its return to the circuit court for the county in which the person to whom the firearm

1 was surrendered is located. The court shall order such notice as it considers  
2 adequate to be given to all persons who have or may have an interest in the firearm  
3 and shall hold a hearing to hear all claims to its true ownership. If the right to  
4 possession is proved to the court's satisfaction, it shall order the firearm returned.  
5 If the court returns a firearm under this paragraph, the court shall inform the person  
6 to whom the firearm is returned of the requirements and penalties under s. 941.29  
7 (4).

8 **SECTION 22.** 813.125 (5r) of the statutes is created to read:

9 813.125 (5r) NOTICE TO DEPARTMENT OF JUSTICE. If an injunction is issued or  
10 extended under sub. (4), the clerk of the circuit court shall notify the department of  
11 justice of the injunction and shall provide the department of justice with information  
12 concerning the period during which the injunction is in effect and information  
13 necessary to identify the respondent for purposes of a firearms restrictions record  
14 search under s. 175.35 (2g) (c).

15 **SECTION 23.** 941.29 (1) (f) of the statutes is created to read:

16 941.29 (1) (f) Enjoined under an injunction issued under s. 813.12, 813.122 or  
17 813.125 or under a tribal injunction that has been filed under s. 813.12 (9) (a).

18 **SECTION 24.** 941.29 (2) of the statutes is renumbered 941.29 (2) (intro.) and  
19 amended to read:

20 941.29 (2) (intro.) Any A person specified in sub. (1) who, is guilty of a Class  
21 E felony if he or she possesses a firearm under any of the following circumstances:

22 (a) The person possesses a firearm subsequent to the conviction for the felony  
23 or other crime, as specified in sub. (1), (a) or (b).

24 (b) The person possesses a firearm subsequent to the adjudication, as specified  
25 in sub. (1) (bm), ~~or~~.

1           (c) The person possesses a firearm subsequent to the finding of not guilty or not  
2 responsible by reason of insanity or mental disease, defect or illness, ~~possesses a~~  
3 ~~firearm is guilty of a Class E felony as specified in sub. (1) (c) or (d).~~

4           **SECTION 25.** 941.29 (2) (d) of the statutes is created to read:

5           941.29 (2) (d) The person possesses a firearm while subject to the court order,  
6 as specified in sub. (1) (e).

7           **SECTION 26.** 941.29 (2) (e) of the statutes is created to read:

8           941.29 (2) (e) The person possesses a firearm while the injunction, as specified  
9 in sub. (1) (f), is in effect.

10          **SECTION 27. Initial applicability.**

11          (1) CRIMINAL PENALTIES FOR POSSESSION OF A FIREARM. The treatment of section  
12 941.29 (1) (f) and (2) of the statutes and the creation of section 941.29 (2) (d) and (e)  
13 of the statutes first apply to persons who possess a firearm on the effective date of  
14 this subsection.

15          (2) FIREARMS RESTRICTIONS RECORD SEARCHES. The treatment of section 175.35  
16 (1) (at) and (bg), (2) (c) and (d), (2f), (2g) (b) and (c) (intro.), 3. and 4., (2i), (2j), (2k)  
17 (a) 2. and (b) 2.a. and (2L) of the statutes first applies to the sale of a handgun on the  
18 effective date of this subsection.

19          (3) PROCEEDINGS FOR INJUNCTIONS.

20          (a) The treatment of section 813.12 (4m), (6) (am) and (9) (a) 4. of the statutes  
21 first applies to proceedings in which a petition is filed, under section 813.12 (2) of the  
22 statutes, on the effective date of this paragraph.

23          (b) The treatment of section 813.122 (5m) and (9) (am) of the statutes first  
24 applies to proceedings in which a petition is filed, under section 813.122 (2) of the  
25 statutes, on the effective date of this paragraph.

