

State of Wisconsin



2013 Assembly Bill 727

Date of enactment: April 8, 2014
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2013 WISCONSIN ACT 223

AN ACT *to renumber* 165.25 (12m); *to amend* 51.20 (13) (cv) 4., 51.45 (13) (i) 4., 54.10 (3) (f) 4., 55.12 (10) (d), 175.35 (1) (at), 175.60 (1) (f) 2., 175.60 (9g) (a) 2., 175.60 (11) (a) 2. f., 813.12 (4m) (b) 2., 813.12 (6) (am) 1., 813.12 (6) (am) 2., 813.122 (5m) (b) 2., 813.122 (9) (am) 1., 813.122 (9) (am) 2., 813.125 (4m) (d) 2., 813.125 (5r) (a), 813.125 (5r) (b) and 941.29 (1) (g); and *to create* 165.63, 813.123 (5m) and 813.123 (8m) of the statutes; **relating to:** a firearm prohibition for an individual subject to an individuals-at-risk injunction and disclosure of and access to information regarding individuals who are prohibited from possessing a firearm.

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

SECTION 1d. 51.20 (13) (cv) 4. of the statutes is amended to read:

51.20 (13) (cv) 4. If the court orders a subject individual not to possess a firearm under subd. 1. or cancels under subd. 1m. c. an order issued under subd. 1. or under s. 51.20 (13) (cv) 1., 2007 stats., the court clerk shall notify the department of justice of that fact and provide any information identifying the subject individual that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c), a background check under s. 175.60 (9g) (a), or an accurate response under s. 165.63. No other information from the subject individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only to respond to a request under s. 165.63, as part of a firearms restrictions record search under s. 175.35 (2g) (c) ~~or~~, under rules the department of justice promulgates under s. 175.35 (2g) (d), or as part of a background check under s. 175.60 (9g) (a).

SECTION 1f. 51.45 (13) (i) 4. of the statutes is amended to read:

51.45 (13) (i) 4. If the court orders under subd. 1. a person not to possess a firearm or cancels under subd. 2. c. an order issued under subd. 1., the court clerk shall notify the department of justice of the order or cancellation and provide any information identifying the person that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c), a background check under s. 175.60 (9g) (a), or an accurate response under s. 165.63. No other information from the person's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only to respond to a request under s. 165.63, as part of a firearms restrictions record search under s. 175.35 (2g) (c) ~~or~~, under rules the department of justice promulgates under s. 175.35 (2g) (d), or as part of a background check under s. 175.60 (9g) (a).

SECTION 1h. 54.10 (3) (f) 4. of the statutes is amended to read:

54.10 (3) (f) 4. If the court orders under subd. 1. an individual not to possess a firearm or cancels under subd.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

2. c. an order issued under subd. 1., the court clerk shall notify the department of justice of the order or cancellation and provide any information identifying the individual that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c), a background check under s. 175.60 (9g) (a), or an accurate response under s. 165.63. No other information from the individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only to respond to a request under s. 165.63, as part of a firearms restrictions record search under s. 175.35 (2g) (c) ~~or~~, under rules the department of justice promulgates under s. 175.35 (2g) (d), or as part of a background check under s. 175.60 (9g) (a).

SECTION 1j. 55.12 (10) (d) of the statutes is amended to read:

55.12 (10) (d) If the court orders under par. (a) an individual not to possess a firearm or cancels under par. (b) 3. an order issued under par. (a), the court clerk shall notify the department of justice of the order or cancellation and provide any information identifying the individual that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c), a background check under s. 175.60 (9g) (a), or an accurate response under s. 165.63. No other information from the individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this paragraph only to respond to a request under s. 165.63, as part of a firearms restrictions record search under s. 175.35 (2g) (c) ~~or~~, under rules the department of justice promulgates under s. 175.35 (2g) (d), or as part of a background check under s. 175.60 (9g) (a).

SECTION 1q. 165.25 (12m) of the statutes is renumbered 165.25 (16).

SECTION 2. 165.63 of the statutes is created to read:

165.63 Access to firearm prohibition orders. (1) DEFINITION. In this section, "department" means the department of justice.

(2) DEPARTMENT TO PROVIDE INFORMATION UPON REQUEST. Upon a request under sub. (3) or (4), the department shall provide to the person making the request information regarding any of the following:

(a) Individuals ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a).

(b) The cancellation under s. 51.20 (13) (cv) 1m. c., 51.45 (13) (i) 2. c., 54.10 (3) (f) 2. c., or 55.12 (10) (b) 3. of an order not to possess a firearm.

(2m) PROCESS; DATA CONFIDENTIALITY. The department, when providing information under sub. (2), may use the transaction information for the management of enforcement system or another method approved by the department to process requests and responses in a secure manner to ensure confidentiality of the data.

(3) REQUESTS FOR INJUNCTIONS. In making a determination required under s. 813.12 (4m) (b), 813.122 (5m) (b), 813.123 (5m) (g), or 813.125 (4m) (d), a judge or court commissioner shall request information under sub. (2) from the department or from a law enforcement agency or law enforcement officer as provided in sub. (4) (d).

(4) LAW ENFORCEMENT REQUESTS. A law enforcement agency or a law enforcement officer may request information under sub. (2) from the department to do any of the following:

(a) Enforce or investigate a violation of s. 941.29.

(b) Conduct a background check on an individual who is applying to become a law enforcement officer or on a current law enforcement officer.

(c) Make a determination under s. 175.48 (2) (a) or 175.49 (2) (b) 4. or (5).

(d) Aid the court in making a determination required under s. 813.12 (4m) (b), 813.122 (5m) (b), 813.123 (5m) (g), or 813.125 (4m) (d).

SECTION 3. 175.35 (1) (at) of the statutes is amended to read:

175.35 (1) (at) "Firearms restrictions record search" means a search of department of justice records to determine whether a person seeking to purchase a handgun is prohibited from possessing a firearm under s. 941.29. "Firearms restrictions record search" includes a criminal history record search, a search to determine whether a person is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check system to determine whether a person has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search to determine whether the person is subject to an injunction under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. 806.247 (3), and a search to determine whether the person is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125 (4m).

SECTION 4. 175.60 (1) (f) 2. of the statutes is amended to read:

175.60 (1) (f) 2. The state is listed in the rule promulgated by the department under s. 165.25 (~~12m~~) (~~16~~) and, if that state does not require a background search for the permit, license, approval, or authorization, the permit, license, approval, or authorization designates that the holder chose to submit to a background search.

SECTION 5. 175.60 (9g) (a) 2. of the statutes is amended to read:

175.60 (9g) (a) 2. The department shall conduct a criminal history record search and shall search its records and conduct a search in the national instant criminal background check system to determine whether the applicant is prohibited from possessing a firearm under federal law; whether the applicant is prohibited from possessing a firearm under s. 941.29; whether the applicant is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. 806.247 (3); and whether the applicant is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125 (4m); and to determine if the court has prohibited the applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the applicant is prohibited from possessing a dangerous weapon as a condition of release under s. 969.01.

SECTION 6. 175.60 (11) (a) 2. f. of the statutes is amended to read:

175.60 (11) (a) 2. f. The individual becomes subject to an injunction described in s. 941.29 (1) (f) or is ordered not to possess a firearm under s. 813.123 (5m) or 813.125 (4m).

SECTION 7. 813.12 (4m) (b) 2. of the statutes is amended to read:

813.12 (4m) (b) 2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief. The court or commissioner shall use the information provided under s. 165.63 to aid in making the determination under this subdivision.

SECTION 8. 813.12 (6) (am) 1. of the statutes is amended to read:

813.12 (6) (am) 1. If an injunction is issued or extended under sub. (4) or if a tribal injunction is filed under s. 806.247 (3), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

SECTION 9. 813.12 (6) (am) 2. of the statutes is amended to read:

813.12 (6) (am) 2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

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

813.122 (5m) (b) 2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief. The court or commissioner shall use the information provided under s. 165.63 to aid in making the determination under this subdivision.

SECTION 11. 813.122 (9) (am) 1. of the statutes is amended to read:

813.122 (9) (am) 1. If an injunction is issued or extended under sub. (5), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

SECTION 12. 813.122 (9) (am) 2. of the statutes is amended to read:

813.122 (9) (am) 2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

SECTION 13. 813.123 (5m) of the statutes is created to read:

813.123 (5m) RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS. (a) If a judge or circuit court commissioner issues an injunction under sub. (5) and the judge or circuit court commissioner determines, based on clear and convincing evidence presented at the hearing on the issuance of the injunction, that the respondent may use a firearm to cause physical harm to another or to endanger public safety, the judge or circuit court commissioner may prohibit the respondent from possessing a firearm.

(b) An order prohibiting a respondent from possessing a firearm issued under par. (a) remains in effect until the expiration of the injunction issued under sub. (5).

(c) An order issued under par. (a) that prohibits a respondent from possessing a firearm shall do all of the following:

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

2. Except as provided in par. (d), 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 under this section was commenced, to the sheriff of the county in which the respondent resides, or to another person designated by the respondent and approved by the judge or circuit court commissioner. The judge or circuit court commissioner shall approve the person designated by the respondent unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(d) If the respondent is a peace officer, an order issued under par. (a) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(e) 1. When a respondent surrenders a firearm under par. (c) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model, and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (g), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (g).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(f) A sheriff may store a firearm surrendered to him or her under par. (c) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.

(g) A firearm surrendered under par. (c) 2. may not be returned to the respondent until the judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (5) has been vacated or has expired.

2. That person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief. The court or commissioner shall use the information provided under s. 165.63 to aid in making the determination under this subdivision.

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

SECTION 14. 813.123 (8m) of the statutes is created to read:

813.123 (8m) NOTICE TO DEPARTMENT OF JUSTICE. (a) If an order prohibiting a respondent from possessing a firearm is issued under sub. (5m), the clerk of the circuit court shall notify the department of justice of the existence of the order prohibiting a respondent from possessing a firearm and shall provide the department of justice with information concerning the period during which the order is in effect and information necessary to identify the respondent for purposes of responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(b) Except as provided in par. (c), the department of justice may disclose information that it receives under par. (a) only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(c) The department of justice shall disclose any information that it receives under par. (a) to a law enforcement agency when the information is needed for law enforcement purposes.

SECTION 15. 813.125 (4m) (d) 2. of the statutes is amended to read:

813.125 (4m) (d) 2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other

than an order from which the judge or circuit court commissioner is competent to grant relief. The court or commissioner shall use the information provided under s. 165.63 to aid in making the determination under this subdivision.

SECTION 16. 813.125 (5r) (a) of the statutes is amended to read:

813.125 (5r) (a) If an order prohibiting a respondent from possessing a firearm is issued under sub. (4m), the clerk of the circuit court shall notify the department of justice of the existence of the order prohibiting a respondent from possessing a firearm and shall provide the department of justice with information concerning the period during which the order is in effect and information necessary to identify the respondent for purposes of responding to a request under s. 165.63 or for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

SECTION 17. 813.125 (5r) (b) of the statutes is amended to read:

813.125 (5r) (b) Except as provided in par. (c), the department of justice may disclose information that it receives under par. (a) only to respond to a request under s. 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

SECTION 20. 941.29 (1) (g) of the statutes is amended to read:

941.29 (1) (g) Ordered not to possess a firearm under s. 813.123 (5m) or 813.125 (4m).

SECTION 21. Initial applicability.

(1) RETURN OF FIREARMS. The treatment of sections 813.12 (4m) (b) 2., 813.122 (5m) (b) 2., and 813.125 (4m) (d) 2. of the statutes first applies to determinations made on the effective date of this subsection.

(2) FIREARMS RESTRICTION FOR INDIVIDUALS-AT-RISK INJUNCTION. The treatment of section 813.123 (5m) of the statutes first applies to injunctions issued on the effective date of this subsection.