



## **Wisconsin Addresses Firearm Surrender**

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## ***The enforcement of firearms prohibitions has been an ongoing problem.***

Federal law [prohibits respondents](#) in Orders for Protection from possessing firearms since the passage in 1994 of the original Violence Against Women Act (VAWA). Many states, Wisconsin included, have also legislated prohibitions similar to the federal prohibition. Enforcement of these prohibitions, however, has been an ongoing problem. Wisconsin not only developed clear protocols to facilitate enforcement of firearm surrender, but also piloted the protocols in four counties and evaluated the process. In 2014 these protocols became a legislated mandate.

### **The Problem**

Despite federal and state prohibitions, firearms continue to be used in the homicides of women by their intimate partners. In 2010 in Wisconsin, at least 6 perpetrators who used a gun should not have had access to firearms under either felony or domestic abuse-related convictions or an active domestic abuse injunction. End Abuse Wisconsin's most recent Domestic Violence Homicide Report states that in 2013, firearms were still the weapon of choice in 20 of the 39 homicides. In at least seven of these domestic violence shooting deaths, the gunmen were legally prohibited from possessing firearms.

### **First Steps to Address the Problem**

In 2009, a subcommittee of the Wisconsin Governor's Council on Domestic Violence completed draft law enforcement and judicial procedures to enforce firearm surrender after an injunction (civil protection order) was issued. The subcommittee was multi-disciplinary, including judges, advocates, law enforcement, court clerks, and prosecutors. Four counties in central Wisconsin agreed to pilot the surrender procedures beginning in 2010. Dr. Steve Brandl, University of Wisconsin Milwaukee, conducted an [evaluation](#) in March of 2012.

Wisconsin has four types of restraining orders:

- Domestic Abuse [Wis. Stat. 813.12]
- Child Abuse [Wis. Stat. 813.122]
- Individual at Risk [Wis. Stat. 813.123]
- Harassment [Wis. Stat. 813.125]

When a temporary restraining order (TRO) is issued, it's granted without a hearing and is valid for 14 days, unless extended by the court. Firearm surrender requirements do not apply to TROs. After a full hearing allowing for due process, an injunction may be granted that is generally valid for 2-4 years. Firearm surrender requirements do apply to injunctions (final orders).

Domestic Abuse and Child Abuse restraining order injunction always require surrender of firearms. Individual at Risk or Harassment Injunctions only require firearm surrender if the judge finds "...that the respondent may use a firearm to cause physical harm to another or to endanger public safety". The new surrender protocol required courts to hold follow-up hearings when they issue injunctions with firearm restrictions and the court finds that the respondent possesses firearms. Respondents have up to 48 hours from the time the injunction is issued to surrender firearms to the sheriff or a third party. The follow-up hearing is scheduled within one week of the injunction hearing. At the hearing, the court

determines whether the respondent complied with the court's surrender order. Respondents who surrender firearms to the sheriff are given two copies of a receipt from the sheriff. One copy is for the court and the other is kept by the respondent. Another option for compliance is surrender to a third party. In that case, the third party must be present in court, testify under oath that he/she received the firearms and be approved by the court. The petitioner has the opportunity to object to a third party.

### **Surprising Evaluation Results from the Pilot Project**

After the protocol was initially piloted in four counties, the evaluation found two major surprises. First, the protocol was not nearly as difficult to implement as first expected. Second, very few firearms were actually surrendered despite strong beliefs that large numbers of households have firearms for hunting. Possible explanations for this finding are that some petitioners who knew the respondent owned firearms might have chosen a harassment injunction instead of DV, or simply didn't report the guns.

The pilot project also found that coordination between the offices involved in injunction and firearm surrender process was critical. Pre-planning, clear lines of communication, and clear delineations of responsibility was extremely important, particularly between the court and sheriff. Proper implementation rests primarily on the court. The court's discretion largely determines the process and outcome of case. As a result, suggested practice is that courts play a central role in the planning process. Education and training for all involved is critical to successful implementation of the protocol.

### **Passage of Surrender Legislation and Implementation of the Protocols**

The successful pilot project facilitated the passage of Wisconsin legislation (Stat. 813.1285), which became effective 11/1/2014 and adopted the new surrender protocols as state law. Following the legislation, training across the state was conducted. Trainers emphasized throughout that the protocols for surrender of firearms were directed only at those who were prohibited from possession due to a court injunction. Forms were developed to inform respondents of the surrender laws and procedures. Provisions are made for return of the firearms when injunctions expire and for what to do with firearms that are not retrieved.

### **Benefits**

Firearms are now recognized and understood as an important issue and there is follow-up to ensure the actual surrender of firearms. Advocates have been supportive based on feedback from victims and think the new process makes victims feel safer. The firearm surrender law and new procedures may empower victims and allow them more discretion and control. If petitioners are fully informed about the process and possible remedies, they can decide what kind of injunction to pursue and whether or not to report firearm possession. Respondents may see the threat of firearm surrender as even more of a sanction than the injunction itself. Even the possibility of having to surrender firearms may be significant enough to induce the respondent's compliance with the injunction.

The protocol requires greater scrutiny on guns and ownership among respondents, thus benefits are not limited to the actual surrender. In terms of victim safety, the removal of even one firearm from an abuser is a significant outcome.

## Timeline for the Surrender Legislation

- **2009:** Subcommittee of the Governor's Council on Domestic Violence completed model firearm surrender protocol.
  - **2010:** Protocol was piloted in 4 counties, funded by Wisconsin Office of Justice Assistance (OJA) with federal grant money. - Once pilot was complete, OJA completed evaluation.
  - **2012:** Wisconsin Director of State Courts Office's (DSCO) Committee of Chief Judges voted to adopt protocol as best practice. - DSCO created model forms and procedures for counties to use. - DSCO funded trainings using VAWA funds.
  - **2012-14:** Several counties voluntarily adopted protocol.
  - **April 2014:** Firearm surrender legislation is passed into law (2013 WI Act 321). - Created Wis. Stat. 813.1285
  - **November 2014:** Firearm surrender law effective. - 7-month delayed effective date allowed time to train court and law enforcement. - DSCO funded 5 multidisciplinary trainings w/ VAWA funds for judges, commissioners, clerks, law enforcement, and advocates.
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