

WISCONSIN'S FIREARM SURRENDER LAW

2015 Workshop for State Court VAW Points of Contact

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OVERVIEW OF PRESENTATION

- **History of Wisconsin's Firearm Surrender Law**
- **Overview of Wisconsin Restraining Order Laws**
- **Key Features of Firearm Surrender Law**
- **Lessons Learned**

HISTORY OF FIREARM SURRENDER LAW

- **Problem: Wisconsin law required surrender of firearms, but there was lack of compliance**
- **Governor's Council on Domestic Abuse created model surrender protocol**
- **Protocol was piloted in four counties**
- **Protocol was adopted as a best practice by Wisconsin Committee of Chief Judges**

OVERVIEW OF RESTRAINING ORDER LAW

- 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]

OVERVIEW: TRO VS. INJUNCTION

- **Temporary Restraining Order (TRO)**
 - Granted *ex parte* and without a hearing
 - Valid for 14 days, unless extended by the court
 - Firearms surrender requirements do not apply
- **Injunction**
 - Granted after full due process hearing
 - Generally valid for 2-4 years, but can be extended up to 5-10 years
 - Firearm surrender requirements do apply

OVERVIEW: INJUNCTIONS WITH MANDATORY SURRENDER

- Injunctions that require mandatory firearm surrender:
 - Domestic abuse [Wis. Stat. 813.12(4m)(a)2.]
 - Child abuse [Wis. Stat. 813.122(5m)(a)2.]
- “An injunction ... shall ... require the respondent to surrender any firearms that he or she owns or has in his or her possession...”

OVERVIEW: INJUNCTIONS WITH OPTIONAL FIREARM SURRENDER

- Injunctions where the court may order firearm surrender:
 - Individual at risk [Wis. Stat. 813.123(5m)(a)]
 - Harassment [Wis. Stat. 813.125(4m)(a)]
- If the court determines “... 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.”

MODEL PROTOCOL BECOMES LAW

- Firearm surrender law became effective **11/1/2014** [2013 WI Act 321]
 - Created Wis. Stat. **813.1285**
 - Law requires court to hold follow-up hearing when:
 - Court issues domestic abuse, child abuse, individual at risk (w/ firearm restriction), or harassment injunction (w/ firearm restriction)
- AND**
- Court finds that the respondent possesses firearm(s)

KEY FEATURES OF SURRENDER LAW

■ Notifying Respondent of Process

- Respondent is served with *Information for Respondents Regarding the Surrender and Return of Firearms (CV-804)*
- Establishes expectations for what will happen with regard to firearms

[Wis. Stat. 813.12(2)(c), 813.122(2)(b), 813.123(5)(a)2., 813.125(4)(a)2.]

KEY FEATURES OF SURRENDER LAW

■ Identifying Firearms Early

- Respondent is required to complete *Respondent's Statement of Possession of Firearms (CV-800)*
- Petitioner can complete *Petitioner's Statement of Respondent's Possession of Firearms (CV-801)*
- Provides the court with more information about presence of firearms

[Wis. Stat. 813.1285(2)(a)]

KEY FEATURES OF SURRENDER LAW

■ Setting a Timeline for Surrender

- If court determines respondent possesses firearms, respondent is ordered to surrender firearms within 48 hours of the injunction hearing
- Surrender can be made to the sheriff or a third party or both (sheriff first, then third party)
- See *Order to Surrender Firearms and Notice of Firearm Surrender Hearing (CV-803)*

[Wis. Stat. 813.1285(1g)]

KEY FEATURES OF SURRENDER LAW

■ Follow-Up Surrender Hearing

- If firearms are ordered surrendered, the court schedules a hearing within one week of the injunction hearing
- At follow-up hearing, the court determines whether the respondent complied with the court's surrender order

[Wis. Stat. 813.1285(2)(c)2., 813.1285(4)(b)]

KEY FEATURES OF SURRENDER LAW

■ Examples of Compliance

- Respondent surrenders firearms to the sheriff and brings in a receipt from sheriff
- Respondent brings a third party to court

[Wis. Stat. 813.1285(4)(b)]

KEY FEATURES OF SURRENDER LAW

■ Third Party Presence

- If respondent wishes to surrender to a third party, the third party must:
 - Be present in court
 - Testify under oath that s/he received firearms
 - Be approved by the court
 - Petitioner has the opportunity to object to third party

[Wis. Stat. 813.1285(3)(a)1., 813.1285(4)(b)1.]

TRAINING EFFORTS

- Once law passed, STOP funds were used to conduct several trainings throughout the state
- Counties came in teams consisting of
 - Judges
 - Court Commissioners
 - Clerks of Circuit Court and Staff
 - District Court Administrators
 - Law Enforcement
 - District Attorneys
 - Domestic Violence Advocates

LESSONS LEARNED

- Don't go straight to legislation, do pilot project first
- Work with state Coalition Against Domestic Violence to help with lobbying efforts
- Get delayed effective date to allow time for development of forms, procedures, and trainings

LESSONS LEARNED (CONT.)

- Create a law that's clear, but flexible to allow counties to tailor practices
- Buy-in from the court and law enforcement is essential
- Conduct multidisciplinary trainings
 - Judges, clerks, law enforcement, DV advocates

HISTORY OF SURRENDER LAW

- **2009:** Subcommittee of the Governor's Council on Domestic Violence completed model firearm surrender protocol
- **2010:** Protocol was piloted in 4 counties
 - Project was funded by Wisconsin Office of Justice Assistance (OJA) with federal grant money
 - Once pilot was complete, OJA completed evaluation

HISTORY OF SURRENDER LAW (CONT.)

- **2012:** Wisconsin Director of State Courts Office's (DSCO) Committee of Chief Judges voted to adopt protocol a best practice
 - DSCO created model forms and procedures for counties to use
 - DSCO funded trainings using VAWA money
- **2012-14:** Several counties voluntarily adopted protocol

HISTORY OF SURRENDER LAW (CONT.)

- **April 2014:** Firearm surrender legislation is passed into law (2013 WI Act 321)
- **November 1, 2014:** Surrender law effective
 - 7-month delayed effective date allowed time to train court and law enforcement
 - DSCO funded 5 multidisciplinary trainings w/ STOP funds (judges, commissioners, clerks, law enforcement, advocates)

WISCONSIN FIREARM SURRENDER FORMS

- Respondent's and Petitioner's Statements of Possession of Firearms (CV-800 and 801)
- Order to Surrender Firearms and Notice of Firearm Surrender Hearing (CV-803 and 802)
- Information for Respondents Regarding the Surrender and Return of Firearms (CV-804)
- All forms available at www.wicourts.gov/forms1/circuit/index.htm
 - Click on "Civil" – "View all civil forms"

CONTACT INFORMATION

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