

FIREARMS SURRENDER LAWS

This document, created by the Wisconsin Coalition Against Domestic Violence (WCADV) Legal Department, does not constitute legal advice.

| State Laws | Federal Gun Control Act | | |
|---|---|--|---|
| Wisconsin Statutes | Persons Subject to Domestic Violence Protection Orders | Persons Convicted of a Felony | Persons Convicted of Misdemeanor Crimes of Domestic Violence (Lautenberg Amendment) |
| <p>1. Domestic Abuse Restraining Order Sec. 813.12(4m)(a) Wis. Stats. [Civil Law] Automatic surrender of any firearms he/she owns or has in his/her possession if the injunction (not TRO) is granted.</p> <p>2. Child Abuse Restraining Order Sec. 813.122(5m)(a) Wis. Stats. [Civil Law] Automatic surrender of any firearms he/she owns or has in his/her possession if the injunction (not TRO) is granted.</p> <p>3. Harassment Restraining Order Sec. 813.125(4m)(a) Wis. Stats. [Civil Law] Firearms surrender is not automatic. The petitioner must request firearms surrender at the injunction hearing. If the court finds clear and convincing evidence that the respondent may use a firearm to cause physical harm to another or to endanger public safety, the court may prohibit the respondent from possessing a firearm.</p> <p>4. Possession of a Firearm Sec. 941.29(1) Wis. Stats. [Criminal Law] A person cannot possess a firearm if he/she has been: (a) Convicted of a felony in this state. (b) Convicted of a crime elsewhere that would be a felony in this state. (c) Found not guilty of a felony in this state by reason of mental disease or defect. (d) Found not guilty of or not responsible for a crime elsewhere that would be a felony in this state by reason of insanity or mental disease, defect or illness. Other reasons can be found under Secs. 941.29(1)(bm), (e), (f) and (g).</p> | <p>1. 18 U.S.C. Sec. 922(g)(8) A person who is subject to a final restraining order is prohibited from purchasing, receiving, or possessing firearms. This applies to orders that restrain a person from harassing, stalking, threatening, or engaging in other conduct that would place an intimate partner* or child of intimate partner in reasonable fear of bodily injury.</p> <p>* Intimate Partner: spouse, former spouse, parent of the child of the person [respondent], or an individual who currently or formerly cohabited with the person. Does not include dating relationship where cohabitation did not occur. See 18 U.S.C. Sec. 921(a)(32)</p> | <p>1. 18 U.S.C. Sec. 922(g)(1), See also 18 U.S.C. Sec. 922(d)(1), 3559(a) Federal law prohibits persons who have been convicted of any felony [a crime punishable by imprisonment for more than one year] from purchasing, receiving or possessing firearms.</p> | <p>1. 18 U.S.C. Sec. 922(d)(9), (g)(9) [Federal law prohibits persons convicted* of misdemeanor crimes of domestic violence** from purchasing, receiving or possessing firearms.</p> <p>* See next page for qualifiers.</p> <p>** Misdemeanor crime of domestic violence: state, tribal or federal misdemeanor that includes as an element the use or attempted use of physical force or threatened use of a deadly weapon committed by a current or former spouse, a parent or guardian of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated. See 18 U.S.C. Sec. 921(a)(33)(A)</p> |

PERSONS EXEMPT FROM FIREARMS SURRENDER

| State Laws | Federal Laws | | |
|--|--|---|---|
| Wisconsin Statutes | VAWA | Brady Bill | Domestic Violence Offender Gun Ban |
| <p>1. Domestic Abuse Restraining Order Sec. 813.12(4m)(ag) Wis. Stats. [Civil Law] If the respondent is a peace officer*, respondent does not have to surrender a firearm he/she is required, as a condition of employment, to possess whether or not he or she is on duty.</p> <p>Sec. 941.29(10)(b) Wis. Stats. [Civil Law] A person who is a member of the U.S. armed forces or national guard may possess a firearm only while in the line of duty.</p> <p>2. Child Abuse Restraining Order Sec. 813.122(5m)(ag) Wis. Stats. [Civil Law] If the respondent is a peace officer*, respondent does not have to surrender a firearm he/she is required, as a condition of employment, to possess whether or not he or she is on duty.</p> <p>Sec. 941.29 (10)(b) Wis. Stats. [Civil Law] A person who is a member of the U.S. armed forces or national guard may possess a firearm only while in the line of duty.</p> <p>3. Harassment Restraining Order Sec. 813.125(4m)(cg) Wis. Stats. [Civil Law] If the respondent is a peace officer*, respondent does not have to surrender a firearm he/she is required, as a condition of employment, to possess whether or not he or she is on duty.</p> <p>Sec. 941.29(10)(b) Wis. Stats. [Civil Law] There is no reference under Sec. 813.125 [harassment restraining order] to persons in the U.S. armed forces or national guard, so it appears they could be prosecuted if possessing a firearm even while in the line of duty.</p> <p>4. Possession of a firearm Sec. 941.29(5) [Criminal Law] If the respondent has received a pardon for the crime or felony in Sec. 941.29(1), and has been expressly authorized to possess a firearm, he/she may possess a firearm. If respondent is a correctional officer employed before May 1, 1982, respondent may possess a firearm only while in the line of duty.</p> | <p>18 U.S.C. Sec. 925(a)(1) [Civil Law] Law enforcement officers may possess a firearm on duty.** A person who is a member of the U.S. armed forces or national guard may possess a firearm only while in the line of duty.</p> <p>**This exemption from surrender of firearms for law enforcement officers is for a service weapon only, when the service person is on duty or is required to possess a weapon off-duty. This exemption does not apply to personal weapons.</p> <p>See Interpretation by Bureau of Alcohol, Tobacco and Firearms (ATF) http://www.atf.treas.gov/pub/fire-explo_pub/i33102.pdf</p> | <p>18 U.S.C. Sec. 925(a)(1) [Criminal] Law enforcement officers may possess a firearm on duty. A person who is a member of the U.S. armed forces or national guard may possess a firearm only while in the line of duty.</p> | <p>18 U.S.C. Sec. 925(a)(1) [Criminal] Law enforcement officers and U.S. armed forces or national guard members may not possess a firearm at any time. [NO EXEMPTIONS].</p> <p>But see:</p> <p>18 U.S.C. Sec. 921(a)(33)(B)(i) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence for purposes of the gun ban unless:</p> <ol style="list-style-type: none"> (1) the person was represented by counsel in the case or knowingly and intelligently waived the right to counsel and (2) if the person was entitled to a jury trial in the jurisdiction in which the case was tried either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury by guilty plea or otherwise. <p>18 U.S.C. Sec. 921(a)(33)(B)(ii) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence if any of the following occurred***:</p> <ol style="list-style-type: none"> (1) the conviction has been expunged or set aside (2) it is an offense for which the person has been pardoned (3) it is an offense for which the person has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense). <p>***Exception: if the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.</p> |

* Peace Officer: any person vested by law with the duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes. **Sec. 939.22(22) Wis. Stats.**