



ENGROSSED 2017 ASSEMBLY BILL 65

February 20, 2018 - Printed by direction of SENATE CHIEF CLERK.

1 **AN ACT** *to repeal* 941.29 (4); *to renumber* 175.35 (2g) (b); *to renumber and*
2 *amend* 175.35 (3); *to amend* 48.57 (3p) (g) 2., 165.63 (4) (a), 813.1285 (3) (a)
3 1. d., 813.1285 (4) (b) 1. (intro.), 813.1285 (7) (b), 941.29 (1g) (a), 973.12 and
4 976.05 (12); and *to create* 165.988, 175.35 (2g) (b) 2., 175.35 (3) (b), 175.35 (4),
5 939.46 (3), 939.6195 and 941.2905 of the statutes; **relating to:** grants to school
6 districts that employ an armed school safety officer; furnishing, purchasing, or
7 possessing a firearm for a person who is prohibited from possessing a firearm;
8 mandatory minimum sentences for individuals who commit certain firearm
9 violations; and providing criminal penalties.

Analysis by the Legislative Reference Bureau

Engrossment information:

The text of Engrossed 2017 Assembly Bill 65 consists of the following documents adopted in the assembly on February 20, 2018: Assembly Substitute Amendment 1 as affected by Assembly Amendment 1, as affected by Assembly Amendment 1, and Assembly Amendment 2. The text also includes the February 20, 2018, chief clerk's correction to Assembly Amendment 1 to Assembly Amendment 1 to Assembly Substitute Amendment 1 to Assembly Bill 65.

ENGROSSED ASSEMBLY BILL 65***Content of Engrossed 2017 Assembly Bill 65:***

This bill creates a crime for purchasing a firearm with the intent to transfer it to a person who is prohibited from possessing a firearm, which is also known as “straw purchasing.” The crime under the bill includes furnishing or possessing a firearm for a prohibited person.

Under current law, a person who knowingly furnishes with a firearm a person who is prohibited from possessing a firearm may be convicted of illegal possession of a firearm. Under current law, a federally licensed firearm dealer may not transfer a handgun to a person until the person has completed a form that the dealer must use to conduct a background check on the person. If a person provides false information on the form, the person must be fined not less than \$500 nor more than \$10,000 and may be imprisoned for not more than nine months. This bill increases the penalty to a Class H felony if the false information regards whether the person is purchasing the firearm with the purpose or intent of transferring the firearm to a person who is prohibited from possessing a firearm. This bill authorizes the Department of Justice to prosecute the violation.

This bill also creates an affirmative defense to straw purchasing crimes if the defendant has ever filed a petition for a domestic abuse injunction or a child abuse injunction against the person for whom the defendant was furnishing, purchasing, or possessing the firearm or for whom the defendant provided false information on a firearm form.

Under this bill, a person is subject to a mandatory minimum period of confinement in prison of four years if the person is convicted of illegally possessing a firearm or convicted of another crime involving a firearm and, within five years prior to that conviction, he or she had been convicted of committing either three misdemeanors or one felony. This mandatory minimum sentence requirement expires on July 1, 2022.

This bill allows DOJ to provide grants to school districts to employ law enforcement officers or former law enforcement officers as armed school safety officers. A school district may spend the grant moneys only on costs associated with employing the armed school safety officer. This bill provides that a school district may receive a grant for three consecutive years and the grant will cover 75 percent of the costs in the first year, 50 percent in the second year, and 25 percent in the third year. Under this bill, DOJ indemnifies the school district and the armed school safety officer for any actions taken in good faith.

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

1 **SECTION 1.** 48.57 (3p) (g) 2. of the statutes is amended to read:
2 48.57 (**3p**) (g) 2. The person has had imposed on him or her a penalty specified
3 in s. 939.64, 1999 stats., or s. 939.641, 1999 stats., or s. 939.6195, 939.62, 939.621,

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1 939.63 or 939.645 or has been convicted of a violation of the law of any other state
2 or federal law under circumstances under which the person would be subject to a
3 penalty specified in any of those sections if convicted in this state.

4 **SECTION 2.** 165.63 (4) (a) of the statutes is amended to read:

5 165.63 (4) (a) Enforce or investigate a violation of s. 941.29 or 941.2905.

6 **SECTION 3.** 165.988 of the statutes is created to read:

7 **165.988 Grants for armed school safety officers. (1)** In this section:

8 (a) "Former officer" means a person who was formerly employed as a law
9 enforcement officer to whom s. 941.23 (2) (c) 1. to 7. applies.

10 (b) "Law enforcement officer" means a person who is employed in this state by
11 a public agency as a law enforcement officer and to whom s. 941.23 (1) (g) 2. to 5. and
12 (2) (b) 1. to 3. applies.

13 (2) The department of justice may provide grants from the appropriation under
14 s. 20.455 (3) (g) to school districts to employ law enforcement officers or former law
15 enforcement officers as armed school safety officers.

16 (3) A school district applying to the department of justice for a grant under sub.
17 (2) shall include a proposed plan of expenditure of the grant moneys. The plan shall
18 also include that any armed school safety officer shall report to the principal of the
19 school at which he or she is assigned.

20 (4) A school district that receives grant moneys under sub. (2) may expend the
21 moneys only on costs associated with employing armed school safety officer.

22 (5) A school district may receive a grant under sub. (2) for 3 consecutive years
23 without submitting a new application each year. In the first year, the grant shall
24 cover 75 percent of the costs associated with employing armed school safety officers;
25 in the 2nd year, the grant shall cover 50 percent of the costs associated with

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1 employing armed school safety officers; and in the 3rd year, the grant shall cover 25
2 percent of the costs associated with employing armed school safety officers.

3 **(6)** The department of justice shall indemnify a school district receiving grant
4 moneys and an armed school safety officer employed using the grant moneys for any
5 actions taken in good faith.

6 **SECTION 4.** 175.35 (2g) (b) of the statutes is renumbered 175.35 (2g) (b) 1.

7 **SECTION 5.** 175.35 (2g) (b) 2. of the statutes is created to read:

8 175.35 **(2g)** (b) 2. The department of justice shall ensure that each notification
9 form under subd. 1. requires the transferee to indicate that he or she is not
10 purchasing the firearm with the purpose or intent to transfer the firearm to a person
11 who is prohibited from possessing a firearm under state or federal law and that each
12 notification form informs the transferee that making a false statement with regard
13 to this purpose or intent is a Class H felony.

14 **SECTION 6.** 175.35 (3) of the statutes is renumbered 175.35 (3) (a) and amended
15 to read:

16 175.35 **(3)** (a) Any person who intentionally violates sub. (2), ~~(2e)~~, (2f), or (2j)
17 shall be fined not less than \$500 nor more than \$10,000 and may be imprisoned for
18 not more than 9 months.

19 **SECTION 7.** 175.35 (3) (b) of the statutes is created to read:

20 175.35 **(3)** (b) 1. Except as provided in subd. 2., a person who intentionally
21 violates sub. (2e) shall be fined not less than \$500 nor more than \$10,000 and may
22 be imprisoned for not more than 9 months.

23 2. A person who violates sub. (2e) by intentionally providing false information
24 regarding whether he or she is purchasing the firearm with the purpose or intent to
25 transfer the firearm to another who the person knows or reasonably should know is

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1 prohibited from possessing a firearm under state or federal law is guilty of a Class
2 H felony. The penalty shall include a fine that is not less than \$500.

3 **SECTION 8.** 175.35 (4) of the statutes is created to read:

4 175.35 (4) The department of justice or the district attorney may institute,
5 manage, control, and direct, in the proper county, a prosecution for a violation of sub.
6 (2e) that is punishable under sub. (3) (b) 2. When prosecuting such a violation, the
7 department of justice shall have and exercise all powers conferred upon district
8 attorneys.

9 **SECTION 9.** 813.1285 (3) (a) 1. d. of the statutes is amended to read:

10 813.1285 (3) (a) 1. d. The court informs the person to whom the firearm is
11 surrendered of the requirements and penalties under s. ~~941.29 (4)~~ 941.2905.

12 **SECTION 10.** 813.1285 (4) (b) 1. (intro.) of the statutes is amended to read:

13 813.1285 (4) (b) 1. (intro.) If the respondent wants to surrender his or her
14 firearms to a person who is not the sheriff and who appears at the hearing to
15 surrender firearms, and if the court, after considering all relevant factors and input
16 from the petitioner, approves the surrender and informs the person to whom the
17 firearms are surrendered of the requirements and penalties under s. ~~941.29 (4)~~
18 941.2905, order the respondent to surrender his or her firearms in one of the
19 following ways:

20 **SECTION 11.** 813.1285 (7) (b) of the statutes is amended to read:

21 813.1285 (7) (b) If a respondent surrenders a firearm under this section that
22 is owned by a person other than the respondent, the person who owns the firearm
23 may apply for its return to the circuit court for the county in which the person to
24 whom the firearm was surrendered is located. The court shall order such notice as
25 it considers adequate to be given to all persons who have or may have an interest in

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1 the firearm and shall hold a hearing to hear all claims to its true ownership. If the
2 right to possession is proved to the court's satisfaction, it shall order the firearm
3 returned. If the court returns a firearm under this paragraph, the court shall inform
4 the person to whom the firearm is returned of the requirements and penalties under
5 s. ~~941.29~~ (4) 941.2905.

6 **SECTION 12.** 939.46 (3) of the statutes is created to read:

7 939.46 (3) A petitioner under s. 813.12 or 813.122, or an individual whose
8 parent, stepparent, or legal guardian filed a petition under s. 813.122 on behalf of the
9 individual as a child victim, as defined in s. 813.122 (1) (c), has an affirmative defense
10 for an offense under s. 175.35 (2e) that is punishable under s. 175.35 (3) (b) 2., or for
11 an offense under s. 941.2905, if the person prohibited from possessing a firearm was
12 the respondent in the action under s. 813.12 or 813.122.

13 **SECTION 13.** 939.6195 of the statutes is created to read:

14 **939.6195 Mandatory minimum sentence for repeat firearm crimes. (1)**

15 In this section:

16 (a) "Firearm violation" means any of the following:

17 1. A violation of s. 941.29 or 941.2905.

18 2. A commission of any crime specified under chs. 939 to 951 and 961 if the
19 person uses a firearm in the commission of the crime.

20 (b) "Repeater" has the meaning given in s. 939.62 (2).

21 (2) If a person who is a repeater is convicted of a firearm violation, the court
22 shall impose a bifurcated sentence under s. 973.01. Notwithstanding s. 973.01 (2)
23 (b), the term of confinement in prison portion of the bifurcated sentence shall be at
24 least 4 years, but otherwise the penalties for the crime apply, subject to any
25 applicable penalty enhancement. The court may not place the person on probation.

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1 **(3)** This section does not apply to sentences imposed after July 1, 2022.

2 **(4)** The department of justice shall, after consulting with persons the
3 department determines to be appropriate, including the city of Milwaukee and the
4 Milwaukee police department, prepare a report on the efficacy of the mandatory
5 minimum sentence under this section. No later than August 1, 2022, the department
6 of justice shall submit the report to the chief clerk of each house of the legislature,
7 for distribution to the legislature under s. 13.172 (2).

8 **SECTION 14.** 941.29 (1g) (a) of the statutes is amended to read:

9 941.29 **(1g)** (a) “Violent felony” means any felony under s. 943.23 (1m), 1999
10 stats., or s. 943.23 (1r), 1999 stats., this section, or s. 940.01, 940.02, 940.03, 940.05,
11 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21,
12 940.225, 940.23, 940.235, 940.285 (2), 940.29, 940.295 (3), 940.30, 940.302, 940.305,
13 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.2905, 941.292,
14 941.30, 941.327 (2) (b) 3. or 4., 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32,
15 943.87, 946.43, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.051, 948.06,
16 948.07, 948.08, 948.085, or 948.30.

17 **SECTION 15.** 941.29 (4) of the statutes is repealed.

18 **SECTION 16.** 941.2905 of the statutes is created to read:

19 **941.2905 Straw purchasing of firearms.** **(1)** Whoever intentionally
20 furnishes, purchases, or possesses a firearm for a person, knowing that the person
21 is prohibited from possessing a firearm under s. 941.29 (1m), is guilty of a Class G
22 felony.

23 **(2)** The prohibition in sub. (1) against possessing a firearm for a person who
24 is prohibited from possessing a firearm does not apply to the possession of a firearm
25 by any of the following:

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1 (a) A person to whom the firearm is surrendered under s. 813.1285.

2 (b) A person who has been designated under s. 51.20 (13) (cv) 3. to store the
3 firearm during the duration of the order under s. 51.20 (13) (cv) 1. not to possess a
4 firearm.

5 (c) A person who has been designated under s. 51.45 (13) (i) 3. to store the
6 firearm during the duration of the order under s. 51.45 (13) (i) 1. not to possess a
7 firearm.

8 (d) A person who has been designated under s. 54.10 (3) (f) 3. to store the
9 firearm during the duration of the order under s. 54.10 (3) (f) 1.

10 (e) A person who has been designated under s. 55.12 (10) (c) to store the firearm
11 during the duration of the order under s. 55.12 (10) (a).

12 (f) A person not covered under pars. (a) to (e) who has been designated to store
13 the firearm during the duration of any temporary prohibition on the possession of a
14 firearm.

15 **SECTION 17.** 973.12 of the statutes is amended to read:

16 **973.12 Sentence of a repeater or persistent repeater.** (1) Whenever a
17 person charged with a crime will be a repeater or a persistent repeater under s.
18 939.62 or subject to a penalty under s. 939.6195 if convicted, any applicable prior
19 convictions may be alleged in the complaint, indictment or information or
20 amendments so alleging at any time before or at arraignment, and before acceptance
21 of any plea. The court may, upon motion of the district attorney, grant a reasonable
22 time to investigate possible prior convictions before accepting a plea. If the prior
23 convictions are admitted by the defendant or proved by the state, he or she shall be
24 subject to sentence under s. 939.6195 or 939.62 unless he or she establishes that he
25 or she was pardoned on grounds of innocence for any crime necessary to constitute

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1 him or her a repeater or a persistent repeater. An official report of the F.B.I. or any
2 other governmental agency of the United States or of this or any other state shall be
3 prima facie evidence of any conviction or sentence therein reported. Any sentence
4 so reported shall be deemed prima facie to have been fully served in actual
5 confinement or to have been served for such period of time as is shown or is consistent
6 with the report. The court shall take judicial notice of the statutes of the United
7 States and foreign states in determining whether the prior conviction was for a felony
8 or a misdemeanor.

9 (2) In every case of sentence under s. 939.6195 or 939.62, the sentence shall be
10 imposed for the present conviction, but if the court indicates in passing sentence how
11 much thereof is imposed because the defendant is a repeater, it shall not constitute
12 reversible error, but the combined terms shall be construed as a single sentence for
13 the present conviction.

14 **SECTION 18.** 976.05 (12) of the statutes is amended to read:

15 976.05 (12) Nothing in this section or in the agreement on detainers shall be
16 construed to require the application of s. 939.6195 or 939.62 to any person on account
17 of any conviction had in a proceeding brought to final disposition by reason of the use
18 of said agreement.

19 **SECTION 19. Initial applicability.**

20 (1) FALSE INFORMATION ON NOTIFICATION FORMS. The treatment of section 175.35
21 (4) of the statutes, the renumbering of section 175.35 (2g) (b) of the statutes, the
22 renumbering and amendment of section 175.35 (3) of the statutes, and the creation
23 of section 175.35 (2g) (b) 2. and (3) (b) of the statutes first apply to offenses committed
24 on the effective date of this subsection.

