

# State of Wisconsin



2017 Senate Bill 408

Date of enactment: **March 28, 2018**

Date of publication\*: **March 29, 2018**

## 2017 WISCONSIN ACT 145

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

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

**SECTION 1.** 48.57 (3p) (g) 2. of the statutes is amended to read:

48.57 (3p) (g) 2. The person has had imposed on him or her a penalty specified in s. 939.64, 1999 stats., or s. 939.641, 1999 stats., or s. ~~939.6195~~, 939.62, 939.621, 939.63 or 939.645 or has been convicted of a violation of the law of any other state or federal law under circumstances under which the person would be subject to a penalty specified in any of those sections if convicted in this state.

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

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

**SECTION 3.** 175.35 (2g) (b) of the statutes is renumbered 175.35 (2g) (b) 1.

**SECTION 4.** 175.35 (2g) (b) 2. of the statutes is created to read:

175.35 (2g) (b) 2. The department of justice shall ensure that each notification form under subd. 1. requires the transferee to indicate that he or she is not purchasing

the firearm with the purpose or intent to transfer the firearm to a person who is prohibited from possessing a firearm under state or federal law and that each notification form informs the transferee that making a false statement with regard to this purpose or intent is a Class H felony.

**SECTION 5.** 175.35 (3) of the statutes is renumbered 175.35 (3) (a) and amended to read:

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

**SECTION 6.** 175.35 (3) (b) of the statutes is created to read:

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

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

\* 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."

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

**SECTION 7.** 175.35 (4) of the statutes is created to read:

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

**SECTION 8.** 813.1285 (3) (a) 1. d. of the statutes is amended to read:

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

**SECTION 9.** 813.1285 (4) (b) 1. (intro.) of the statutes is amended to read:

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

**SECTION 10.** 813.1285 (7) (b) of the statutes is amended to read:

813.1285 (7) (b) If a respondent surrenders a firearm under this section 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)~~ 941.2905.

**SECTION 11.** 939.46 (3) of the statutes is created to read:

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

**SECTION 12.** 939.6195 of the statutes is created to read:

**939.6195 Mandatory minimum sentence for repeat firearm crimes.** (1) In this section:

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

1. A violation of s. 941.29 or 941.2905.

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

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

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

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

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

**SECTION 13.** 941.29 (1g) (a) of the statutes is amended to read:

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

**SECTION 14.** 941.29 (4) of the statutes is repealed.

**SECTION 15.** 941.2905 of the statutes is created to read:

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

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

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

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

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

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

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

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

**SECTION 16.** 973.12 of the statutes is amended to read:

**973.12 Sentence of a repeater or persistent repeater.** (1) Whenever a person charged with a crime will be a repeater or a persistent repeater under s. 939.62 or subject to a penalty under s. 939.6195 if convicted, any applicable prior convictions may be alleged in the complaint, indictment or information or amendments so alleging at any time before or at arraignment, and before acceptance of any plea. The court may, upon motion of the district attorney, grant a reasonable time to investigate possible prior convictions before accepting a plea. If the prior convictions are admitted by the defendant or proved by the state, he or she shall be subject to sentence under s. 939.6195 or 939.62 unless he or she establishes that he or she was pardoned on grounds of innocence for any crime necessary to constitute him or her a repeater or a persistent repeater. An official report of the F.B.I. or any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any

conviction or sentence therein reported. Any sentence so reported shall be deemed prima facie to have been fully served in actual confinement or to have been served for such period of time as is shown or is consistent with the report. The court shall take judicial notice of the statutes of the United States and foreign states in determining whether the prior conviction was for a felony or a misdemeanor.

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

**SECTION 17.** 976.05 (12) of the statutes is amended to read:

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

**SECTION 18. Initial applicability.**

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

(2) REPEAT FIREARM CRIMES. The treatment of section 939.6195 of the statutes first applies to offenses committed on the effective date of this subsection but does not preclude counting prior offenses for sentencing purposes.