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# DAN KNODL

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STATE REPRESENTATIVE • 24<sup>TH</sup> ASSEMBLY DISTRICT

## **Assembly Bill 13**

Public Testimony

Senate Committee on Judiciary and Public Safety

October 28, 2015

Thank you Chairman Wanggaard and committee members for hearing testimony on Assembly Bill 13. AB 13 protects the property rights of lawful gun owners by clarifying statute to ensure the timely return of their seized property. When the gun owner has been cleared of charges or wrongdoing and the lawful owner meets certain requirements, the seized firearm must be returned within 35 business days. This is certainly an improvement over the often lengthy wait times many law abiding citizens have experienced.

This legislation was drafted with input from several attorney generals, police associations, and gun rights advocates. The bill has been authored to resolve an issue that has been occurring primarily in the Milwaukee criminal justice system, but is not unique to Milwaukee and could currently happen anywhere in the state. With passage of this bill, a reasonable framework for return of a seized firearm will be in place.

An event occurred on August 15, 2013 at Kochanski's Concertina Beer Hall in Milwaukee that put this issue on my radar. Andy Kochanski was tending to patrons on a Friday night when armed individuals entered his establishment. Andy engaged the individuals with his firearm neutralizing the threat and protecting himself as well as his patrons. Milwaukee County prosecutors made the determination that Mr. Kochanski acted in self-defense and decided not to file charges regarding the incident. The unfortunate part of this story is that Mr. Kochanski had to wait nearly eight months to get his lawfully owned property returned to him.

Assembly Bill 13 is supported by the Milwaukee Police Association, Milwaukee County Sheriff David Clarke, and the National Rifle Association. Thank you again for the opportunity to testify and if any committee members have questions I am happy to answer them.



## **AB 13 Return of a Seized Firearm to its Lawful Owner**

Testimony of Senator Steve Nass

Senate Committee on Judiciary & Public Safety

October 28, 2015 • 330 Southwest, State Capitol

Thank you Chairman Wanggaard for holding a public hearing and allowing me to testify in support of Assembly Bill 13. This legislation requires the return of property to law abiding citizens who have been cleared of charges or wrongdoing in connection with the seizure of a firearm. It creates a maximum timeline for the process of returning seized firearms to their rightful owners, so that innocent individuals will no longer be subject to long wait times for the return of their property.

Under the bill, a gun owner cleared of criminal wrongdoing, who is legally able to possess a firearm, can petition the court for the return of their property. The court must schedule a hearing on the matter within 20 business days, and the court must make a ruling within 5 business days after the hearing. If a judge determines the firearm must be returned, the law enforcement entity holding it is required to return it within 10 business days of receiving the return of firearms notice.

The bill requires the court to order the return of a seized firearm, provided all of the following apply:

- Either: 1) the firearm is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or 2) all proceedings and investigations in which the evidence might be required have been completed.
- The person is not prohibited from possessing a firearm under state or federal law.
- One of the following has occurred:
  - The DA has affirmatively declined to file charges in connection with the seizure against the person.
  - All charges filed in connection with the seizure against the person have been dismissed.

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- Ten months have passed since the seizure and no charges have been filed against the person.
- The trial court has reached final disposition for all charges in connection with the seizure and the person has not been adjudged guilty, or not guilty by reason of mental disease or defect, of a crime in connection with the seizure.
- The person has established that he or she had no prior knowledge of and gave no consent to the commission of the activity that led to the seizure.

An example of the need for this legislation occurred in Milwaukee, where Andy Kochanski, owner of Kochanski's Concertina Beer Hall, was forced to use a firearm in self-defense during an armed robbery at his business in 2013. Milwaukee County prosecutors made the determination that Kochanski acted in self-defense and in defense of his patrons shortly after the incident, but it took him more than 7 months to get his gun back from police.

AB 13 is designed to address a problem where lawful owners are being forced to wait an excessive length of time to get their property back when they did nothing wrong. The bill will not give property back to individuals who committed a crime with it. The bill does not impose a mandatory waiting period before a seized firearm can be returned or require a person to go through a court process. Instead it gives the individual this option as a last resort.

This legislation is supported by the Milwaukee Police Association, Milwaukee County Sheriff David Clarke, and the National Rifle Association.

Thank you again for the opportunity to testify in support of AB 13. If any committee members have questions on this bill, I would be happy to answer them at this time.



Senate Committee on Judiciary and Public Safety,

Wisconsin Carry, Inc. is an all-volunteer non-profit organization incorporated in 2009. We seek to preserve and expand the right to keep and bear arms using an “all of the above” approach that includes 1) civil litigation 2) public relations 3) education and 4) grass roots legislative activism. We are the largest state-based gun rights group in WI.

**We submit this testimony and urge you to REJECT Assembly Bill 13 because, while well intentioned, it actually makes the process of obtaining the return of lawfully owned firearms seized by Milwaukee Police, MORE difficult.**

Since our founding one of the most frequent type of cases that we have funded, and our attorneys litigated, are “return of property petitions” filed in Milwaukee County Circuit Court. I would estimate that we have funded and/or advised individuals on several dozen of these cases in the past few years.

In Milwaukee, the police department has a notable practice of seizing virtually any gun they come across during the course of their daily activities, and refusing to return them without a court ordering them to do so. Many people who have had guns seized have been told by MPD that “you won’t be able to get your guns back” or “it will cost you more in attorneys fee’s to get your gun back than it is worth” and as a result, thousands of citizens have had their 4th amendment rights violated by MPD. Wisconsin Carry has filed federal lawsuits to obtain relief in these cases, however, the cost of those lawsuits is significant. In the absence of “attorney fee shifting” for successful petitions in Wisconsin’s return of property law, its clear to us MPD will be able to unlawfully retain far more guns than we have the resources to litigate the return of (whether via return of property hearings or federal civil rights lawsuits)

These seized guns which we have had to go to court to obtain the return of include guns that were never used in a crime where a crime was never charged, guns that were seized without just cause from individuals who had a legal right to posses them, guns that were seized during an arrest where charges were never filed, guns that were seized during a terry-stop where no arrest was ever made, AND guns that were seized for evidence after they were used in self-defense. (guns seized for evidence after a self-defense shooting are the vast MINORITY of cases).

We believe that in the spirit of the 4th Amendment, MPD should affirmatively return firearms that they have no lawful justification in keeping from citizens without making the process so arduous that people just give up. The current system is de-facto confiscation. MOST of the guns seized by MPD which we get returned were not guns used in self-defense. Most were lawfully possessed guns seized for “safe keeping” or seized during a terry stop where an arrest was never made or seized during an arrest where charges are never even filed.

Under currently law, a citizen may immediately file a return of property petition, get a hearing scheduled, and make their case for the return of property before a judge immediately after their gun was taken by MPD. **If Assembly bill 13 becomes law, the return of any gun could now legally be delayed for 6 months.**

ASSEMBLY BILL 13, while attempting to shorten the length of time a gun used in self-defense can be held by a department, in effect extends the amount of time before any guns can be ordered returned because MOST cases of gun seizures would NOT meet one of the ‘5 qualifying events’ described in the bill. Please be welcome to reach out for more information about MPD’s practices and how this could be addressed legislatively.

Nik Clark

Chairman/President - Wisconsin Carry, Inc. - [nik@wisconsincarry.org](mailto:nik@wisconsincarry.org) - [www.wisconsincarry.org](http://www.wisconsincarry.org)



P.O. Box 270403, Milwaukee, WI 53227





*County of Milwaukee*  
**Office of the Sheriff**

**David A. Clarke Jr.**  
**Sheriff**

Senate Committee on Judiciary and Public Safety  
Re: AB 13  
October 27, 2015

Greetings, Chairman Wanggaard and Vice-Chair Vukmir, two dedicated legislators with whom we in the Milwaukee County Sheriff's Office enjoy a fine working relationship, and members of the committee.

Unfortunately, matters in Milwaukee County have prevented Sheriff David Clarke and I from attending today's hearing on AB 13, as I was able to in the Winter hearing before the Assembly Committee on Criminal Justice and Public Safety, to provide this testimony.

This important bill, a first step that my office has supported with Representative Knodl, constitutes an admirable effort to reinforce the protection of the Second Amendment to private citizens in Wisconsin. As such, it will surely generate a fair amount of attention, as all such matters seem to do. I applaud the author, Representative Knodl, and cosponsors including the venerable Chair of this committee and Representative Joe Sanfelippo, of the Milwaukee Delegation, for their willingness in taking on a highly charged issue such as this, and beginning a discussion in this legislative session on how best to maintain one's Constitutional protections.

Sheriff Clarke of Milwaukee County, for whom I work, believes that AB 13 constitutes a strong step towards law enforcement's desire to see the rights of potential victims safeguarded to the greatest degree possible under law.

I am confident that, should this legislation pass, my peers in Milwaukee area law enforcement are of one voice:

We all concur that any proposed changes that strengthen our resolve relative to crime guns, and the accessibility of crime guns, including moves to make it a felony for people to illegally possess a firearm, or to strengthen the penalties for those who fraudulently attempt or participate in one's illegal purchase, are needed. But we are not talking in this bill about crime guns...we're talking about guns seized, very reasonably I might add, by law enforcement in matters in which guilt was not the final outcome of a criminal referral.

The so-called "trigger events" contemplated by this bill bear that out.

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Senate Committee on Judiciary and Public Safety  
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Quite simply, the proposed legislation begins the process, Sheriff Clarke believes, of affirmatively putting the onus of the return of this seized property where it belongs: On the government, not the citizens...and, for the first time, under some reasonable timetable.

I know the issue may seem benign... what is the difference of one firearm? But in Milwaukee, an area with some unfortunately deep pockets of entrenched poverty, that is what some households have.

And I have personally worked with persons involved in self-defense or defense of other shootings, in which the subject's only firearm was seized, again very responsibly and reasonably, in connection with the ensuing investigation...with that seizure stretching on, in the eyes of the person from whom the property was taken, interminably...month after month.

And in terms of a position of reasonableness, I would be shocked to hear that anyone's position on this occurrence might properly be, as I've heard from within the Criminal Justice system, "Well, tell them to buy another one." We don't do that with vehicles...we don't do that with expensive jewelry...we don't do that with Stradivarius Violins...and we ought not to do it with the tools of their right to self-protection.

Thank you for your time considering our thoughts, and of course we wish this committee the best of continued good luck in your important work.

Cordially Yours,



Edward H. Bailey, Inspector  
Adjutant to Sheriff Clarke