



State of Wisconsin
2021 - 2022 LEGISLATURE

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CMH:cdc

2021 ASSEMBLY BILL 638

October 21, 2021 - Introduced by Representatives ANDRACA, STUBBS, HESSELBEIN, CONLEY, HONG, ANDERSON, HEBL, SNODGRASS, BALDEH, SINICKI, S. RODRIGUEZ, POPE, EMERSON, ORTIZ-VELEZ, NEUBAUER, BILLINGS, BROSTOFF, SPREITZER, SHELTON, GOYKE, BOWEN, OHNSTAD, VINING, CONSIDINE, MOORE OMOKUNDE, SUBECK, VRUWINK, CABRERA and DRAKE, cosponsored by Senators L. TAYLOR, AGARD, JOHNSON, ERPENBACH, ROYS, LARSON, CARPENTER, SMITH and RINGHAND. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to amend** 165.63 (3), 165.63 (4) (d), 175.35 (1) (at), 175.60 (9g) (a) 2.,
2 175.60 (11) (a) 2. f., 801.58 (2m), 813.06, 813.126 (1), 813.127, 813.128 (2g) (b)
3 and 941.29 (1m) (f); and **to create** 801.50 (5sb) and 813.124 of the statutes;
4 **relating to:** extreme risk protection temporary restraining orders and
5 injunctions and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person is prohibited from possessing a firearm, and must surrender all firearms, if the person is subject to a domestic abuse injunction, a child abuse injunction, or, in certain cases, a harassment or an individuals-at-risk injunction. If a person surrenders a firearm because the person is subject to one of those injunctions, the firearm may not be returned to the person until a court determines that the injunction has been vacated or has expired and that the person is not otherwise prohibited from possessing a firearm. A person who is prohibited from possessing a firearm under such an injunction is guilty of a Class G felony for violating the prohibition.

This bill creates an extreme risk protection temporary restraining order and injunction to prohibit a person from possessing a firearm. Under the bill, either a law enforcement officer or a family or household member of the person may file a petition with a court to request an extreme risk protection injunction. The petition must allege facts that show that the person is substantially likely to injure himself or herself or another if the person possesses a firearm.

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Under the bill, the petitioner may request the court to consider first granting a temporary restraining order. If the petitioner does request a TRO, the petitioner must include evidence that there is an immediate and present danger that the person may injure himself or herself or another if the person possesses a firearm and that waiting for the injunction hearing may increase the immediate and present danger.

If the petitioner requests a TRO, the court must hear the petition in an expedited manner. The judge must issue a TRO if, after questioning the petitioner and witnesses or relying on affidavits, the judge determines that it is substantially likely that the petition for an injunction will be granted and the judge finds good cause to believe there is an immediate and present danger that the person will injure himself or herself or another if the person has a firearm and that waiting for the injunction hearing may increase the immediate and present danger. If the judge issues a TRO, the TRO is in effect until the injunction hearing, which must occur within 14 days of the TRO issuance. The TRO must require a law enforcement officer to personally serve the person with the order and to require the person to immediately surrender all firearms in his or her possession. If a law enforcement officer is unable to personally serve the person, then the TRO requires the person to surrender within 24 hours all firearms to a law enforcement officer or a firearms dealer and to provide the court a receipt indicating the surrender occurred.

At the injunction hearing, the court may grant an extreme risk protection injunction ordering the person to refrain from possessing a firearm and, if the person was not subject to a TRO, to surrender all firearms he or she possesses if the court finds by clear and convincing evidence that the person is substantially likely to injure himself or herself or another if the person possesses a firearm. An extreme risk protection injunction is effective for up to one year and may be renewed. A person who is subject to an extreme risk protection injunction may petition to vacate the injunction. If a person surrenders a firearm because the person is subject to an extreme risk protection TRO or injunction, the firearm may not be returned to the person until a court determines that the TRO has expired or the injunction has been vacated or has expired and that the person is not otherwise prohibited from possessing a firearm.

A person who possesses a firearm while subject to an extreme risk protection TRO or injunction is guilty of a Class G felony. In addition, a person who files a petition for an extreme risk protection injunction, knowing the information in the petition to be false, is guilty of the crime of false swearing, a Class H felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

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1 **SECTION 1.** 165.63 (3) of the statutes is amended to read:

2 165.63 (3) REQUESTS FROM COURTS. In making a determination required under
3 s. 813.124 (7) (a), 813.1285 (7) (a), or 968.20 (1m) (d) 1., a judge or court commissioner
4 shall request information under sub. (2) from the department or from a law
5 enforcement agency or law enforcement officer as provided in sub. (4) (d).

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

7 165.63 (4) (d) Aid the court in making a determination required under s.
8 813.124 (7) (a), 813.1285 (7) (a), or 968.20 (1m) (d) 1. or aid an entity in making a
9 determination required under s. 968.20 (1m) (d) 2.

10 **SECTION 3.** 175.35 (1) (at) of the statutes is amended to read:

11 175.35 (1) (at) “Firearms restrictions record search” means a search of
12 department of justice records to determine whether a person seeking to purchase a
13 handgun is prohibited from possessing a firearm under s. 941.29. “Firearms
14 restrictions record search” includes a criminal history record search, a search to
15 determine whether a person is prohibited from possessing a firearm under s. 51.20
16 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
17 system to determine whether a person has been ordered not to possess a firearm
18 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
19 to determine whether the person is subject to an injunction under s. 813.12 or
20 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
21 established by any federally recognized Wisconsin Indian tribe or band, except the
22 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
23 or she is subject to the requirements and penalties under s. 941.29 and that has been
24 filed with the circuit court under s. 813.128 (3g), a search to determine whether the
25 person is subject to a temporary restraining order or injunction under s. 813.124, and

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1 a search to determine whether the person is prohibited from possessing a firearm
2 under s. 813.123 (5m) or 813.125 (4m).

3 **SECTION 4.** 175.60 (9g) (a) 2. of the statutes is amended to read:

4 175.60 **(9g)** (a) 2. The department shall conduct a criminal history record
5 search and shall search its records and conduct a search in the national instant
6 criminal background check system to determine whether the applicant is prohibited
7 from possessing a firearm under federal law; whether the applicant is prohibited
8 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
9 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
10 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
11 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction
12 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
13 by a court established by any federally recognized Wisconsin Indian tribe or band,
14 except the Menominee Indian tribe of Wisconsin, that includes notice to the
15 respondent that he or she is subject to the requirements and penalties under s.
16 941.29 and that has been filed with the circuit court under s. 813.128 (3g); whether
17 the applicant is subject to a temporary restraining order or injunction under s.
18 813.124; and whether the applicant is prohibited from possessing a firearm under
19 s. 813.123 (5m) or 813.125 (4m); and to determine if the court has prohibited the
20 applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1)
21 (c) and if the applicant is prohibited from possessing a dangerous weapon as a
22 condition of release under s. 969.01.

23 **SECTION 5.** 175.60 (11) (a) 2. f. of the statutes is amended to read:

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1 175.60 (11) (a) 2. f. The individual becomes subject to an a temporary
2 restraining order or injunction described in s. 941.29 (1m) (f) or is ordered not to
3 possess a firearm under s. 813.123 (5m) or 813.125 (4m).

4 **SECTION 6.** 801.50 (5sb) of the statutes is created to read:

5 801.50 (5sb) Venue of an action under s. 813.124 shall be in the county in which
6 the cause of action arose or where the petitioner or the respondent resides.

7 **SECTION 7.** 801.58 (2m) of the statutes is amended to read:

8 801.58 (2m) If, under sub. (2), the judge determines that the request for
9 substitution was made timely and in proper form, any ex parte order granted by the
10 original judge remains in effect according to the terms, except that a temporary
11 restraining order issued under s. 813.12 (3), 813.122 (4), 813.123 (4), 813.124 (2t), or
12 813.125 (3) by the original judge is extended until the newly assigned judge holds a
13 hearing on the issuance of an injunction. The newly assigned judge shall hear any
14 subsequent motion to modify or vacate any ex parte order granted by the original
15 judge.

16 **SECTION 8.** 813.06 of the statutes is amended to read:

17 **813.06 Security for damages.** In proceedings under s. 767.225 the court or
18 judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122,
19 813.124, 813.125 and 823.113 the court or judge shall, require a bond of the party
20 seeking an injunction, with sureties, to the effect that he or she will pay to the party
21 enjoined such damages, not exceeding an amount to be specified, as he or she may
22 sustain by reason of the injunction if the court finally decides that the party was not
23 entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon
24 the party enjoined and the officer serving the same shall, within 8 days after such
25 service, file his or her return in the office of the clerk of the court.

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1 **SECTION 9.** 813.124 of the statutes is created to read:

2 **813.124 Extreme risk protection temporary restraining orders and**
3 **injunctions. (1) DEFINITIONS.** In this section:

4 (a) “Family or household member” means any of the following:

5 1. A person related by blood, adoption, or marriage to the respondent.

6 2. A person with whom the respondent has or had a dating relationship, as
7 defined in s. 813.12 (1) (ag), or with whom the respondent has a child in common.

8 3. A person who resides with, or within the 6 months before filing a petition,
9 had resided with, the respondent.

10 4. A domestic partner under ch. 770 of the respondent.

11 5. A person who is acting or has acted as the respondent’s legal guardian or who
12 is or was a foster parent or other physical custodian described in s. 48.62 (2) of the
13 respondent.

14 6. A person for whom the respondent is acting or has acted as a legal guardian
15 or for whom the respondent is or was the foster parent or other physical custodian
16 described in s. 48.62 (2).

17 (b) “Firearms dealer” has the meaning given in s. 175.35 (1) (ar).

18 (c) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

19 **(2) COMMENCEMENT OF ACTION AND RESPONSE.** No action under this section may
20 be commenced by complaint and summons. An action under this section may be
21 commenced only by a petition described under sub. (4) (a).

22 **(2m) PROCEDURE.** Procedure for an action under this section is as follows:

23 (a) If the petitioner requests an extreme risk protection temporary restraining
24 order, the court shall consider the request as provided under sub. (2t). If the court
25 issues a temporary restraining order, the court shall set forth the date, that must be

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1 within 14 days of issuing the temporary restraining order, for the hearing on the
2 injunction and shall forward a copy of the temporary restraining order, the
3 injunction hearing date, and the petition to the appropriate law enforcement agency
4 with jurisdiction over the respondent's residence. The law enforcement agency shall
5 immediately, or as soon as practicable, serve it on the respondent. If personal service
6 cannot be effected upon the respondent, the court may order other appropriate
7 service.

8 (b) The court shall hold a hearing under sub. (3) on whether to issue an extreme
9 risk protection injunction, which is the final relief. If there was no temporary
10 restraining order, the respondent shall be served notice of the petition by a law
11 enforcement officer and the date for the hearing shall be set upon motion by either
12 party. If personal service cannot be effected upon the respondent, the court may
13 order other appropriate service. The service shall include the name of the respondent
14 and of the petitioner, and, if known, notice of the date, time, and place of the
15 injunction hearing.

16 (c) When the respondent is served under this subsection, the respondent shall
17 be provided notice of the requirements and penalties under s. 941.29.

18 **(2t) EXTREME RISK PROTECTION TEMPORARY RESTRAINING ORDER.** (a) A judge shall
19 issue an extreme risk protection temporary restraining order under this subsection
20 prohibiting the respondent from possessing a firearm and ordering the respondent
21 to surrender all firearms in the respondent's possession if all of the following occur:

22 1. A petitioner files a petition alleging the elements under sub. (4) (a), and
23 requests a temporary restraining order. The petition requesting a temporary
24 restraining order shall be heard by the court in an expedited manner. The court shall

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1 examine under oath the petitioner and any witness the petitioner may produce or
2 may rely on an affidavit submitted in support of the petition.

3 2. The judge finds all of the following:

4 a. Substantial likelihood that the petition for an injunction will be successful.

5 b. Good cause to believe that there is an immediate and present danger that
6 the respondent may injure himself or herself or another person if the respondent
7 possesses a firearm and that waiting for the injunction hearing may increase the
8 immediate and present danger.

9 (b) A temporary restraining order issued under this section shall remain in
10 effect until a hearing is held on issuance of an injunction under sub. (3). Notice need
11 not be given to the respondent before issuing a temporary restraining order under
12 this subsection. A temporary restraining order may be entered only against the
13 respondent named in the petition and may not be renewed or extended.

14 (c) A temporary restraining order issued under this subsection shall inform the
15 respondent named in the petition of the requirements and penalties under s. 941.29.

16 (d) The temporary restraining order issued under par. (a) shall require one of
17 the following:

18 1. If a law enforcement officer is able to personally serve the respondent with
19 the order, the officer to require the respondent to immediately surrender all firearms
20 in the respondent's possession.

21 2. If a law enforcement officer is not able to personally serve the respondent
22 with the order, the respondent to, within 24 hours of service, surrender all firearms
23 in the respondent's possession to a law enforcement officer or transfer or sell all
24 firearms in the respondent's possession to a firearms dealer. Within 48 hours of
25 service, the respondent shall file with the court that issued the order under par. (a)

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1 a receipt indicating that the respondent surrendered, transferred, or sold the
2 firearms. The receipt must include the date on which the firearm was surrendered,
3 transferred, or sold and the manufacturer, model, and serial number of each firearm
4 and must be signed by either the law enforcement officer to whom the firearm was
5 surrendered or the firearms dealer to whom the firearm was transferred or sold.

6 **(3) EXTREME RISK PROTECTION INJUNCTION.** (a) The court shall hold a hearing on
7 whether to issue an extreme risk protection injunction, which is the final relief. At
8 the hearing, a judge may grant an injunction prohibiting the respondent from
9 possessing a firearm and, if there was no temporary restraining order under sub. (2t),
10 ordering the respondent to surrender all firearms in the respondent's possession if
11 all of the following occur:

12 1. The petitioner files a petition alleging the elements set forth under sub. (4)
13 (a).

14 2. The petitioner serves upon the respondent a copy or summary of the petition
15 and notice of the time for hearing on the issuance of the injunction, or the respondent
16 serves upon the petitioner notice of the time for hearing on the issuance of the
17 injunction.

18 3. The judge finds by clear and convincing evidence that the respondent is
19 substantially likely to injure himself or herself or another person if the respondent
20 possesses a firearm.

21 (b) The judge may enter an injunction only against the respondent named in
22 the petition.

23 (c) 1. Unless a judge vacates the injunction under par. (d), an injunction under
24 this subsection is effective for a period determined by the judge that is no longer than
25 one year.

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1 2. When an injunction expires, the court shall extend the injunction, upon
2 petition, for up to one year if the judge finds by clear and convincing evidence that
3 the respondent is still substantially likely to injure himself or herself or another
4 person if the respondent possesses a firearm.

5 (d) A respondent who is subject to an injunction issued under this subsection
6 may request in writing a judge to vacate the injunction one time during any
7 injunction period. If a respondent files a request under this paragraph, the
8 petitioner shall be notified of the request before the judge considers the request. The
9 judge shall vacate the injunction if the respondent demonstrates by clear and
10 convincing evidence that the respondent is no longer substantially likely to injure
11 himself or herself or another person if the respondent possesses a firearm.

12 (e) An injunction issued under this subsection shall inform the respondent
13 named in the petition of the requirements and penalties under s. 941.29.

14 **(4) PETITION.** (a) The petition shall allege facts sufficient to show the following:

15 1. The name of the petitioner and, unless the petitioner is a law enforcement
16 officer, how the petitioner is a family or household member of the respondent.

17 2. The name of the respondent.

18 3. That the respondent is substantially likely to injure himself or herself or
19 another person if the respondent possesses a firearm.

20 4. If the petitioner knows, the number, types, and locations of any firearms that
21 the respondent possesses.

22 5. If requesting a temporary restraining order, evidence of an immediate and
23 present danger that the respondent may injure himself or herself or another person
24 if the respondent possesses a firearm and that waiting for the injunction hearing may
25 increase the immediate and present danger.

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1 (b) The clerk of the circuit court shall provide simplified forms to help a person
2 file a petition.

3 (c) Only the following persons may file a petition under this section:

4 1. A law enforcement officer.

5 2. A family or household member of the respondent.

6 **(5) ENFORCEMENT ASSISTANCE.** (a) 1. If a temporary restraining order is issued
7 under sub. (2t) or an injunction is issued, extended, or vacated under sub. (3), the
8 clerk of the circuit court shall notify the department of justice of the action and shall
9 provide the department of justice with information concerning the period during
10 which the order or injunction is in effect or the date on which the injunction is vacated
11 and with information necessary to identify the respondent for purposes of
12 responding to a request under s. 165.63 or for purposes of a firearms restrictions
13 record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

14 2. Except as provided in subd. 3., the department of justice may disclose
15 information that it receives under subd. 1. only to respond to a request under s.
16 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or
17 a background check under s. 175.60 (9g) (a).

18 3. The department of justice shall disclose any information that it receives
19 under subd. 1. to a law enforcement agency when the information is needed for law
20 enforcement purposes.

21 (b) Within one business day after a temporary restraining order is issued under
22 sub. (2t) or an injunction is issued, extended, or vacated under this section, the clerk
23 of the circuit court shall send a copy of the temporary restraining order, of the
24 injunction, or of the order extending or vacating an injunction, to the sheriff or to any

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1 other local law enforcement agency which is the central repository for injunctions
2 and which has jurisdiction over the petitioner's premises.

3 (c) No later than 24 hours after receiving the information under par. (b), the
4 sheriff or other appropriate local law enforcement agency under par. (b) shall enter
5 the information concerning a temporary restraining order issued under sub. (2t) or
6 concerning an injunction issued, extended, or vacated under this section into the
7 transaction information for management of enforcement system. The sheriff or other
8 appropriate local law enforcement agency shall also make available to other law
9 enforcement agencies, through a verification system, information on the existence
10 and status of any order or injunction issued under this section. The information need
11 not be maintained after the order or injunction is no longer in effect.

12 (d) 1. The court may schedule a hearing to surrender firearms for any reason
13 relevant to the surrender of firearms.

14 2. If the respondent does not comply with an order issued at a hearing to
15 surrender firearms, or a law enforcement officer has probable cause to believe that
16 the respondent possesses a firearm, the law enforcement officer shall request a
17 search warrant to seize the firearms and may use information contained in the
18 petition to establish probable cause.

19 **(6) PENALTY FOR FALSE SWEARING.** Whoever files a petition under this section for
20 knowing the information in the petition to be false is subject to prosecution for false
21 swearing under s. 946.32 (1).

22 **(7) RETURN OF FIREARMS AND FORM.** (a) A firearm surrendered under this section
23 may not be returned to the respondent until the respondent completes a petition for
24 the return of firearms under par. (c) and a judge or circuit court commissioner
25 determines all of the following:

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1 1. If a temporary restraining order was issued, that the temporary restraining
2 order has expired and no injunction has been issued.

3 2. If an injunction was issued, that the injunction has been vacated or has
4 expired and not been extended.

5 3. That the person is not prohibited from possessing a firearm under any state
6 or federal law or by the order of any federal court or state court, other than an order
7 from which the judge or circuit court commissioner is competent to grant relief. The
8 judge or commissioner shall use the information provided under s. 165.63 to aid in
9 making the determination under this subdivision.

10 (b) If a respondent surrenders under this section a firearm that is owned by a
11 person other than the respondent, the person who owns the firearm may apply for
12 its return to the circuit court for the county in which the person to whom the firearm
13 was surrendered is located. The court shall order such notice as it considers
14 adequate to be given to all persons who have or may have an interest in the firearm
15 and shall hold a hearing to hear all claims to its true ownership. If the right to
16 possession is proved to the court's satisfaction, it shall order the firearm returned.
17 If the court returns a firearm under this paragraph, the court shall inform the person
18 to whom the firearm is returned of the requirements and penalties under s. 941.2905.

19 (c) The director of state courts shall develop a petition for the return of firearms
20 form that is substantially the same as the form under s. 813.1285 (5) (b).

21 **(8) NOTICE OF FULL FAITH AND CREDIT.** A temporary restraining order issued
22 under sub. (2t) and an injunction issued under sub. (3) shall include a statement that
23 the order or injunction may be accorded full faith and credit in every civil or criminal
24 court of the United States, civil or criminal courts of any other state, and Indian

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1 tribal courts to the extent that such courts may have personal jurisdiction over
2 nontribal members.

3 **SECTION 10.** 813.126 (1) of the statutes is amended to read:

4 813.126 (1) TIME LIMITS. If a party seeks to have the judge conduct a hearing
5 de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court
6 commissioner in an action under s. 813.12, 813.122, 813.123, 813.124, or 813.125,
7 including a denial of a request for a temporary restraining order, the motion
8 requesting the hearing must be filed with the court within 30 days after the circuit
9 court commissioner issued the determination, order, or ruling. The court shall hold
10 the de novo hearing within 30 days after the motion requesting the hearing is filed
11 with the court unless the court finds good cause for an extension. Any determination,
12 order, or ruling entered by a court commissioner in an action under s. 813.12,
13 813.122, 813.123, 813.124, or 813.125 remains in effect until the judge in the de novo
14 hearing issues his or her final determination, order, or ruling.

15 **SECTION 11.** 813.127 of the statutes is amended to read:

16 **813.127 Combined actions; domestic abuse, child abuse, extreme risk**
17 **protection, and harassment.** A petitioner may combine in one action 2 or more
18 petitions under one or more of the provisions in ss. 813.12, 813.122, 813.124, and
19 813.125 if the respondent is the same person in each petition. In any such action,
20 there is only one fee applicable under s. 814.61 (1) (a). In any such action, the
21 hearings for different types of temporary restraining orders or injunctions may be
22 combined.

23 **SECTION 12.** 813.128 (2g) (b) of the statutes is amended to read:

24 813.128 (2g) (b) A foreign protection order or modification of the foreign
25 protection order that meets the requirements under this section has the same effect

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1 as an order issued under s. 813.12, 813.122, 813.123, 813.124, or 813.125, except that
2 the foreign protection order or modification shall be enforced according to its own
3 terms.

4 **SECTION 13.** 941.29 (1m) (f) of the statutes is amended to read:

5 941.29 **(1m)** (f) The person is subject to an injunction issued under s. 813.12
6 or 813.122, a temporary restraining order or an injunction issued under s. 813.124,
7 or ~~under~~ a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
8 established by any federally recognized Wisconsin Indian tribe or band, except the
9 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
10 or she is subject to the requirements and penalties under this section and that has
11 been filed under s. 813.128 (3g).

12

(END)