



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0259/P2

CMH:eev&wlj/jf&jm

P3

TODAY
PLEASE

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 464

Regen

1 **AN ACT to repeal** 813.122 (5m) (am), 813.122 (5m) (aw), 813.122 (5m) (b) and (c),
2 813.125 (4m) (cm), 813.125 (4m) (cw) and 813.125 (4m) (d) and (e); **to renumber**
3 813.122 (2); **to renumber and amend** 813.12 (4m) (am), 813.12 (4m) (aw),
4 813.12 (4m) (b) and 813.12 (4m) (c); **to amend** 48.25 (6), 813.12 (3) (c), 813.12
5 (4m) (a) 1., 813.12 (4m) (a) 2., 813.122 (4) (c), 813.122 (5m) (a) 1., 813.122 (5m)
6 (a) 2., 813.125 (3) (c), 813.125 (4) (a) 2., 813.125 (4m) (c) 1., 813.125 (4m) (c) 2.,
7 813.125 (6) (c) and 938.25 (6); and **to create** 785.01 (1) (br), 813.12 (2) (c),
8 813.122 (2) (b), 813.125 (4) (a) 2. a., b. and c., 813.1285 and 818.02 (9) of the
9 statutes; **relating to:** providing notice of firearm prohibition when serving
10 notice for certain injunction hearings and process for surrendering firearms
11 following the granting of certain injunctions and providing penalties.

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

1 **SECTION 1.** 48.25 (6) of the statutes is amended to read:

2 48.25 (6) If a proceeding is brought under s. 48.13, any party to or any
3 governmental or social agency involved in the proceeding may petition the court to
4 issue a temporary restraining order and injunction as provided in s. 813.122 or
5 813.125. The court exercising jurisdiction under this chapter shall follow the
6 procedure under s. 813.122 or 813.125 except that the court may combine hearings
7 authorized under s. 813.122 or 813.125 and this chapter, the petitioner for the
8 temporary restraining order and injunction is not subject to the limitations under s.
9 813.122 (2) (a) or 813.125 (2) and no fee is required regarding the filing of the petition
10 under s. 813.122 or 813.125.

11 **SECTION 2.** 785.01 (1) (br) of the statutes is created to read:

12 785.01 (1) (br) Violation of an order under s. 813.1285 (4) (b) 2.;

13 *** Note: Please confirm that this is the only provision in s. 813.1285 that
 SECTION 3. 813.12 (2) (c) of the statutes is created to read: *should appear here.*

14 813.12 (2) (c) When the respondent is served with the petition under this
15 subsection, the person who serves the respondent shall also provide the respondent
16 all of the following information:

17 1. Notice of the requirements and penalties under s. 941.29 (1) (f) and (2) (e)
18 and notice of any similar applicable federal laws and penalties.

19 2. An explanation of s. 813.1285, including the procedures for surrendering a
20 firearm and the circumstances listed under s. 813.1285 under which a respondent
21 must appear at a hearing to surrender firearms.

22 3. A firearm possession form developed under s. 813.1285 (5) (a), with
23 instructions for completing and returning the form.

1 **SECTION 4.** 813.12 (3) (c) of the statutes is amended to read:

2 813.12 (3) (c) The temporary restraining order is in effect until a hearing is held
3 on issuance of an injunction under sub. (4), except that the court may extend the
4 temporary restraining order under s. 813.1285. The temporary restraining order is
5 not voided if the respondent is admitted into a dwelling that the order directs him
6 or her to avoid. A judge or circuit court commissioner shall hold a hearing on issuance
7 of an injunction within 14 days after the temporary restraining order is issued,
8 unless the time is extended upon the written consent of the parties or extended once
9 for 14 days upon a finding that the respondent has not been served with a copy of the
10 temporary restraining order although the petitioner has exercised due diligence.

11 **SECTION 5.** 813.12 (4m) (a) 1. of the statutes is amended to read:

12 813.12 (4m) (a) 1. Inform the respondent named in the petition of the
13 requirements and penalties under s. 941.29 and any similar applicable federal laws
14 and penalties.

15 **SECTION 6.** 813.12 (4m) (a) 2. of the statutes is amended to read:

16 813.12 (4m) (a) 2. Except as provided in par. (ag), require in writing the
17 respondent to surrender any firearms that he or she owns or has in his or her
18 possession to the sheriff of the county in which the action under this section was
19 commenced, to the sheriff of the county in which the respondent resides or to another
20 person designated by the respondent and approved by the judge or circuit court
21 commissioner. ~~The judge or circuit court commissioner shall approve the person~~
22 ~~designated by the respondent unless the judge or circuit court commissioner finds~~
23 ~~that the person is inappropriate and places the reasons for the finding on the record.~~
24 ~~If a firearm is surrendered to a person designated by the respondent and approved~~
25 ~~by the judge or circuit court commissioner, the judge or circuit court commissioner~~

1 ~~shall inform the person to whom the firearm is surrendered of the requirements and~~
2 ~~penalties under s. 941.29 (4), in accordance with s. 813.1285.~~

3 **SECTION 7.** 813.12 (4m) (am) of the statutes is renumbered 813.1285 (6) and
4 amended to read:

5 813.1285 (6) (a) When a respondent surrenders a firearm under ~~par. (a) 2. sub.~~
6 ~~(3) (a) 2. or (4) (b) 2.~~ to a sheriff, the sheriff who is receiving the firearm shall prepare
7 a receipt for each firearm surrendered to him or her. The receipt shall include the
8 date on which the firearm was surrendered and the manufacturer, model, and serial
9 number of the firearm surrendered to the sheriff and shall be signed by the
10 respondent and by the sheriff to whom the firearm is surrendered.

11 (b) The sheriff shall keep the original of a receipt prepared under ~~subd. 1. par.~~
12 ~~(a)~~ and shall provide an exact copy 2 copies of the receipt to the respondent. The
13 respondent shall provide one copy of the receipt to the clerk of courts within 48 hours
14 of the order to surrender firearms. When the firearm covered by the receipt is
15 returned to the respondent under ~~par. (b) sub. (7),~~ the sheriff shall surrender to the
16 respondent the original receipt and all of his or her copies of the receipt.

17 (c) A receipt prepared under ~~subd. 1. par. (a)~~ is conclusive proof that the
18 respondent owns the firearm for purposes of returning the firearm covered by the
19 receipt to the respondent under ~~par. (b) sub. (7).~~

20 (d) The sheriff may not enter any information contained on a receipt prepared
21 under ~~subd. 1. par. (a)~~ into any computerized or direct electronic data transfer system
22 in order to store the information or, except as provided in par. (b), disseminate or
23 provide access to the information.

24 **SECTION 8.** 813.12 (4m) (aw) of the statutes is renumbered 813.1285 (6) (e) 1.
25 and amended to read:

1 813.1285 (6) (e) 1. A sheriff may store a firearm surrendered to him or her
2 under ~~par. (a) 2. sub. (3) (a) 2. or (4) (b) 2.~~ in a warehouse that is operated by a public
3 warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse
4 under this ~~paragraph~~ subdivision, the respondent shall pay the costs charged by the
5 warehouse for storing that firearm.

6 **SECTION 9.** 813.12 (4m) (b) of the statutes is renumbered 813.1285 (7) (a), and
7 813.1285 (7) (a) (intro.) and 1., as renumbered, are amended to read:

8 813.1285 (7) (a) (intro.) A firearm surrendered under ~~par. (a) 2.~~ this section may
9 not be returned to the respondent until the respondent completes a petition for the
10 return of firearms and a judge or circuit court commissioner determines all of the
11 following:

12 1. That the injunction issued under ~~sub. (4) s. 813.12 (4), 813.122 (5), or 813.125~~
13 (4), whichever required the surrender of the firearm, has been vacated or has expired
14 and not been extended.

15 **SECTION 10.** 813.12 (4m) (c) of the statutes is renumbered 813.1285 (7) (b) and
16 amended to read:

17 813.1285 (7) (b) If a respondent surrenders a firearm under ~~par. (a) 2.~~ this
18 section that is owned by a person other than the respondent, the person who owns
19 the firearm may apply for its return to the circuit court for the county in which the
20 person to whom the firearm was surrendered is located. The court shall order such
21 notice as it considers adequate to be given to all persons who have or may have an
22 interest in the firearm and shall hold a hearing to hear all claims to its true
23 ownership. If the right to possession is proved to the court's satisfaction, it shall
24 order the firearm returned. If the court returns a firearm under this paragraph, the

1 court shall inform the person to whom the firearm is returned of the requirements
2 and penalties under s. 941.29 (4).

3 **SECTION 11.** 813.122 (2) of the statutes is renumbered 813.122 (2) (a).

4 **SECTION 12.** 813.122 (2) (b) of the statutes is created to read:

5 813.122 (2) (b) When the respondent is served with the petition under this
6 subsection, the person who serves the respondent shall also provide the respondent
7 with all of the following information:

8 1. Notice of the requirements and penalties under s. 941.29 (1) (f) and (2) (e)
9 and notice of any similar applicable federal laws and penalties.

10 2. An explanation of s. 813.1285, including the procedures for surrendering a
11 firearm and the circumstances listed under s. 813.1285 under which a respondent
12 must appear at a hearing to surrender firearms.

13 3. A firearm possession form developed under s. 813.1285 (5) (a), with
14 instructions for completing and returning the form.

15 **SECTION 13.** 813.122 (4) (c) of the statutes is amended to read:

16 813.122 (4) (c) The temporary restraining order is in effect until a hearing is
17 held on issuance of an injunction under sub. (5), except that the court may extend the
18 temporary restraining order under s. 813.1285. A judge shall hold a hearing on
19 issuance of an injunction within 14 days after the temporary restraining order is
20 issued, unless the time is extended upon the written consent of the parties or
21 extended once for 14 days upon a finding that the respondent has not been served
22 with a copy of the temporary restraining order although the petitioner has exercised
23 due diligence.

24 **SECTION 14.** 813.122 (5m) (a) 1. of the statutes is amended to read:

1 813.122 (5m) (a) 1. Inform the respondent named in the petition of the
2 requirements and penalties under s. 941.29 and any similar applicable federal laws
3 and penalties.

4 **SECTION 15.** 813.122 (5m) (a) 2. of the statutes is amended to read:

5 813.122 (5m) (a) 2. Except as provided in par. (ag), require in writing the
6 respondent to surrender any firearms that he or she owns or has in his or her
7 possession to the sheriff of the county in which the action under this section was
8 commenced, to the sheriff of the county in which the respondent resides or to another
9 person designated by the respondent and approved by the judge or circuit court
10 commissioner. ~~The judge or circuit court commissioner shall approve the person~~
11 ~~designated by the respondent unless the judge or circuit court commissioner finds~~
12 ~~that the person is inappropriate and places the reasons for the finding on the record.~~
13 ~~If a firearm is surrendered to a person designated by the respondent and approved~~
14 ~~by the judge or circuit court commissioner, the judge or circuit court commissioner~~
15 ~~shall inform the person to whom the firearm is surrendered of the requirements and~~
16 ~~penalties under s. 941.29 (4), in accordance with s. 813.1285.~~

17 **SECTION 16.** 813.122 (5m) (am) of the statutes is repealed.

18 **SECTION 17.** 813.122 (5m) (aw) of the statutes is repealed.

19 **SECTION 18.** 813.122 (5m) (b) and (c) of the statutes are repealed.

20 **SECTION 19.** 813.125 (3) (c) of the statutes is amended to read:

21 813.125 (3) (c) The temporary restraining order is in effect until a hearing is
22 held on issuance of an injunction under sub. (4), except that the court may extend the
23 temporary restraining order under s. 813.1285. A judge or circuit court
24 commissioner shall hold a hearing on issuance of an injunction within 14 days after
25 the temporary restraining order is issued, unless the time is extended upon the

1 written consent of the parties or extended once for 14 days upon a finding that the
2 respondent has not been served with a copy of the temporary restraining order
although the petitioner has exercised due diligence.

*Please
fix
component*

*renumbered
813.125 (4) (a) 2. (intro.)
and*

SECTION 20. 813.125 (4) (a) 2. of the statutes is amended to read:

5 813.125 (4) (a) 2. *(intro.)* The petitioner serves upon the respondent a copy of a
6 restraining order obtained under sub. (3) and notice of the time for the hearing on
7 the issuance of the injunction under sub. (3) (c). The restraining order or notice of
8 hearing served under this subdivision shall inform the respondent that, if the judge
9 or circuit court commissioner issues an injunction, the judge or circuit court
10 commissioner may also order the respondent not to possess a firearm while the
11 injunction is in effect. The person who serves the respondent with the order or notice
12 shall also provide the respondent with all of the following information:

13 **SECTION 21.** 813.125 (4) (a) 2. a., b. and c. of the statutes are created to read:

14 813.125 (4) (a) 2. a. Notice of the requirements and penalties under s. 941.29
15 (1) (g) and (2) (d) and notice of any similar applicable federal laws and penalties.

16 b. An explanation of s. 813.1285, including the procedures for surrendering a
17 firearm and the circumstances listed under s. 813.1285 under which a respondent
18 must appear at a hearing to surrender firearms.

19 c. A firearm possession form developed under s. 813.1285 (5), with instructions
20 for completing and returning the form.

21 **SECTION 22.** 813.125 (4m) (c) 1. of the statutes is amended to read:

22 813.125 (4m) (c) 1. Inform the respondent named in the petition of the
23 requirements and penalties under s. 941.29 and any similar applicable federal laws
24 and penalties.

25 **SECTION 23.** 813.125 (4m) (c) 2. of the statutes is amended to read:

1 813.125 (4m) (c) 2. Except as provided in par. (cg), require in writing the
2 respondent to surrender any firearms that he or she owns or has in his or her
3 possession to the sheriff of the county in which the action under this section was
4 commenced, to the sheriff of the county in which the respondent resides or to another
5 person designated by the respondent and approved by the judge or circuit court
6 commissioner. ~~The judge or circuit court commissioner shall approve the person~~
7 ~~designated by the respondent unless the judge or circuit court commissioner finds~~
8 ~~that the person is inappropriate and places the reasons for the finding on the record.~~
9 ~~If a firearm is surrendered to a person designated by the respondent and approved~~
10 ~~by the judge or circuit court commissioner, the judge or circuit court commissioner~~
11 ~~shall inform the person to whom the firearm is surrendered of the requirements and~~
12 ~~penalties under s. 941.29 (4), in accordance with s. 813.1285.~~

13 **SECTION 24.** 813.125 (4m) (cm) of the statutes is repealed.

14 **SECTION 25.** 813.125 (4m) (cw) of the statutes is repealed.

15 **SECTION 26.** 813.125 (4m) (d) and (e) of the statutes are repealed.

16 **SECTION 27.** 813.125 (6) (c) of the statutes is amended to read:

17 813.125 (6) (c) A respondent who does not appear at a hearing at which the
18 court orders an injunction under sub. (4) but who has been served with a copy of the
19 petition and notice of the time for hearing under sub. (4) (a) 2. that includes the
20 information required under sub. (4) (a) 2. a., b., and c. has constructive knowledge
21 of the existence of the injunction and shall be arrested for violation of the injunction
22 regardless of whether he or she has been served with a copy of the injunction.

23 **SECTION 28.** 813.1285 of the statutes is created to read:

24 **813.1285 Notice and process for firearm surrender. (1) DEFINITIONS.** In
25 this section:

1 (a) "Firearm possession form" means the form developed under sub. (5) (a).

2 (b) "Petitioner" means an individual who is applying for, or for whom a court
3 has granted, an injunction under s. 813.12 (4), 813.122 (5), or 813.125 (4).

4 (c) "Petition for the return of firearms" means a petition developed under sub.
5 (5) (b).

6 (d) "Respondent" means the individual who is the subject of an injunction
7 issued under s. 813.12 (4) or 813.122 (5), or, if the court has required the individual
8 to surrender his or her firearms under s. 813.125 (4m), under s. 813.125 (4).

INS
10-9

9 (1m) TEMPORARY RESTRAINING ORDERS. If the court is required to extend a
10 temporary restraining order under this section, and a temporary restraining order
11 was not previously granted, the court shall, on its own motion, reconsider and grant
12 the temporary restraining order before issuing the order to surrender firearms and
13 extend the temporary restraining order.

14 (2) FIREARM POSSESSION DETERMINATION. (a) If the respondent is present at the
15 injunction hearing, the court shall stay the injunction for a period not to exceed 48
16 hours and shall extend the temporary restraining order for 48 hours for the purpose
17 of firearm surrender. The respondent shall provide the court a completed firearm
18 possession form. The court shall verify the information on the firearm possession
19 form and shall make an inquiry on the record as to the contents of the firearm
20 possession form.

21 (b) If the respondent is not present at the injunction hearing, the court shall
22 provide the petitioner with an opportunity to inform the court orally or in writing
23 whether he or she believes that the respondent possesses a firearm. If the petitioner
24 informs the court that the respondent possesses a firearm, the court shall request the
25 petitioner to inform the court orally or in writing how many firearms he or she

1 believes the respondent possesses, the make and model of any firearm he or she
2 believes the respondent possesses, and the location of any firearm he or she believes
3 the respondent possesses.

4 (c) 1. If the firearm possession form submitted to the court under par. (a) or (b)
5 indicates the respondent does not possess a firearm, and the court, after an inquiry,
6 is satisfied that the respondent does not possess a firearm, the court shall file the
7 firearm possession form, lift the stay of the injunction, and dismiss the temporary
8 restraining order extended under par. (a).

9 2. If, under par. (a), the firearm possession form submitted to the court
10 indicates the respondent possesses a firearm, and the respondent has not
11 surrendered his or her firearm as described under sub. (3) (a), the court shall
12 continue to stay the injunction as provided under par. (a) for a period not to exceed
13 48 hours, maintain the 48-hour extension under par. (a) of the temporary restraining
14 order for the purpose of firearm surrender, order the respondent to surrender his or
15 her firearms within 48 hours, and order that the respondent may possess or
16 transport a firearm only for the purpose of complying with the order to surrender his
17 or her firearms. The court shall schedule a hearing to surrender firearms to occur
18 within one week of the injunction hearing. IN 11-17

19 3. If, under par. (b), the petitioner indicates that the respondent possesses a
20 firearm or if the court is not satisfied under subd. 1. that the respondent does not
21 possess a firearm, the court shall schedule a hearing to surrender firearms to occur
22 within one week of the injunction hearing. The court shall do one of the following:

23 a. Continue the stay under par. (a) of the injunction, maintain the 48-hour
24 extension under par. (a) of the temporary restraining order for the purpose of firearm
25 surrender, order the respondent to surrender his or her firearms within 48 hours,

1 and order that the respondent may possess or transport a firearm only for the
2 purpose of complying with the order to surrender his or her firearms. INS 12-2

3 b. Lift the stay of the injunction and dismiss the temporary restraining order
4 and order that the respondent may possess or transport a firearm only for the
5 purpose of complying with the order to surrender his or her firearms. INS 12-5

6 4. The court may schedule a hearing to surrender firearms for any reason
7 relevant to the surrender of firearms.

8 (3) SURRENDER OF FIREARMS. (a) Unless the court has noted another reason that
9 is relevant to the surrender of firearms that would require the hearing to surrender
10 firearms to occur, the court shall dismiss the hearing to surrender firearms
11 scheduled under sub. (2) (c) 2. or 3. if the respondent surrenders his or her firearm
12 in one of the following manners:

13 1. The respondent surrenders his or her firearm to another person and all of
14 the following apply:

15 a. The respondent and the person to whom the respondent is surrendering his
16 or her firearm appear at the injunction hearing under s. 813.12 (4), 813.122 (5), or
17 813.125 (4), whichever is appropriate.

18 b. At the injunction hearing, the person testifies under oath that the person has
19 received the firearms listed on the respondent's firearm possession form.

20 c. At the injunction hearing, the court determines that the person is not
21 prohibited from possessing a firearm.

22 d. The court informs the person to whom the firearm is surrendered of the
23 requirements and penalties under s. 941.29 (4).

24 e. The court, after considering all relevant factors and any input from the
25 petitioner, approves the surrender of the firearm.

1 f. The court does not use the process under subd. 3.

2 2. The respondent surrenders his or her firearm to a sheriff no later than 48
3 hours after the injunction hearing ordering the respondent to surrender his or her
4 firearm and provides a copy of the receipt to the clerk of courts as provided in sub.
5 (6) (b).

6 3. The respondent surrenders his or her firearm to a sheriff as provided under
7 subd. 2., and a person who appeared at the injunction hearing under s. 813.12 (4),
8 813.122 (5), or 813.125 (4), whichever is appropriate, takes possession of the firearm
9 from the sheriff, if all of the following apply:

10 a. Subdivision 1. d. and e. apply.

11 b. The sheriff determines that the person is not prohibited from possessing a
12 firearm.

13 (b) If the court approves the surrender under par. (a) 1., and if the court has
14 extended the temporary restraining order and has stayed the injunction, the court
15 shall lift the stay and dismiss the temporary restraining order.

INS 12-14

16 (4) HEARING TO SURRENDER FIREARMS. (a) Unless the court dismisses the hearing
17 to surrender firearms, a respondent for whom a hearing to surrender firearms has
18 been scheduled must attend the hearing. If the respondent fails to attend the
19 hearing to surrender firearms, the court shall issue an arrest warrant for the
20 respondent.

21 (b) At the hearing to surrender firearms, the court shall ensure that the
22 respondent has completed a firearm possession form, shall and verify the information
23 provided on the firearm possession form if the information was not already verified
24 under sub. (2) (a), shall make an inquiry on the record as to the contents of the
25 firearm possession form, and shall do one of the following:

INS 13-21

INS
13-14

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

7 a. To the person, after the person testifies under oath that he or she has received
8 the firearms listed on the respondent's firearm possession form and after the court
9 determines that the person is not prohibited from possessing a firearm.

10 b. To the sheriff, who shall transfer the firearms to the person after determining
11 that the person is not prohibited from possessing a firearm.

12 1m. If the respondent claims to have surrendered his or her firearms to the
13 sheriff in accordance with sub. (6), verify that the respondent has surrendered all
14 such firearms.

15 2. Order the respondent to surrender any firearm that the court finds the
16 respondent owns or possesses to a sheriff in accordance with sub. (6). If the
17 respondent has not provided to the court, within 48 hours of the hearing to surrender
18 firearms, a receipt as specified in sub. (6) (b) that shows surrender of all of the
19 firearms that were subject to the order, the court shall presume the respondent is
20 violating the order and the injunction and may do any of the following:

21 a. Notify the sheriff of the violation for investigation and appropriate action.

22 b. Schedule another hearing to surrender firearms.

23 c. Issue a warrant to the sheriff ordering that the respondent be brought before
24 the court to show cause why the respondent should not be held in contempt.

*issue a
surrender
order
attend*

1 3. a. If, under subd. 1. b. or 2., the court orders the respondent to surrender his
2 or her firearms to the sheriff, the court shall order that the respondent may possess
3 or transport a firearm only for the purpose of complying with the order to surrender
4 his or her firearms.

****NOTE: Should the injunction continue to be stayed and the TRO continued here,
or should it be lifted and the TRO cancelled?

5 b. If, under subd. 1. a., the court orders the respondent to surrender his or her
6 firearms to a person who is not the sheriff, the court shall lift any stay and dismiss
7 any temporary restraining order.

8 4. If the firearm possession form indicates that the respondent does not possess
9 a firearm, and the court, after an inquiry, is satisfied that the respondent does not
10 possess a firearm, the court shall file the firearm possession form, lift any stay of the
11 injunction, and dismiss any temporary restraining order.

12 (5) FIREARM POSSESSION FORM AND PETITION FOR THE RETURN OF FIREARMS. (a) The
13 director of state courts shall develop a firearm possession form. Any false
14 information provided on the form by the respondent may be subject to a penalty of
15 false swearing under s. 946.32. The director of state courts shall ensure that the
16 firearm possession form does all of the following:

- 17 1. Requires the respondent to list his or her name and address.
- 18 2. Includes space for the respondent's signature and date signed.
- 19 3. Requires the respondent to indicate whether he or she owns or possesses any
20 firearm or has owned or possessed any firearm in the 6 months immediately
21 preceding the issuance of the injunction, and, if the answer is yes, to list the quantity
22 and the make and model of each firearm and to note whether the firearm was sold
23 or surrendered and whether he or she has a receipt for the firearm sale or surrender.

1 4. Gives notice of the penalty for false swearing under s. 946.32.

2 (b) The director of state courts shall develop a petition for the return of firearms
3 in substantially the following form:

4 STATE OF WISCONSIN
5 IN CIRCUIT COURT FOR COUNTY

6 Petition to Return Firearm(s)

7 In re the Return of Firearms to (name of person required to surrender firearms
8 in an injunction action)

9 Requesting person's information: date of birth, sex, race, height, weight, hair
10 color, eye color, address, and phone number.

11 Under oath I state that:

12 1. The court issued an injunction against me on (date of injunction). The
13 injunction was issued based on a:

14 Domestic Abuse petition.

15 Child Abuse petition.

16 Harassment petition.

17 2. The court ordered me to surrender any firearms I owned or had in my
18 possession to:

19 the sheriff of this county.

20 the sheriff of the county in which I resided, which is (name of county).

21 to the following person (whether directly or indirectly through a sheriff):

22 name:

23 address:

1 3. I surrendered the following firearms as provided in item 2 and have attached
2 a receipt from the sheriff or from the 3rd person (if the person did not provide a
3 receipt, attach a description of the firearm(s)):

4 4. The injunction has (been vacated) (expired and has not been extended).

5 5. I (have) (have not) been convicted of a misdemeanor crime of domestic
6 violence.

7 6. I (have) (have not) been convicted of a felony.

8 7. I am not prohibited from possessing a firearm under any state or federal law
9 or by the order of any federal court or state court, other than an order from which a
10 judge or family court commissioner is competent to grant relief.

11 I request that the court enter an order directing that the person named under
12 item 2. return to me those firearms that were surrendered under the order of the
13 court.

14 Subscribed and sworn to before me on (date)

15 (Signature of person requesting return of firearms)

16 (Signature of notary public, state of Wisconsin)

17 My commission expires on (date)

18 Dated this day of, (year)

19 Distribution:

20 1. Court – original 2. Petitioner in injunction action 3. Person to whom
21 firearm(s) were surrendered

22 **(5m)** NOTIFICATION TO LOCAL LAW ENFORCEMENT. (a) Within one business day
23 after the court issues an order, extends or modifies a temporary restraining order, or
24 stays or lifts a stay on an injunction under this section, the clerk of the circuit court
25 shall send a copy of the order, the extension or modification, or the stay or lift to the

1 sheriff or to any other local law enforcement agency that is the repository for such
2 actions and that has jurisdiction over the premises of the petitioner.

3 (b) No later than 24 hours after receiving the information under par. (a), the
4 sheriff or other appropriate local law enforcement agency under par. (a) shall enter
5 the information concerning the order issued, the extension or modification, or the
6 stay or lift of the injunction under par. (a) into the transaction information for
7 management of enforcement system. The sheriff or other appropriate local law
8 enforcement agency shall also make available to other law enforcement agencies,
9 through a verification system, the information received and entered under this
10 paragraph. The information need not be maintained after the order or injunction is
11 no longer in effect.

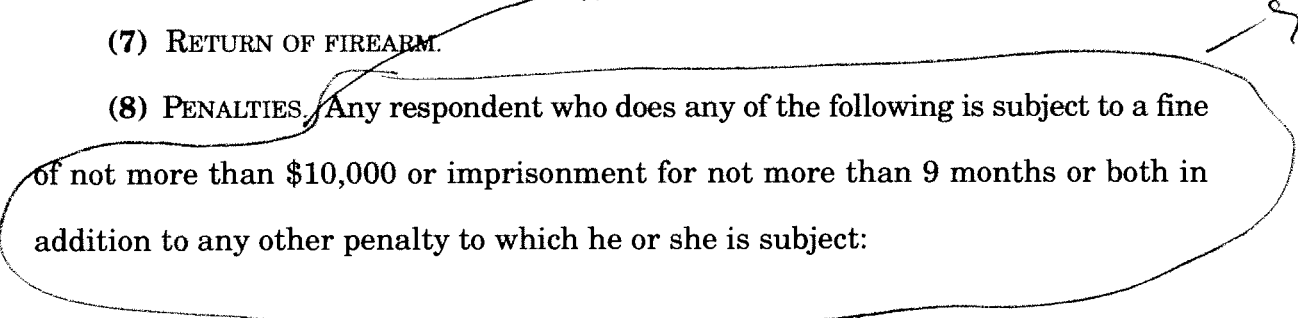
12 (6) SURRENDER OF FIREARM TO SHERIFF.

13 (e) 2. If an injunction expires and is not extended, or an injunction is vacated,
14 a sheriff may charge the respondent for any costs incurred 30 days after the
15 injunction expires for storage of the firearm surrendered to the sheriff due to that
16 injunction. A sheriff may dispose of a firearm surrendered to the sheriff due to that
17 injunction 12 months after the injunction expires or is vacated and, if the sheriff
18 disposes of the firearm, the sheriff may charge the respondent for the costs of
19 disposal.

20 (7) RETURN OF FIREARM.

21 (8) PENALTIES. Any respondent who does any of the following is subject to a fine
22 of not more than \$10,000 or imprisonment for not more than 9 months or both in
23 addition to any other penalty to which he or she is subject:

INS 18-21



1 (a) Violates an order to surrender, within a specified period, any firearm that
2 he or she owns or possesses to the sheriff or, in the court's discretion, to another
3 person.

4 (b) Violates the order that the respondent may possess or transport a firearm
5 only to comply with an order to surrender firearms.

6 (c) Violates an order to attend a hearing to surrender firearms.

****NOTE: Are there any other violations that should be subject to this section?

7 **SECTION 29.** 818.02 (9) of the statutes is created to read:

8 818.02 (9) In a proceeding under s. 813.1285.

9 **SECTION 30.** 938.25 (6) of the statutes is amended to read:

10 938.25 (6) TEMPORARY RESTRAINING ORDER AND INJUNCTION. If a proceeding is
11 brought under s. 938.13, any party to or any governmental or social agency involved
12 in the proceeding may petition the court to issue a temporary restraining order and
13 injunction as provided in s. 813.122 or 813.125. The court shall follow the procedure
14 under s. 813.122 or 813.125 except that the court may combine hearings authorized
15 under s. 813.122 or 813.125 and this chapter, the petitioner for the temporary
16 restraining order and injunction is not subject to the limitations under s. 813.122 (2)
17 (a) or 813.125 (2) and no fee is required regarding the filing of the petition under s.
18 813.122 or 813.125.

19 **SECTION 31. Initial applicability.**

20 (1) This act first applies to a petition filed on the effective date of this
21 subsection.

22 **SECTION 32. Effective date.**

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0259/P3ins
CMH:eev&wlj:jf&jm

1 Insert 10-9

2 (e) "Surrender and extend order" means an order under sub. (1g).

3 **(1g) SURRENDER AND EXTEND ORDER.** If the court issues a surrender and extend
4 order, the court shall do all of the following:

5 (a) Order the respondent to surrender, within a period that is no longer than
6 48 hours, any firearm that he or she owns or possesses to the sheriff or, in the court's
7 discretion, to another person.

8 (b) Order that the respondent may possess or transport a firearm only for the
9 purpose of complying with par. (a).

10 (c) If the court stays an injunction, order the respondent subject to a temporary
11 restraining order during the stay of the injunction and extend the temporary
12 restraining order for a period of 48 hours for the purpose of firearm surrender.

13 (d) Inform the respondent when the injunction will take effect and the penalty
14 for possessing a firearm while the injunction is in effect.

15 (e) Instruct the respondent how to surrender any firearm.

16 (f) If appropriate, order the respondent to attend a hearing to surrender
17 firearms.

18

19 Insert 11-17

20 issue a surrender and extend order, and

21

22 Insert 12-2

23 and issue a surrender and extend order

1

2

Insert 12-5

3

issue a surrender and extend order

4

5

Insert 13-14

6

issued a surrender and extend order

7

8

Insert 13-16

****NOTE: Should the cross-reference to par. (a) 1. be to the whole of par. (a)?

9

10

Insert 13-21

11

stay the injunction for a period not to exceed 48 hours, shall issue a surrender

12

and extend order, shall

13

14

Insert 18-21

15

A respondent who violates an order under sub. (1g) (a) or (b) is subject to a fine

16

of not more than \$10,000 or imprisonment for not more than 9 months or both in

17

addition to any other penalty to which he or she is subject.

Hanaman, Cathlene

From: Tony Gibart <tonyg@wcadv.org>
Sent: Thursday, February 06, 2014 5:39 PM
To: Rep.Bies
Cc: Bruce, Cory; Hanaman, Cathlene
Subject: RE: Draft review: LRB s0259/P3 Topic: Firearm seizure process under certain injunctions; stay injunction

Cathlene,

Thanks for this draft. We are really just down to my nitpicks now. Please excuse them.

Here are the final changes that I recommend:

- Question on page 2: Yes, that is the only provision.
- Page 10, line 8: Let's define the respondent as a person "who is the subject of an injunction issued under...813.122(5), regardless of whether or not the injunction is stayed." [Somebody could otherwise argue, I suppose, that they are not a "respondent" when the injunction is stayed]
- Page 12, line 15: Delete "and issue a surrender and extend order." [In this case, the injunction is in effect and it contains a surrender provision.]
- Question on page 14: "par.(a)1." is fine.
- Page 14, line 10: Please delete "shall issue a surrender and extend order"
- Page 15, line 5: Please add after "firearms" the following: "lift the stay of the injunction and dismiss the temporary restraining order."
- Page 15, line 24: Let's say "and dismiss ~~any~~ the temporary restraining order." Who knows, there might be another TRO from another case.

Thanks you so much for all of your work. As I said in the email today, I think it will pay dividends.

Tony

From: Rep.Bies [<mailto:Rep.Bies@legis.wisconsin.gov>]
Sent: Thursday, February 06, 2014 3:51 PM
To: Tony Gibart
Subject: FW: Draft review: LRB s0259/P3 Topic: Firearm seizure process under certain injunctions; stay injunction

From: LRB.Legal
Sent: Thursday, February 06, 2014 3:49 PM
To: Rep.Bies
Subject: Draft review: LRB s0259/P3 Topic: Firearm seizure process under certain injunctions; stay injunction

Following is the PDF version of draft LRB s0259/P3.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0259/P3

CMH:eev&wlj:jm

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stays
Redraft
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Rum

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 464

gen car

1 AN ACT *to repeal* 813.122 (5m) (am), 813.122 (5m) (aw), 813.122 (5m) (b) and (c),
2 813.125 (4m) (cm), 813.125 (4m) (cw) and 813.125 (4m) (d) and (e); *to renumber*
3 813.122 (2); *to renumber and amend* 813.12 (4m) (am), 813.12 (4m) (aw),
4 813.12 (4m) (b), 813.12 (4m) (c) and 813.125 (4) (a) 2.; *to amend* 48.25 (6),
5 813.12 (3) (c), 813.12 (4m) (a) 1., 813.12 (4m) (a) 2., 813.122 (4) (c), 813.122 (5m)
6 (a) 1., 813.122 (5m) (a) 2., 813.125 (3) (c), 813.125 (4m) (c) 1., 813.125 (4m) (c)
7 2., 813.125 (6) (c) and 938.25 (6); and *to create* 785.01 (1) (br), 813.12 (2) (c),
8 813.122 (2) (b), 813.125 (4) (a) 2. a., b. and c., 813.1285 and 818.02 (9) of the
9 statutes; **relating to:** providing notice of firearm prohibition when serving
10 notice for certain injunction hearings and process for surrendering firearms
11 following the granting of certain injunctions and providing penalties.

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

1 **SECTION 1.** 48.25 (6) of the statutes is amended to read:

2 48.25 (6) If a proceeding is brought under s. 48.13, any party to or any
3 governmental or social agency involved in the proceeding may petition the court to
4 issue a temporary restraining order and injunction as provided in s. 813.122 or
5 813.125. The court exercising jurisdiction under this chapter shall follow the
6 procedure under s. 813.122 or 813.125 except that the court may combine hearings
7 authorized under s. 813.122 or 813.125 and this chapter, the petitioner for the
8 temporary restraining order and injunction is not subject to the limitations under s.
9 813.122 (2) (a) or 813.125 (2) and no fee is required regarding the filing of the petition
10 under s. 813.122 or 813.125.

11 **SECTION 2.** 785.01 (1) (br) of the statutes is created to read:

12 785.01 (1) (br) Violation of an order under s. 813.1285 (4) (b) 2.;

****NOTE: Please confirm that this is the only provision in s. 813.1285 that should
appear here.

13 **SECTION 3.** 813.12 (2) (c) of the statutes is created to read:

14 813.12 (2) (c) When the respondent is served with the petition under this
15 subsection, the person who serves the respondent shall also provide the respondent
16 all of the following information:

17 1. Notice of the requirements and penalties under s. 941.29 (1) (f) and (2) (e)
18 and notice of any similar applicable federal laws and penalties.

19 2. An explanation of s. 813.1285, including the procedures for surrendering a
20 firearm and the circumstances listed under s. 813.1285 under which a respondent
21 must appear at a hearing to surrender firearms.

1 3. A firearm possession form developed under s. 813.1285 (5) (a), with
2 instructions for completing and returning the form.

3 **SECTION 4.** 813.12 (3) (c) of the statutes is amended to read:

4 813.12 (3) (c) The temporary restraining order is in effect until a hearing is held
5 on issuance of an injunction under sub. (4), except that the court may extend the
6 temporary restraining order under s. 813.1285. The temporary restraining order is
7 not voided if the respondent is admitted into a dwelling that the order directs him
8 or her to avoid. A judge or circuit court commissioner shall hold a hearing on issuance
9 of an injunction within 14 days after the temporary restraining order is issued,
10 unless the time is extended upon the written consent of the parties or extended once
11 for 14 days upon a finding that the respondent has not been served with a copy of the
12 temporary restraining order although the petitioner has exercised due diligence.

13 **SECTION 5.** 813.12 (4m) (a) 1. of the statutes is amended to read:

14 813.12 (4m) (a) 1. Inform the respondent named in the petition of the
15 requirements and penalties under s. 941.29 and any similar applicable federal laws
16 and penalties.

17 **SECTION 6.** 813.12 (4m) (a) 2. of the statutes is amended to read:

18 813.12 (4m) (a) 2. Except as provided in par. (ag), require in writing the
19 respondent to surrender any firearms that he or she owns or has in his or her
20 possession to the sheriff of the county in which the action under this section was
21 commenced, to the sheriff of the county in which the respondent resides or to another
22 person designated by the respondent and approved by the judge or circuit court
23 commissioner. ~~The judge or circuit court commissioner shall approve the person~~
24 ~~designated by the respondent unless the judge or circuit court commissioner finds~~
25 ~~that the person is inappropriate and places the reasons for the finding on the record.~~

1 If a firearm is surrendered to a person designated by the respondent and approved
2 by the judge or circuit court commissioner, the judge or circuit court commissioner
3 shall inform the person to whom the firearm is surrendered of the requirements and
4 penalties under ~~s. 941.29 (4)~~, in accordance with s. 813.1285.

5 SECTION 7. 813.12 (4m) (am) of the statutes is renumbered 813.1285 (6) and
6 amended to read:

7 813.1285 (6) (a) When a respondent surrenders a firearm under ~~par. (a) 2. sub.~~
8 (3) (a) 2. or (4) (b) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare
9 a receipt for each firearm surrendered to him or her. The receipt shall include the
10 date on which the firearm was surrendered and the manufacturer, model, and serial
11 number of the firearm surrendered to the sheriff and shall be signed by the
12 respondent and by the sheriff to whom the firearm is surrendered.

13 (b) The sheriff shall keep the original of a receipt prepared under ~~subd. 1. par.~~
14 (a) and shall provide ~~an exact copy~~ 2 copies of the receipt to the respondent. The
15 respondent shall provide one copy of the receipt to the clerk of courts within 48 hours
16 of the order to surrender firearms. When the firearm covered by the receipt is
17 returned to the respondent under ~~par. (b) sub. (7)~~, the sheriff shall surrender to the
18 respondent the original receipt and all of his or her copies of the receipt.

19 (c) A receipt prepared under ~~subd. 1. par. (a)~~ is conclusive proof that the
20 respondent owns the firearm for purposes of returning the firearm covered by the
21 receipt to the respondent under ~~par. (b) sub. (7)~~.

22 (d) The sheriff may not enter any information contained on a receipt prepared
23 under ~~subd. 1. par. (a)~~ into any computerized or direct electronic data transfer system
24 in order to store the information or, except as provided in par. (b), disseminate or
25 provide access to the information.

1 **SECTION 8.** 813.12 (4m) (aw) of the statutes is renumbered 813.1285 (6) (e) 1.
2 and amended to read:

3 813.1285 (6) (e) 1. A sheriff may store a firearm surrendered to him or her
4 under ~~par. (a) 2. sub. (3) (a) 2. or (4) (b) 2.~~ in a warehouse that is operated by a public
5 warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse
6 under this ~~paragraph subdivision~~, the respondent shall pay the costs charged by the
7 warehouse for storing that firearm.

8 **SECTION 9.** 813.12 (4m) (b) of the statutes is renumbered 813.1285 (7) (a), and
9 813.1285 (7) (a) (intro.) and 1., as renumbered, are amended to read:

10 813.1285 (7) (a) (intro.) A firearm surrendered under ~~par. (a) 2.~~ this section may
11 not be returned to the respondent until the respondent completes a petition for the
12 return of firearms and a judge or circuit court commissioner determines all of the
13 following:

14 1. That the injunction ~~issued under sub. (4)~~ (s. 813.12 (4), 813.122 (5), or 813.125
15 (4), whichever required the surrender of the firearm, has been vacated or has expired
16 and not been extended.

17 **SECTION 10.** 813.12 (4m) (c) of the statutes is renumbered 813.1285 (7) (b) and
18 amended to read:

19 813.1285 (7) (b) If a respondent surrenders a firearm under ~~par. (a) 2.~~ this
20 section that is owned by a person other than the respondent, the person who owns
21 the firearm may apply for its return to the circuit court for the county in which the
22 person to whom the firearm was surrendered is located. The court shall order such
23 notice as it considers adequate to be given to all persons who have or may have an
24 interest in the firearm and shall hold a hearing to hear all claims to its true
25 ownership. If the right to possession is proved to the court's satisfaction, it shall

1 order the firearm returned. If the court returns a firearm under this paragraph, the
2 court shall inform the person to whom the firearm is returned of the requirements
3 and penalties under s. 941.29 (4).

4 **SECTION 11.** 813.122 (2) of the statutes is renumbered 813.122 (2) (a).

5 **SECTION 12.** 813.122 (2) (b) of the statutes is created to read:

6 813.122 (2) (b) When the respondent is served with the petition under this
7 subsection, the person who serves the respondent shall also provide the respondent
8 with all of the following information:

9 1. Notice of the requirements and penalties under s. 941.29 (1) (f) and (2) (e)
10 and notice of any similar applicable federal laws and penalties.

11 2. An explanation of s. 813.1285, including the procedures for surrendering a
12 firearm and the circumstances listed under s. 813.1285 under which a respondent
13 must appear at a hearing to surrender firearms.

14 3. A firearm possession form developed under s. 813.1285 (5) (a), with
15 instructions for completing and returning the form.

16 **SECTION 13.** 813.122 (4) (c) of the statutes is amended to read:

17 813.122 (4) (c) The temporary restraining order is in effect until a hearing is
18 held on issuance of an injunction under sub. (5), except that the court may extend the
19 temporary restraining order under s. 813.1285. A judge shall hold a hearing on
20 issuance of an injunction within 14 days after the temporary restraining order is
21 issued, unless the time is extended upon the written consent of the parties or
22 extended once for 14 days upon a finding that the respondent has not been served
23 with a copy of the temporary restraining order although the petitioner has exercised
24 due diligence.

25 **SECTION 14.** 813.122 (5m) (a) 1. of the statutes is amended to read:

1 813.122 (5m) (a) 1. Inform the respondent named in the petition of the
2 requirements and penalties under s. 941.29 and any similar applicable federal laws
3 and penalties.

4 **SECTION 15.** 813.122 (5m) (a) 2. of the statutes is amended to read:

5 813.122 (5m) (a) 2. Except as provided in par. (ag), require in writing the
6 respondent to surrender any firearms that he or she owns or has in his or her
7 possession to the sheriff of the county in which the action under this section was
8 commenced, to the sheriff of the county in which the respondent resides or to another
9 person designated by the respondent and approved by the judge or circuit court
10 commissioner. ~~The judge or circuit court commissioner shall approve the person~~
11 ~~designated by the respondent unless the judge or circuit court commissioner finds~~
12 ~~that the person is inappropriate and places the reasons for the finding on the record.~~
13 ~~If a firearm is surrendered to a person designated by the respondent and approved~~
14 ~~by the judge or circuit court commissioner, the judge or circuit court commissioner~~
15 ~~shall inform the person to whom the firearm is surrendered of the requirements and~~
16 ~~penalties under s. 941.29 (4), in accordance with s. 813.1285.~~

17 **SECTION 16.** 813.122 (5m) (am) of the statutes is repealed.

18 **SECTION 17.** 813.122 (5m) (aw) of the statutes is repealed.

19 **SECTION 18.** 813.122 (5m) (b) and (c) of the statutes are repealed.

20 **SECTION 19.** 813.125 (3) (c) of the statutes is amended to read:

21 813.125 (3) (c) The temporary restraining order is in effect until a hearing is
22 held on issuance of an injunction under sub. (4), except that the court may extend the
23 temporary restraining order under s. 813.1285. A judge or circuit court
24 commissioner shall hold a hearing on issuance of an injunction within 14 days after
25 the temporary restraining order is issued, unless the time is extended upon the

1 written consent of the parties or extended once for 14 days upon a finding that the
2 respondent has not been served with a copy of the temporary restraining order
3 although the petitioner has exercised due diligence.

4 **SECTION 20.** 813.125 (4) (a) 2. of the statutes is renumbered 813.125 (4) (a) 2.
5 (intro.) and amended to read:

6 813.125 (4) (a) 2. (intro.) The petitioner serves upon the respondent a copy of
7 a restraining order obtained under sub. (3) and notice of the time for the hearing on
8 the issuance of the injunction under sub. (3) (c). The restraining order or notice of
9 hearing served under this subdivision shall inform the respondent that, if the judge
10 or circuit court commissioner issues an injunction, the judge or circuit court
11 commissioner may also order the respondent not to possess a firearm while the
12 injunction is in effect. The person who serves the respondent with the order or notice
13 shall also provide the respondent with all of the following information:

14 **SECTION 21.** 813.125 (4) (a) 2. a., b. and c. of the statutes are created to read:

15 813.125 (4) (a) 2. a. Notice of the requirements and penalties under s. 941.29
16 (1) (g) and (2) (d) and notice of any similar applicable federal laws and penalties.

17 b. An explanation of s. 813.1285, including the procedures for surrendering a
18 firearm and the circumstances listed under s. 813.1285 under which a respondent
19 must appear at a hearing to surrender firearms.

20 c. A firearm possession form developed under s. 813.1285 (5)^(a), with instructions
21 for completing and returning the form.

22 **SECTION 22.** 813.125 (4m) (c) 1. of the statutes is amended to read:

23 813.125 (4m) (c) 1. Inform the respondent named in the petition of the
24 requirements and penalties under s. 941.29 and any similar applicable federal laws
25 and penalties.

1 **SECTION 23.** 813.125 (4m) (c) 2. of the statutes is amended to read:

2 813.125 (4m) (c) 2. Except as provided in par. (cg), require in writing the
3 respondent to surrender any firearms that he or she owns or has in his or her
4 possession to the sheriff of the county in which the action under this section was
5 commenced, to the sheriff of the county in which the respondent resides or to another
6 person designated by the respondent and approved by the judge or circuit court
7 commissioner. ~~The judge or circuit court commissioner shall approve the person~~
8 ~~designated by the respondent unless the judge or circuit court commissioner finds~~
9 ~~that the person is inappropriate and places the reasons for the finding on the record.~~
10 ~~If a firearm is surrendered to a person designated by the respondent and approved~~
11 ~~by the judge or circuit court commissioner, the judge or circuit court commissioner~~
12 ~~shall inform the person to whom the firearm is surrendered of the requirements and~~
13 ~~penalties under s. 941.29 (4), in accordance with s. 813.1285.~~

14 **SECTION 24.** 813.125 (4m) (cm) of the statutes is repealed.

15 **SECTION 25.** 813.125 (4m) (cw) of the statutes is repealed.

16 **SECTION 26.** 813.125 (4m) (d) and (e) of the statutes are repealed.

17 **SECTION 27.** 813.125 (6) (c) of the statutes is amended to read:

18 813.125 (6) (c) A respondent who does not appear at a hearing at which the
19 court orders an injunction under sub. (4) but who has been served with a copy of the
20 petition and notice of the time for hearing under sub. (4) (a) 2. that includes the
21 information required under sub. (4) (a) 2. a., b., and c. has constructive knowledge
22 of the existence of the injunction and shall be arrested for violation of the injunction
23 regardless of whether he or she has been served with a copy of the injunction.

24 **SECTION 28.** 813.1285 of the statutes is created to read:

1 **813.1285 Notice and process for firearm surrender. (1) DEFINITIONS.** In
2 this section:

3 (a) “Firearm possession form” means the form developed under sub. (5) (a).

INS
10-4
4 (b) “Petitioner” means an individual who is applying for, or for whom a court
5 has granted, an injunction (under s. 813.12 (4), 813.122 (5), or 813.125 (4)).

6 (c) “Petition for the return of firearms” means a petition developed under sub.
7 (5) (b).

8 (d) “Respondent” means the individual who is the subject of an injunction
9 issued under s. 813.12 (4) or 813.122 (5), or, if the court has required the individual
10 to surrender his or her firearms under s. 813.125 (4m), under s. 813.125 (4).

11 (e) “Surrender and extend order” means an order under sub. (1g).

12 **(1g) SURRENDER AND EXTEND ORDER.** If the court issues a surrender and extend
13 order, the court shall do all of the following:

14 (a) Order the respondent to surrender, within a period that is no longer than
15 48 hours, any firearm that he or she owns or possesses to the sheriff or, in the court’s
16 discretion, to another person.

17 (b) Order that the respondent may possess or transport a firearm only for the
18 purpose of complying with par. (a).

19 (c) If the court stays an injunction, order the respondent subject to a temporary
20 restraining order during the stay of the injunction and extend the temporary
21 restraining order for a period of 48 hours for the purpose of firearm surrender.

22 (d) Inform the respondent when the injunction will take effect and the penalty
23 for possessing a firearm while the injunction is in effect.

24 (e) Instruct the respondent how to surrender any firearm.

1 (f) If appropriate, order the respondent to attend a hearing to surrender
2 firearms.

3 (1m) TEMPORARY RESTRAINING ORDERS. If the court is required to extend a
4 temporary restraining order under this section, and a temporary restraining order
5 was not previously granted, the court shall, on its own motion, reconsider and grant
6 the temporary restraining order.

7 (2) FIREARM POSSESSION DETERMINATION. (a) If the respondent is present at the
8 injunction hearing, the court shall stay the injunction for a period not to exceed 48
9 hours and shall extend the temporary restraining order for 48 hours for the purpose
10 of firearm surrender. The respondent shall provide the court a completed firearm
11 possession form. The court shall verify the information on the firearm possession
12 form and shall make an inquiry on the record as to the contents of the firearm
13 possession form.

14 (b) If the respondent is not present at the injunction hearing, the court shall
15 provide the petitioner with an opportunity to inform the court orally or in writing
16 whether he or she believes that the respondent possesses a firearm. If the petitioner
17 informs the court that the respondent possesses a firearm, the court shall request the
18 petitioner to inform the court orally or in writing how many firearms he or she
19 believes the respondent possesses, the make and model of any firearm he or she
20 believes the respondent possesses, and the location of any firearm he or she believes
21 the respondent possesses.

22 (c) 1. If the firearm possession form submitted to the court under par. (a) or (b)
23 indicates the respondent does not possess a firearm, and the court, after an inquiry,
24 is satisfied that the respondent does not possess a firearm, the court shall file the

1 firearm possession form, lift the stay of the injunction, and dismiss the temporary
2 restraining order extended under par. (a).

3 2. If, under par. (a), the firearm possession form submitted to the court
4 indicates the respondent possesses a firearm, and the respondent has not
5 surrendered his or her firearm as described under sub. (3) (a), the court shall
6 continue to stay the injunction as provided under par. (a) for a period not to exceed
7 48 hours, issue a surrender and extend order, and schedule a hearing to surrender
8 firearms to occur within one week of the injunction hearing.

9 3. If, under par. (b), the petitioner indicates that the respondent possesses a
10 firearm or if the court is not satisfied under subd. 1. that the respondent does not
11 possess a firearm, the court shall schedule a hearing to surrender firearms to occur
12 within one week of the injunction hearing. The court shall do one of the following:

13 a. Continue the stay under par. (a) of the injunction and issue a surrender and
14 extend order.

15 b. Lift the stay of the injunction and issue a surrender and extend order.

16 4. The court may schedule a hearing to surrender firearms for any reason
17 relevant to the surrender of firearms.

18 (3) SURRENDER OF FIREARMS. (a) Unless the court has noted another reason that
19 is relevant to the surrender of firearms that would require the hearing to surrender
20 firearms to occur, the court shall dismiss the hearing to surrender firearms
21 scheduled under sub. (2) (c) 2. or 3. if the respondent surrenders his or her firearm
22 in one of the following manners:

23 1. The respondent surrenders his or her firearm to another person and all of
24 the following apply:

1 a. The respondent and the person to whom the respondent is surrendering his
2 or her firearm appear at the injunction hearing under s. 813.12 (4), 813.122 (5), or
3 813.125 (4), whichever is appropriate.

4 b. At the injunction hearing, the person testifies under oath that the person has
5 received the firearms listed on the respondent's firearm possession form.

6 c. At the injunction hearing, the court determines that the person is not
7 prohibited from possessing a firearm.

8 d. The court informs the person to whom the firearm is surrendered of the
9 requirements and penalties under s. 941.29 (4).

10 e. The court, after considering all relevant factors and any input from the
11 petitioner, approves the surrender of the firearm.

12 f. The court does not use the process under subd. 3.

13 2. The respondent surrenders his or her firearm to a sheriff no later than 48
14 hours after the injunction hearing ordering the respondent to surrender his or her
15 firearm and provides a copy of the receipt to the clerk of courts as provided in sub.
16 (6) (b).

17 3. The respondent surrenders his or her firearm to a sheriff as provided under
18 subd. 2., and a person who appeared at the injunction hearing under s. 813.12 (4),
19 813.122 (5), or 813.125 (4), whichever is appropriate, takes possession of the firearm
20 from the sheriff, if all of the following apply:

21 a. Subdivision 1. d. and e. apply.

22 b. The sheriff determines that the person is not prohibited from possessing a
23 firearm.

1 (b) If the court approves the surrender under par. (a) 1., and if the court has
2 issued a surrender and extend order and has stayed the injunction, the court shall
3 lift the stay and dismiss the temporary restraining order.

****NOTE: Should the cross-reference to par. (a) 1. be to the whole of par. (a)?

4 (4) HEARING TO SURRENDER FIREARMS. (a) Unless the court dismisses the hearing
5 to surrender firearms, a respondent for whom a hearing to surrender firearms has
6 been scheduled must attend the hearing. If the respondent fails to attend the
7 hearing to surrender firearms, the court shall issue an arrest warrant for the
8 respondent.

9 (b) At the hearing to surrender firearms, the court shall stay the injunction for
10 a period not to exceed 48 hours, shall issue a surrender and extend order, shall ensure
11 that the respondent has completed a firearm possession form and verify the
12 information provided on the firearm possession form if the information was not
13 already verified under sub. (2) (a), shall make an inquiry on the record as to the
14 contents of the firearm possession form, and shall do one of the following:

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

21 a. To the person, after the person testifies under oath that he or she has received
22 the firearms listed on the respondent's firearm possession form and after the court
23 determines that the person is not prohibited from possessing a firearm.

1 b. To the sheriff, who shall transfer the firearms to the person after determining
2 that the person is not prohibited from possessing a firearm.

3 1m. If the respondent claims to have surrendered his or her firearms to the
4 sheriff in accordance with sub. (6), verify that the respondent has surrendered all
5 such firearms. *INS 15-5*

6 2. Order the respondent to surrender any firearm that the court finds the
7 respondent owns or possesses to a sheriff in accordance with sub. (6). If the
8 respondent has not provided to the court, within 48 hours of the hearing to surrender
9 firearms, a receipt as specified in sub. (6) (b) that shows surrender of all of the
10 firearms that were subject to the order, the court shall presume the respondent is
11 violating the order and the injunction and may do any of the following:

12 a. Notify the sheriff of the violation for investigation and appropriate action.

13 b. Schedule another hearing to surrender firearms.

14 c. Issue a warrant to the sheriff ordering that the respondent be brought before
15 the court to show cause why the respondent should not be held in contempt.

16 3. a. If, under subd. 1. b. or 2., the court orders the respondent to surrender his
17 or her firearms to the sheriff, the court shall issue a surrender and extend order.

18 b. If, under subd. 1. a., the court orders the respondent to surrender his or her
19 firearms to a person who is not the sheriff, the court shall lift ^{of the injunction} any stay and dismiss
20 ~~any~~ ^{the} temporary restraining order.

21 4. If the firearm possession form indicates that the respondent does not possess
22 a firearm, and the court, after an inquiry, is satisfied that the respondent does not
23 possess a firearm, the court shall file the firearm possession form, lift any stay of the
24 injunction, and dismiss ~~any~~ ^{the} temporary restraining order.

1 **(5) FIREARM POSSESSION FORM AND PETITION FOR THE RETURN OF FIREARMS.** (a) The
2 director of state courts shall develop a firearm possession form. Any false
3 information provided on the form by the respondent may be subject to a penalty of
4 false swearing under s. 946.32. The director of state courts shall ensure that the
5 firearm possession form does all of the following:

6 1. Requires the respondent to list his or her name and address.

7 2. Includes space for the respondent's signature and date signed.

8 3. Requires the respondent to indicate whether he or she owns or possesses any
9 firearm or has owned or possessed any firearm in the 6 months immediately
10 preceding the issuance of the injunction, and, if the answer is yes, to list the quantity
11 and the make and model of each firearm and to note whether the firearm was sold
12 or surrendered and whether he or she has a receipt for the firearm sale or surrender.

13 4. Gives notice of the penalty for false swearing under s. 946.32.

14 (b) The director of state courts shall develop a petition for the return of firearms
15 in substantially the following form:

16 STATE OF WISCONSIN

17 IN CIRCUIT COURT FOR COUNTY

18 Petition to Return Firearm(s)

19 In re the Return of Firearms to (name of person required to surrender firearms
20 in an injunction action)

21 Requesting person's information: date of birth, sex, race, height, weight, hair
22 color, eye color, address, and phone number.

23 Under oath I state that:

24 1. The court issued an injunction against me on (date of injunction). The
25 injunction was issued based on a:

1 Domestic Abuse petition.

2 Child Abuse petition.

3 Harassment petition.

4 2. The court ordered me to surrender any firearms I owned or had in my
5 possession to:

6 the sheriff of this county.

7 the sheriff of the county in which I resided, which is (name of county).

8 to the following person (whether directly or indirectly through a sheriff):

9 name:

10 address:

11 3. I surrendered the following firearms as provided in item 2 and have attached
12 a receipt from the sheriff or from the 3rd person (if the person did not provide a
13 receipt, attach a description of the firearm(s)):

14 4. The injunction has (been vacated) (expired and has not been extended).

15 5. I (have) (have not) been convicted of a misdemeanor crime of domestic
16 violence.

17 6. I (have) (have not) been convicted of a felony.

18 7. I am not prohibited from possessing a firearm under any state or federal law
19 or by the order of any federal court or state court, other than an order from which a
20 judge or family court commissioner is competent to grant relief.

21 I request that the court enter an order directing that the person named under
22 item 2 return to me those firearms that were surrendered under the order of the
23 court.

24 Subscribed and sworn to before me on (date)

25 (Signature of person requesting return of firearms)

1 (Signature of notary public, state of Wisconsin)

2 My commission expires on (date)

3 Dated this day of, (year)

4 Distribution:

5 1. Court – original 2. Petitioner in injunction action 3. Person to whom
6 firearm(s) were surrendered

7 **(5m) NOTIFICATION TO LOCAL LAW ENFORCEMENT.** (a) Within one business day
8 after the court issues an order, extends or modifies a temporary restraining order, or
9 stays or lifts a stay on an injunction under this section, the clerk of the circuit court
10 shall send a copy of the order, the extension or modification, or the stay or lift to the
11 sheriff or to any other local law enforcement agency that is the repository for such
12 actions and that has jurisdiction over the premises of the petitioner.

13 (b) No later than 24 hours after receiving the information under par. (a), the
14 sheriff or other appropriate local law enforcement agency under par. (a) shall enter
15 the information concerning the order issued, the extension or modification, or the
16 stay or lift of the injunction under par. (a) into the transaction information for
17 management of enforcement system. The sheriff or other appropriate local law
18 enforcement agency shall also make available to other law enforcement agencies,
19 through a verification system, the information received and entered under this
20 paragraph. The information need not be maintained after the order or injunction is
21 no longer in effect.

22 **(6) SURRENDER OF FIREARM TO SHERIFF.**

23 (e) 2. If an injunction expires and is not extended, or an injunction is vacated,
24 a sheriff may charge the respondent for any costs incurred 30 days after the
25 injunction expires for storage of the firearm surrendered to the sheriff due to that

1 injunction. A sheriff may dispose of a firearm surrendered to the sheriff due to that
2 injunction 12 months after the injunction expires or is vacated and, if the sheriff
3 disposes of the firearm, the sheriff may charge the respondent for the costs of
4 disposal.

5 **(7) RETURN OF FIREARM.**

6 **(8) PENALTIES.** A respondent who violates an order ^{described} under sub. (1g) (a) or (b) is
7 subject to a fine of not more than \$10,000 or imprisonment for not more than 9
8 months or both in addition to any other penalty to which he or she is subject.

9 **SECTION 29.** 818.02 (9) of the statutes is created to read:

10 818.02 (9) In a proceeding under s. 813.1285.

11 **SECTION 30.** 938.25 (6) of the statutes is amended to read:

12 938.25 (6) **TEMPORARY RESTRAINING ORDER AND INJUNCTION.** If a proceeding is
13 brought under s. 938.13, any party to or any governmental or social agency involved
14 in the proceeding may petition the court to issue a temporary restraining order and
15 injunction as provided in s. 813.122 or 813.125. The court shall follow the procedure
16 under s. 813.122 or 813.125 except that the court may combine hearings authorized
17 under s. 813.122 or 813.125 and this chapter, the petitioner for the temporary
18 restraining order and injunction is not subject to the limitations under s. 813.122 (2)
19 (a) or 813.125 (2) and no fee is required regarding the filing of the petition under s.
20 813.122 or 813.125.

21 **SECTION 31. Initial applicability.**

22 (1) This act first applies to a petition filed on the effective date of this
23 subsection.

24 **SECTION 32. Effective date.**

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0259/p4ins
CMH:.....

1 Insert 10-4

2 (am) "Injunction" means an injunction issued under s. 813.12 (4) or 813.122 (5),
3 or, if the court has required the individual to surrender his or her firearms under s.
4 813.125 (4m), under s[Ⓢ] 813.125 (4). "Injunction" includes an injunction that has been
5 stayed under this section.

6

7 Insert 15-5

8 , lift the stay of the injunction, and dismiss the temporary restraining order

Hanaman, Cathlene

From: Tony Gibart <tonyg@wcadv.org>
Sent: Friday, February 07, 2014 3:47 PM
To: Hanaman, Cathlene
Cc: Bruce, Cory
Subject: RE: Draft review: LRB s0259/P4 Topic: Firearm seizure process under certain injunctions; stay injunction

Ok, one more change, and it's my mistake. I am sorry. Thanks for your patience.

Page 14, line 4 : "a period not to exceed 48 hours, shall extend the temporary restraining order for 48 hours, shall ensure that the respondent has completed a"

From: LRB.Legal [<mailto:lrblegal@legis.wisconsin.gov>]
Sent: Friday, February 07, 2014 3:36 PM
To: Tony Gibart
Subject: Draft review: LRB s0259/P4 Topic: Firearm seizure process under certain injunctions; stay injunction

Draft Requester: Rep. Garey Bies

Following is the PDF version of draft LRB s0259/P4.