

**2017 DRAFTING REQUEST**

**Bill**

For: **Melissa Sargent (608) 266-0960** Drafter: **chanaman**  
 By: **Britt** Secondary Drafters:  
 Date: **3/15/2017** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Rep.Sargent@legis.wisconsin.gov**  
 Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Gun violence restraining order

**Instructions:**

See attached

*Per Cmtt*

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 3/15/2017	kfollett 3/15/2017			
/P1	chanaman 4/18/2017	kfollett 4/18/2017	rmilford 3/15/2017		State S&L
/P2	chanaman 1/8/2018	kfollett 1/9/2018	lparisi 4/18/2017		State S&L
/P3			lparisi 1/9/2018		State S&L
/1			lparisi 2/21/2018	lparisi 2/21/2018	State S&L

FE Sent For:

<END>

→ A+  
Intro.



State of Wisconsin  
2017 - 2018 LEGISLATURE

2549/11  
LRB-0947/P1  
CMH:kjf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*no changes*

1     **AN ACT to amend** 165.63 (3), 165.63 (4) (d), 175.35 (1) (at), 175.60 (9g) (a) 2.,  
2             757.69 (1) (j), 801.50 (5s), 813.06, 813.126 (1), 813.127, 813.128 (2g) (b) and  
3             941.29 (1m) (g); and **to create** 813.124 of the statutes; **relating to:** lethal  
4             violence protective temporary restraining orders and injunctions and providing  
5             a criminal penalty.

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***Analysis by the Legislative Reference Bureau***

Under current law, a person is prohibited from possessing a firearm, and must surrender any firearm he or she possesses, if he or she 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 he or she 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 if he or she violates the prohibition.

This bill creates a lethal violence protective temporary restraining order and a lethal violence protective injunction. Upon receiving a petition filed by a law enforcement officer or a family or household member of the respondent, a court shall issue a temporary restraining order prohibiting the respondent from possessing a firearm and ordering the respondent to surrender all of his or her firearms if the court finds reasonable grounds to believe that the respondent is substantially likely

to injure himself or herself or another person if the respondent possesses a firearm. At the injunction hearing, the court may grant a lethal violence protective injunction ordering the respondent to refrain from possessing a firearm if the court finds reasonable grounds to believe that the respondent is substantially likely to injure himself or herself or another person if the respondent possesses a firearm. A lethal violence protective injunction is effective for one year and may be renewed for additional one-year terms. Any person who is subject to a lethal violence protective injunction may petition no more than once a year to vacate the injunction. A person who possesses a firearm while subject to a lethal violence protective TRO or injunction is guilty of a Class G felony. In addition, a person who files a petition for a lethal violence protective TRO or injunction, knowing the information in the petition to be false or with the intent to harass, is subject to a fine of up to \$10,000 and imprisonment for up to nine months or both.

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

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

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 (8) (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 (8) (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

1 determine whether a person is prohibited from possessing a firearm under s. 51.20  
2 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check  
3 system to determine whether a person has been ordered not to possess a firearm  
4 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search  
5 to determine whether the person is subject to an injunction under s. 813.12 or  
6 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court  
7 established by any federally recognized Wisconsin Indian tribe or band, except the  
8 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he  
9 or she is subject to the requirements and penalties under s. 941.29 and that has been  
10 filed with the circuit court under s. 813.128 (3g), and a search to determine whether  
11 the person is prohibited from possessing a firearm under s. 813.123 (5m), 813.124 (3)  
12 or (4), or 813.125 (4m).

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

14 175.60 (9g) (a) 2. The department shall conduct a criminal history record  
15 search and shall search its records and conduct a search in the national instant  
16 criminal background check system to determine whether the applicant is prohibited  
17 from possessing a firearm under federal law; whether the applicant is prohibited  
18 from possessing a firearm under s. 941.29; whether the applicant is prohibited from  
19 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant  
20 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,  
21 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction  
22 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued  
23 by a court established by any federally recognized Wisconsin Indian tribe or band,  
24 except the Menominee Indian tribe of Wisconsin, that includes notice to the  
25 respondent that he or she is subject to the requirements and penalties under s.

1 941.29 and that has been filed with the circuit court under s. 813.128 (3g); and  
2 whether the applicant is prohibited from possessing a firearm under s. 813.123 (5m),  
3 813.124 (3) or (4), or 813.125 (4m); and to determine if the court has prohibited the  
4 applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1)  
5 (c) and if the applicant is prohibited from possessing a dangerous weapon as a  
6 condition of release under s. 969.01.

7 **SECTION 5.** 757.69 (1) (j) of the statutes is amended to read:

8 757.69 (1) (j) Hold hearings, make findings and issue temporary restraining  
9 orders under s. 813.122 ~~or~~, 813.123, or 813.124.

10 **SECTION 6.** 801.50 (5s) of the statutes is amended to read:

11 801.50 (5s) Venue of an action under s. 813.122, 813.124, or 813.125 shall be  
12 in the county in which the cause of action arose or where the petitioner or the  
13 respondent resides.

14 **SECTION 7.** 813.06 of the statutes is amended to read:

15 **813.06 Security for damages.** In proceedings under s. 767.225 the court or  
16 judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122,  
17 813.124, 813.125 and 823.113 the court or judge shall, require a bond of the party  
18 seeking an injunction, with sureties, to the effect that he or she will pay to the party  
19 enjoined such damages, not exceeding an amount to be specified, as he or she may  
20 sustain by reason of the injunction if the court finally decides that the party was not  
21 entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon  
22 the party enjoined and the officer serving the same shall, within 8 days after such  
23 service, file his or her return in the office of the clerk of the court.

24 **SECTION 8.** 813.124 of the statutes is created to read:

1           **813.124 Lethal violence protective orders and injunctions. (1)**

2       DEFINITIONS. In this section:

3           (a) "Firearms dealer" has the meaning given in s. 175.35 (1) (ar).

4           (b) "Reasonable grounds" means more likely than not that a specific event will  
5 occur.

6           **(2) COMMENCEMENT OF ACTION AND RESPONSE.** (a) No action under this section  
7 may be commenced by complaint and summons. An action under this section may  
8 be commenced only by a petition described under sub. (5) (a). The action commences  
9 with the sheriff serving the petition on the respondent if a copy of the petition is filed  
10 before service or promptly after service. If the judge or a circuit court commissioner  
11 extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit  
12 with the court stating that personal service by the sheriff under s. 801.11 (1) (a) or  
13 (b) was unsuccessful because the respondent is avoiding service by concealment or  
14 otherwise, the judge or circuit court commissioner shall inform the petitioner that  
15 he or she may serve the respondent by publication of a summary of the petition as  
16 a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the  
17 respondent's post-office address or facsimile number is known or can with due  
18 diligence be ascertained. The mailing or sending of a facsimile may be omitted if the  
19 post-office address or facsimile number cannot be ascertained with due diligence.  
20 A summary of the petition published as a class 1 notice shall include the name of the  
21 respondent and of the petitioner, notice of the temporary restraining order, and  
22 notice of the date, time, and place of the hearing regarding the injunction. The court  
23 shall inform the petitioner in writing that the petitioner should contact the sheriff  
24 to verify the proof of service of the petition.

1 (b) Section 813.06 does not apply to an action under this section. The  
2 respondent may respond to the petition either in writing before or at the hearing on  
3 the issuance of the injunction or orally at that hearing.

4 (c) When the respondent is served with the petition under this subsection, the  
5 respondent shall be provided notice of the requirements and penalties under s.  
6 941.29.

7 **(2m) TWO-PART PROCEDURE.** Procedure for an action under this section is in 2  
8 parts. First, if the petitioner requests a temporary restraining order, the court shall  
9 issue or refuse to issue that order. Second, the court shall hold a hearing under sub.  
10 (4) on whether to issue an injunction, which is the final relief. If the court issues a  
11 temporary restraining order, the order shall set forth the date for the hearing on an  
12 injunction. If the court does not issue a temporary restraining order, the date for the  
13 hearing shall be set upon motion by either party.

14 **(3) TEMPORARY RESTRAINING ORDER.** (a) 1. A judge or circuit court commissioner  
15 shall issue a temporary restraining order prohibiting the respondent from  
16 possessing a firearm and ordering the respondent to surrender all of his or her  
17 firearms if the judge or circuit court commissioner finds reasonable grounds to  
18 believe that the respondent is substantially likely to injure himself or herself or  
19 another person if the respondent possesses a firearm.

20 2. The judge or circuit court commissioner shall base the finding under subd.  
21 1. on the following:

22 a. Any testimony.

23 b. The petition.

24 c. A recent threat of violence or act of violence by the respondent directed  
25 toward himself or herself or another person.



1           d. A pattern of violent acts or violent threats by the respondent within the past  
2           12 months, including threats of violence or acts of violence directed toward himself  
3           or herself or another person.

4           3. The judge or circuit court commissioner may base the finding under subd.  
5           1. on any factors in addition to those under subd. 2., including any of the following:

6           a. Any unlawful or reckless use, display, or brandishing of a firearm by the  
7           respondent.

8           b. The respondent's history of use, attempted use, or threatened use of physical  
9           force against another person.

10          c. A prior arrest of the respondent for a felony.

11          d. Evidence that the respondent has abused controlled substances or alcohol.

12          e. Evidence that the respondent has recently acquired firearms, ammunition,  
13          or other dangerous weapons.

14          (am) The order issued under par. (a) requires one of the following:

15          1. If the respondent is present at the hearing, the respondent to immediately  
16          surrender all firearms that he or she has in his or her possession to the sheriff of the  
17          county in which the action under this section was commenced or to the sheriff of the  
18          county in which the respondent resides. The sheriff to whom the firearms are  
19          surrendered may, at the request of the respondent, arrange for the sale of the  
20          firearms to a firearms dealer.

21          2. One of the following:

22          a. If the respondent is not present at the hearing and the sheriff personally  
23          serves the respondent with the order issued under par. (a), the sheriff to request the  
24          respondent to immediately surrender all firearms in his or her possession. The

1 sheriff may, at the request of the respondent, arrange for the sale of the firearms to  
2 a firearms dealer.

3 b. If the respondent is not present at the hearing and the sheriff does not  
4 personally serve the respondent with the order issued under par. (a), the respondent  
5 to, within 24 hours of service, surrender all firearms in his or her possession to the  
6 sheriff or sell all firearms in his or her possession to a firearms dealer. Within 48  
7 hours of service, the respondent shall file with the court that issued the order under  
8 par. (a) a receipt from the sheriff or firearms dealer indicating that the respondent  
9 surrendered the firearms.

10 (an) If the respondent does not comply with par. (am) and a law enforcement  
11 officer has probable cause to believe that the respondent possesses a firearm, the law  
12 enforcement officer shall request a search warrant to seize the firearms and may use  
13 information contained in the petition to establish probable cause.

14 (b) Notice need not be given to the respondent before issuing a temporary  
15 restraining order under this subsection. A temporary restraining order may be  
16 entered only against the respondent named in the petition.

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

1 (d) The judge or circuit court commissioner shall advise the petitioner of the  
2 right to serve the respondent the petition by published notice if with due diligence  
3 the respondent cannot be served as provided under s. 801.11 (1) (a) or (b). The clerk  
4 of the circuit court shall assist the petitioner with the preparation of the notice and  
5 filing of the affidavit of printing.

6 (4) INJUNCTION. (a) A judge may grant an injunction prohibiting the respondent  
7 from possessing a firearm and, if the respondent was not subject to a temporary  
8 restraining order under sub. (3), ordering the respondent to surrender his or her  
9 firearms if all of the following occur:

10 1. The petitioner files a petition alleging the elements set forth under sub. (5)  
11 (a).

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

16 3. The judge finds reasonable grounds to believe that the respondent is  
17 substantially likely to injure himself or herself or another person if the respondent  
18 possesses a firearm.

19 4. The judge or circuit court commissioner shall base the finding under subd.  
20 3. on the following:

21 a. Any testimony.

22 b. The petition.

23 c. Any recent threat of violence or act of violence by the respondent directed  
24 toward himself or herself or another person.

1           d. Any pattern of violent acts or violent threats by the respondent within the  
2 past 12 months, including threats of violence or acts of violence directed toward  
3 himself or herself or another person.

4           5. The judge or circuit court commissioner may base the finding under subd.  
5 3. on any factors in addition to those under subd. 4., including any of the following:

6           a. Any unlawful or reckless use, display, or brandishing of a firearm by the  
7 respondent.

8           b. The respondent's history of use, attempted use, or threatened use of physical  
9 force against another person.

10          c. A prior arrest of the respondent for a felony.

11          d. Evidence that the respondent has abused controlled substances or alcohol.

12          e. Evidence that the respondent has recently acquired firearms, ammunition,  
13 or other dangerous weapons.

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

16          (c) 1. An injunction under this subsection is effective for one year unless a judge  
17 vacates the injunction under par. (d).

18          2. When an injunction expires, the court shall extend the injunction, upon  
19 petition filed up to 3 months before the expiration of the injunction, for one year if  
20 the judge finds reasonable grounds to believe that the respondent is substantially  
21 likely to injure himself or herself or another person if the respondent possesses a  
22 firearm.

23          (d) A respondent who is subject to an injunction under this subsection may  
24 request a judge to vacate the injunction one time during the initial injunction period  
25 and one time during each extended injunction period. The judge shall vacate the

1 order if the judge does not find reasonable grounds to believe that the respondent is  
2 substantially likely to injure himself or herself or another person if the respondent  
3 possesses a firearm.

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

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

7 1. The name of the petitioner and, unless the petitioner is a law enforcement  
8 officer, his or her relationship to the respondent.

9 2. The name of the respondent.

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

12 4. The name of at least one adult who has personal knowledge of the conduct  
13 of the respondent, who is not the petitioner, and who is able to testify that the  
14 respondent is substantially likely to injure himself or herself or another person if the  
15 respondent possesses a firearm.

16 5. If the petitioner knows, the number, types, and locations of any firearms that  
17 the respondent possesses.

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

20 (c) Only a law enforcement officer or a spouse, sibling, parent, child, or current  
21 or recent household member of the respondent may prepare and file a petition under  
22 this section.

23 **(6) ENFORCEMENT ASSISTANCE.** (a) 1. If an injunction is issued, extended, or  
24 vacated under sub. (4), the clerk of the circuit court shall notify the department of  
25 justice of the action and shall provide the department of justice with information

1 concerning the period during which the injunction is in effect or the date on which  
2 the injunction is vacated and with information necessary to identify the respondent  
3 for purposes of responding to a request under s. 165.63 or for purposes of a firearms  
4 restrictions record search under s. 175.35 (2g) (c) or a background check under s.  
5 175.60 (9g) (a).

6 2. Except as provided in subd. 3., the department of justice may disclose  
7 information that it receives under subd. 1. only to respond to a request under s.  
8 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or  
9 a background check under s. 175.60 (9g) (a).

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

13 (b) Within one business day after an order or injunction is issued, extended, or  
14 vacated under this section, the clerk of the circuit court shall send a copy of the order  
15 or injunction, or of the order extending or vacating an order or injunction, to the  
16 sheriff or to any other local law enforcement agency which is the central repository  
17 for orders and injunctions and which has jurisdiction over the petitioner's premises.

18 (c) No later than 24 hours after receiving the information under par. (b), the  
19 sheriff or other appropriate local law enforcement agency under par. (b) shall enter  
20 the information concerning an order or injunction issued, extended, or vacated under  
21 this section into the transaction information for management of enforcement system.  
22 The sheriff or other appropriate local law enforcement agency shall also make  
23 available to other law enforcement agencies, through a verification system,  
24 information on the existence and status of any order or injunction issued under this

1 section. The information need not be maintained after the order or injunction is no  
2 longer in effect.

3 (7) PENALTY. Whoever files a petition under this section for a temporary  
4 restraining order or injunction knowing the information in the petition to be false or  
5 with the intent to harass shall be fined not more than \$10,000 or imprisoned for not  
6 more than 9 months or both.

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

11 1. That the temporary restraining order or injunction has been vacated or has  
12 expired and not been extended.

13 2. That the person is not prohibited from possessing a firearm under any state  
14 or federal law or by the order of any federal court or state court, other than an order  
15 from which the judge or circuit court commissioner is competent to grant relief. The  
16 court or commissioner shall use the information provided under s. 165.63 to aid in  
17 making the determination under this subdivision.

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

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

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

5 STATE OF WISCONSIN

6 IN CIRCUIT COURT FOR .... COUNTY

7 Petition to Return Firearm(s)

8 In re the Return of Firearms to (name of person required to surrender firearms  
9 in an action under s. 813.124)

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

12 Under oath I state that:

13 1. The court issued a temporary restraining order or injunction against me on  
14 (date of order or injunction).

15 2. The court ordered me to surrender any firearms I had in my possession, and  
16 I surrendered the firearms to the sheriff of this county or the sheriff of the county in  
17 which I resided, which is (name of county).

18 3. I surrendered the following firearms as provided in item 2 and have attached  
19 a receipt from the sheriff.

20 4. The temporary restraining order or injunction has (been vacated) (expired  
21 and has not been extended).

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

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



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

4           I request that the court enter an order directing that the sheriff named under  
5           item 2 return to me those firearms that were surrendered under the order of the  
6           court.

7           Subscribed and sworn to before me on (date)

8           (Signature of person requesting return of firearms)

9           (Signature of notary public, state of Wisconsin)

10          My commission expires on (date)

11          Dated this .... day of ....., .... (year)

12          Distribution:

13          1. Court - original 2. Petitioner in action under s. 813.124 3. Sheriff to whom  
14          firearm(s) were surrendered

15          **SECTION 9.** 813.126 (1) of the statutes is amended to read:

16          813.126 (1) TIME LIMITS. If a party seeks to have the judge conduct a hearing  
17          de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court  
18          commissioner in an action under s. 813.12, 813.122, 813.123, 813.124, or 813.125,  
19          including a denial of a request for a temporary restraining order, the motion  
20          requesting the hearing must be filed with the court within 30 days after the circuit  
21          court commissioner issued the determination, order, or ruling. The court shall hold  
22          the de novo hearing within 30 days after the motion requesting the hearing is filed  
23          with the court unless the court finds good cause for an extension. Any determination,  
24          order, or ruling entered by a court commissioner in an action under s. 813.12,

1 813.122, 813.123, 813.124, or 813.125 remains in effect until the judge in the de novo  
2 hearing issues his or her final determination, order, or ruling.

3 **SECTION 10.** 813.127 of the statutes is amended to read:

4 **813.127 Combined actions; domestic abuse, child abuse and**  
5 **harassment.** A petitioner may combine in one action 2 or more petitions under one  
6 or more of the provisions in ss. 813.12, 813.122, 813.124, and 813.125 if the  
7 respondent is the same person in each petition. In any such action, there is only one  
8 fee applicable under s. 814.61 (1) (a). In any such action, the hearings for different  
9 types of temporary restraining orders or injunctions may be combined.

10 **SECTION 11.** 813.128 (2g) (b) of the statutes is amended to read:

11 813.128 (2g) (b) A foreign protection order or modification of the foreign  
12 protection order that meets the requirements under this section has the same effect  
13 as an order issued under s. 813.12, 813.122, 813.123, 813.124, or 813.125, except that  
14 the foreign protection order or modification shall be enforced according to its own  
15 terms.

16 **SECTION 12.** 941.29 (1m) (g) of the statutes is amended to read:

17 941.29 (1m) (g) The person is subject to an order not to possess a firearm under  
18 s. 813.123 (5m), 813.124 (3) or (4), or 813.125 (4m).

19 (END)

## Hanaman, Cathlene

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**From:** Rep.Sargent  
**Sent:** Monday, April 17, 2017 4:10 PM  
**To:** Hanaman, Cathlene  
**Subject:** FW: Draft review: LRB -2543/P1  
**Attachments:** 17-2543/P1.pdf

Cathlene,

Hope you had a great weekend. I wanted to see if we could get another p draft of this bill with a change. Under the factors which a judge or commissioner *may* base their finding for a TRO or injunction, we'd like to include history/attempted/threatened self-harm. It might make sense to just add "himself or herself" in page 7, lines 5-6 and page 10 lines 5-6 as it is in the rest of the draft, but I'll leave that up to you.

Also, with regard to the lines I mentioned, we were wondering about using "use of physical force" versus "threats of violence or acts of violence" as it is used in the factors which a judge or commissioner shall base their finding for a TRO or injunction—is there any particular reason for this distinction?

Thanks!

Best,

Britt Cudaback

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Britt Cudaback  
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**From:** LRB.Legal  
**Sent:** Wednesday, March 15, 2017 10:50 AM  
**To:** Rep.Sargent <Rep.Sargent@legis.wisconsin.gov>  
**Subject:** Draft review: LRB -2543/P1

**Following is the PDF version of draft LRB -2543/P1.**



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT to amend** 165.63 (3), 165.63 (4) (d), 175.35 (1) (at), 175.60 (9g) (a) 2.,  
2             757.69 (1) (j), 801.50 (5s), 813.06, 813.126 (1), 813.127, 813.128 (2g) (b) and  
3             941.29 (1m) (g); and **to create** 813.124 of the statutes; **relating to:** lethal  
4             violence protective temporary restraining orders and injunctions and providing  
5             a criminal penalty.

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***Analysis by the Legislative Reference Bureau***

Under current law, a person is prohibited from possessing a firearm, and must surrender any firearm he or she possesses, if he or she 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 he or she 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 if he or she violates the prohibition.

This bill creates a lethal violence protective temporary restraining order and a lethal violence protective injunction. Upon receiving a petition filed by a law enforcement officer or a family or household member of the respondent, a court shall issue a temporary restraining order prohibiting the respondent from possessing a firearm and ordering the respondent to surrender all of his or her firearms if the court finds reasonable grounds to believe that the respondent is substantially likely

to injure himself or herself or another person if the respondent possesses a firearm. At the injunction hearing, the court may grant a lethal violence protective injunction ordering the respondent to refrain from possessing a firearm if the court finds reasonable grounds to believe that the respondent is substantially likely to injure himself or herself or another person if the respondent possesses a firearm. A lethal violence protective injunction is effective for one year and may be renewed for additional one-year terms. Any person who is subject to a lethal violence protective injunction may petition no more than once a year to vacate the injunction. A person who possesses a firearm while subject to a lethal violence protective TRO or injunction is guilty of a Class G felony. In addition, a person who files a petition for a lethal violence protective TRO or injunction, knowing the information in the petition to be false or with the intent to harass, is subject to a fine of up to \$10,000 and imprisonment for up to nine months or both.

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

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

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 (8) (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 (8) (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

1 determine whether a person is prohibited from possessing a firearm under s. 51.20  
2 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check  
3 system to determine whether a person has been ordered not to possess a firearm  
4 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search  
5 to determine whether the person is subject to an injunction under s. 813.12 or  
6 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court  
7 established by any federally recognized Wisconsin Indian tribe or band, except the  
8 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he  
9 or she is subject to the requirements and penalties under s. 941.29 and that has been  
10 filed with the circuit court under s. 813.128 (3g), and a search to determine whether  
11 the person is prohibited from possessing a firearm under s. 813.123 (5m), 813.124 (3)  
12 or (4), or 813.125 (4m).

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

14 175.60 (9g) (a) 2. The department shall conduct a criminal history record  
15 search and shall search its records and conduct a search in the national instant  
16 criminal background check system to determine whether the applicant is prohibited  
17 from possessing a firearm under federal law; whether the applicant is prohibited  
18 from possessing a firearm under s. 941.29; whether the applicant is prohibited from  
19 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant  
20 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,  
21 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction  
22 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued  
23 by a court established by any federally recognized Wisconsin Indian tribe or band,  
24 except the Menominee Indian tribe of Wisconsin, that includes notice to the  
25 respondent that he or she is subject to the requirements and penalties under s.

1 941.29 and that has been filed with the circuit court under s. 813.128 (3g); and  
2 whether the applicant is prohibited from possessing a firearm under s. 813.123 (5m),  
3 813.124 (3) or (4), or 813.125 (4m); and to determine if the court has prohibited the  
4 applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1)  
5 (c) and if the applicant is prohibited from possessing a dangerous weapon as a  
6 condition of release under s. 969.01.

7 **SECTION 5.** 757.69 (1) (j) of the statutes is amended to read:

8 757.69 (1) (j) Hold hearings, make findings and issue temporary restraining  
9 orders under s. 813.122 ~~or~~, 813.123, or 813.124.

10 **SECTION 6.** 801.50 (5s) of the statutes is amended to read:

11 801.50 (5s) Venue of an action under s. 813.122, 813.124, or 813.125 shall be  
12 in the county in which the cause of action arose or where the petitioner or the  
13 respondent resides.

14 **SECTION 7.** 813.06 of the statutes is amended to read:

15 **813.06 Security for damages.** In proceedings under s. 767.225 the court or  
16 judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122,  
17 813.124, 813.125 and 823.113 the court or judge shall, require a bond of the party  
18 seeking an injunction, with sureties, to the effect that he or she will pay to the party  
19 enjoined such damages, not exceeding an amount to be specified, as he or she may  
20 sustain by reason of the injunction if the court finally decides that the party was not  
21 entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon  
22 the party enjoined and the officer serving the same shall, within 8 days after such  
23 service, file his or her return in the office of the clerk of the court.

24 **SECTION 8.** 813.124 of the statutes is created to read:

1           **813.124 Lethal violence protective orders and injunctions. (1)**

2           DEFINITIONS. In this section:

3           (a) "Firearms dealer" has the meaning given in s. 175.35 (1) (ar).

4           (b) "Reasonable grounds" means more likely than not that a specific event will  
5 occur.

6           **(2) COMMENCEMENT OF ACTION AND RESPONSE.** (a) No action under this section  
7 may be commenced by complaint and summons. An action under this section may  
8 be commenced only by a petition described under sub. (5) (a). The action commences  
9 with the sheriff serving the petition on the respondent if a copy of the petition is filed  
10 before service or promptly after service. If the judge or a circuit court commissioner  
11 extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit  
12 with the court stating that personal service by the sheriff under s. 801.11 (1) (a) or  
13 (b) was unsuccessful because the respondent is avoiding service by concealment or  
14 otherwise, the judge or circuit court commissioner shall inform the petitioner that  
15 he or she may serve the respondent by publication of a summary of the petition as  
16 a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the  
17 respondent's post-office address or facsimile number is known or can with due  
18 diligence be ascertained. The mailing or sending of a facsimile may be omitted if the  
19 post-office address or facsimile number cannot be ascertained with due diligence.  
20 A summary of the petition published as a class 1 notice shall include the name of the  
21 respondent and of the petitioner, notice of the temporary restraining order, and  
22 notice of the date, time, and place of the hearing regarding the injunction. The court  
23 shall inform the petitioner in writing that the petitioner should contact the sheriff  
24 to verify the proof of service of the petition.



1 (b) Section 813.06 does not apply to an action under this section. The  
2 respondent may respond to the petition either in writing before or at the hearing on  
3 the issuance of the injunction or orally at that hearing.

4 (c) When the respondent is served with the petition under this subsection, the  
5 respondent shall be provided notice of the requirements and penalties under s.  
6 941.29.

7 **(2m) TWO-PART PROCEDURE.** Procedure for an action under this section is in 2  
8 parts. First, if the petitioner requests a temporary restraining order, the court shall  
9 issue or refuse to issue that order. Second, the court shall hold a hearing under sub.  
10 (4) on whether to issue an injunction, which is the final relief. If the court issues a  
11 temporary restraining order, the order shall set forth the date for the hearing on an  
12 injunction. If the court does not issue a temporary restraining order, the date for the  
13 hearing shall be set upon motion by either party.

14 **(3) TEMPORARY RESTRAINING ORDER.** (a) 1. A judge or circuit court commissioner  
15 shall issue a temporary restraining order prohibiting the respondent from  
16 possessing a firearm and ordering the respondent to surrender all of his or her  
17 firearms if the judge or circuit court commissioner finds reasonable grounds to  
18 believe that the respondent is substantially likely to injure himself or herself or  
19 another person if the respondent possesses a firearm.

20 2. The judge or circuit court commissioner shall base the finding under subd.

21 1. on the following:

22 a. Any testimony.

23 b. The petition.

24 c. A recent threat of violence or act of violence by the respondent directed  
25 toward himself or herself or another person.

1           d. A pattern of violent acts or violent threats by the respondent within the past  
2           12 months, including threats of violence or acts of violence directed toward himself  
3           or herself or another person.

4           3. The judge or circuit court commissioner may base the finding under subd.  
5           1. on any factors in addition to those under subd. 2., including any of the following:

6           a. Any unlawful or reckless use, display, or brandishing of a firearm by the  
7           respondent.

8           b. The respondent's history of use, attempted use, or threatened use of physical  
9           force against another person. *himself or herself or*

10          c. A prior arrest of the respondent for a felony.

11          d. Evidence that the respondent has abused controlled substances or alcohol.

12          e. Evidence that the respondent has recently acquired firearms, ammunition,  
13          or other dangerous weapons.

14          (am) The order issued under par. (a) requires one of the following:

15           1. If the respondent is present at the hearing, the respondent to immediately  
16           surrender all firearms that he or she has in his or her possession to the sheriff of the  
17           county in which the action under this section was commenced or to the sheriff of the  
18           county in which the respondent resides. The sheriff to whom the firearms are  
19           surrendered may, at the request of the respondent, arrange for the sale of the  
20           firearms to a firearms dealer.

21           2. One of the following:

22           a. If the respondent is not present at the hearing and the sheriff personally  
23           serves the respondent with the order issued under par. (a), the sheriff to request the  
24           respondent to immediately surrender all firearms in his or her possession. The

1 sheriff may, at the request of the respondent, arrange for the sale of the firearms to  
2 a firearms dealer.

3 b. If the respondent is not present at the hearing and the sheriff does not  
4 personally serve the respondent with the order issued under par. (a), the respondent  
5 to, within 24 hours of service, surrender all firearms in his or her possession to the  
6 sheriff or sell all firearms in his or her possession to a firearms dealer. Within 48  
7 hours of service, the respondent shall file with the court that issued the order under  
8 par. (a) a receipt from the sheriff or firearms dealer indicating that the respondent  
9 surrendered the firearms.

10 (an) If the respondent does not comply with par. (am) and a law enforcement  
11 officer has probable cause to believe that the respondent possesses a firearm, the law  
12 enforcement officer shall request a search warrant to seize the firearms and may use  
13 information contained in the petition to establish probable cause.

14 (b) Notice need not be given to the respondent before issuing a temporary  
15 restraining order under this subsection. A temporary restraining order may be  
16 entered only against the respondent named in the petition.

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

1 (d) The judge or circuit court commissioner shall advise the petitioner of the  
2 right to serve the respondent the petition by published notice if with due diligence  
3 the respondent cannot be served as provided under s. 801.11 (1) (a) or (b). The clerk  
4 of the circuit court shall assist the petitioner with the preparation of the notice and  
5 filing of the affidavit of printing.

6 (4) INJUNCTION. (a) A judge may grant an injunction prohibiting the respondent  
7 from possessing a firearm and, if the respondent was not subject to a temporary  
8 restraining order under sub. (3), ordering the respondent to surrender his or her  
9 firearms if all of the following occur:

10 1. The petitioner files a petition alleging the elements set forth under sub. (5)  
11 (a).

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

16 3. The judge finds reasonable grounds to believe that the respondent is  
17 substantially likely to injure himself or herself or another person if the respondent  
18 possesses a firearm.

19 4. The judge or circuit court commissioner shall base the finding under subd.  
20 3. on the following:

21 a. Any testimony.

22 b. The petition.

23 c. Any recent threat of violence or act of violence by the respondent directed  
24 toward himself or herself or another person.

1 d. Any pattern of violent acts or violent threats by the respondent within the  
2 past 12 months, including threats of violence or acts of violence directed toward  
3 himself or herself or another person.

4 5. The judge or circuit court commissioner may base the finding under subd.  
5 3. on any factors in addition to those under subd. 4., including any of the following:

6 a. Any unlawful or reckless use, display, or brandishing of a firearm by the  
7 respondent.

8 b. The respondent's history of use, attempted use, or threatened use of physical  
9 force against ~~another person.~~ *himself or herself or*

10 c. A prior arrest of the respondent for a felony.

11 d. Evidence that the respondent has abused controlled substances or alcohol.

12 e. Evidence that the respondent has recently acquired firearms, ammunition,  
13 or other dangerous weapons.

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

16 (c) 1. An injunction under this subsection is effective for one year unless a judge  
17 vacates the injunction under par. (d).

18 2. When an injunction expires, the court shall extend the injunction, upon  
19 petition filed up to 3 months before the expiration of the injunction, for one year if  
20 the judge finds reasonable grounds to believe that the respondent is substantially  
21 likely to injure himself or herself or another person if the respondent possesses a  
22 firearm.

23 (d) A respondent who is subject to an injunction under this subsection may  
24 request a judge to vacate the injunction one time during the initial injunction period  
25 and one time during each extended injunction period. The judge shall vacate the

1 order if the judge does not find reasonable grounds to believe that the respondent is  
2 substantially likely to injure himself or herself or another person if the respondent  
3 possesses a firearm.

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

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

7 1. The name of the petitioner and, unless the petitioner is a law enforcement  
8 officer, his or her relationship to the respondent.

9 2. The name of the respondent.

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

12 4. The name of at least one adult who has personal knowledge of the conduct  
13 of the respondent, who is not the petitioner, and who is able to testify that the  
14 respondent is substantially likely to injure himself or herself or another person if the  
15 respondent possesses a firearm.

16 5. If the petitioner knows, the number, types, and locations of any firearms that  
17 the respondent possesses.

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

20 (c) Only a law enforcement officer or a spouse, sibling, parent, child, or current  
21 or recent household member of the respondent may prepare and file a petition under  
22 this section.

23 **(6) ENFORCEMENT ASSISTANCE.** (a) 1. If an injunction is issued, extended, or  
24 vacated under sub. (4), the clerk of the circuit court shall notify the department of  
25 justice of the action and shall provide the department of justice with information.

1 concerning the period during which the injunction is in effect or the date on which  
2 the injunction is vacated and with information necessary to identify the respondent  
3 for purposes of responding to a request under s. 165.63 or for purposes of a firearms  
4 restrictions record search under s. 175.35 (2g) (c) or a background check under s.  
5 175.60 (9g) (a).

6 2. Except as provided in subd. 3., the department of justice may disclose  
7 information that it receives under subd. 1. only to respond to a request under s.  
8 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or  
9 a background check under s. 175.60 (9g) (a).

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

13 (b) Within one business day after an order or injunction is issued, extended, or  
14 vacated under this section, the clerk of the circuit court shall send a copy of the order  
15 or injunction, or of the order extending or vacating an order or injunction, to the  
16 sheriff or to any other local law enforcement agency which is the central repository  
17 for orders and injunctions and which has jurisdiction over the petitioner's premises.

18 (c) No later than 24 hours after receiving the information under par. (b), the  
19 sheriff or other appropriate local law enforcement agency under par. (b) shall enter  
20 the information concerning an order or injunction issued, extended, or vacated under  
21 this section into the transaction information for management of enforcement system.  
22 The sheriff or other appropriate local law enforcement agency shall also make  
23 available to other law enforcement agencies, through a verification system,  
24 information on the existence and status of any order or injunction issued under this

1 section. The information need not be maintained after the order or injunction is no  
2 longer in effect.

3 (7) PENALTY. Whoever files a petition under this section for a temporary  
4 restraining order or injunction knowing the information in the petition to be false or  
5 with the intent to harass shall be fined not more than \$10,000 or imprisoned for not  
6 more than 9 months or both.

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

11 1. That the temporary restraining order or injunction has been vacated or has  
12 expired and not been extended.

13 2. That the person is not prohibited from possessing a firearm under any state  
14 or federal law or by the order of any federal court or state court, other than an order  
15 from which the judge or circuit court commissioner is competent to grant relief. The  
16 court or commissioner shall use the information provided under s. 165.63 to aid in  
17 making the determination under this subdivision.

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



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

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

5 STATE OF WISCONSIN

6 IN CIRCUIT COURT FOR .... COUNTY

7 Petition to Return Firearm(s)

8 In re the Return of Firearms to (name of person required to surrender firearms  
9 in an action under s. 813.124)

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

12 Under oath I state that:

13 1. The court issued a temporary restraining order or injunction against me on  
14 (date of order or injunction).

15 2. The court ordered me to surrender any firearms I had in my possession, and  
16 I surrendered the firearms to the sheriff of this county or the sheriff of the county in  
17 which I resided, which is (name of county).

18 3. I surrendered the following firearms as provided in item 2 and have attached  
19 a receipt from the sheriff.

20 4. The temporary restraining order or injunction has (been vacated) (expired  
21 and has not been extended).

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

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

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

4           I request that the court enter an order directing that the sheriff named under  
5 item 2 return to me those firearms that were surrendered under the order of the  
6 court.

7           Subscribed and sworn to before me on (date)

8           (Signature of person requesting return of firearms)

9           (Signature of notary public, state of Wisconsin)

10          My commission expires on (date)

11          Dated this .... day of ...., .... (year)

12          Distribution:

13          1. Court - original 2. Petitioner in action under s. 813.124 3. Sheriff to whom  
14 firearm(s) were surrendered

15          **SECTION 9.** 813.126 (1) of the statutes is amended to read:

16          813.126 (1) TIME LIMITS. If a party seeks to have the judge conduct a hearing  
17 de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court  
18 commissioner in an action under s. 813.12, 813.122, 813.123, 813.124, or 813.125,  
19 including a denial of a request for a temporary restraining order, the motion  
20 requesting the hearing must be filed with the court within 30 days after the circuit  
21 court commissioner issued the determination, order, or ruling. The court shall hold  
22 the de novo hearing within 30 days after the motion requesting the hearing is filed  
23 with the court unless the court finds good cause for an extension. Any determination,  
24 order, or ruling entered by a court commissioner in an action under s. 813.12,

1 813.122, 813.123, 813.124, or 813.125 remains in effect until the judge in the de novo  
2 hearing issues his or her final determination, order, or ruling.

3 **SECTION 10.** 813.127 of the statutes is amended to read:

4 **813.127 Combined actions; domestic abuse, child abuse and**  
5 **harassment.** A petitioner may combine in one action 2 or more petitions under one  
6 or more of the provisions in ss. 813.12, 813.122, 813.124, and 813.125 if the  
7 respondent is the same person in each petition. In any such action, there is only one  
8 fee applicable under s. 814.61 (1) (a). In any such action, the hearings for different  
9 types of temporary restraining orders or injunctions may be combined.

10 **SECTION 11.** 813.128 (2g) (b) of the statutes is amended to read:

11 813.128 (2g) (b) A foreign protection order or modification of the foreign  
12 protection order that meets the requirements under this section has the same effect  
13 as an order issued under s. 813.12, 813.122, 813.123, 813.124, or 813.125, except that  
14 the foreign protection order or modification shall be enforced according to its own  
15 terms.

16 **SECTION 12.** 941.29 (1m) (g) of the statutes is amended to read:

17 941.29 (1m) (g) The person is subject to an order not to possess a firearm under  
18 s. 813.123 (5m), 813.124 (3) or (4), or 813.125 (4m).

19 (END)

## Hanaman, Cathlene

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**From:** Cudaback, Britt  
**Sent:** Monday, January 08, 2018 12:35 PM  
**To:** Hanaman, Cathlene  
**Subject:** FW: Draft review: LRB -2543/P2  
**Attachments:** 17-2543/P2.pdf

Cathlene,

We'd like to have a P3 draft of this bill that incorporates the following changes:

- ✓ • Change the one-year injunction length to 180 days
- Respondent may petition for the injunction to be vacated any time *after* the initial injunction period and without any limits on the number of times a petition may be made
  - Question: if a respondent petitions to have the decision vacated, would the original petitioner receive notice of the petition to vacate the injunction? If not, can we require this?
- Petitioners
  - Ensure campus security officers are included among those who may petition if they're not already included under "law enforcement officer";
  - Ensure roommates are included among those who may petition if not already included as a "current or recent household member";
  - Also add resident assistants employed by a postsecondary institution; coworkers; adult close friends; persons with whom respondent is in a dating relationship (use definition from s. 813.12(ag))

Let me know if you have any questions. If possible, can we get this sometime next week? Thanks!

Best,

Britt Cudaback

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**Britt Cudaback**

Legislative Aide  
Office of Representative Melissa Sargent  
321 West | Wisconsin State Capitol

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**From:** LRB.Legal  
**Sent:** Tuesday, April 18, 2017 11:36 AM  
**To:** Rep.Sargent <Rep.Sargent@legis.wisconsin.gov>  
**Subject:** Draft review: LRB -2543/P2

**Following is the PDF version of draft LRB -2543/P2.**



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 AN ACT *to amend* 165.63 (3), 165.63 (4) (d), 175.35 (1) (at), 175.60 (9g) (a) 2.,  
 2 757.69 (1) (j), 801.50 (5s), 813.06, 813.126 (1), 813.127, 813.128 (2g) (b) and  
 3 941.29 (1m) (g); and *to create* 813.124 of the statutes; **relating to:** lethal  
 4 violence protective temporary restraining orders and injunctions and providing  
 5 a criminal penalty. *penalties*

***Analysis by the Legislative Reference Bureau***

Under current law, a person is prohibited from possessing a firearm, and must surrender any firearm he or she possesses, if he or she 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 he or she 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 if he or she violates the prohibition.

This bill creates a lethal violence protective temporary restraining order and a lethal violence protective injunction. Upon receiving a petition filed by a law enforcement officer or a family member of household member of the respondent, a court shall issue a temporary restraining order prohibiting the respondent from possessing a firearm and ordering the respondent to surrender all of his or her firearms if the court finds reasonable grounds to believe that the respondent is substantially likely

*certain persons, such as*

*member*

*or close friend*

*am unnumbered number of  
180-day*

*180 days*

to injure himself or herself or another person if the respondent possesses a firearm. At the injunction hearing, the court may grant a lethal violence protective injunction ordering the respondent to refrain from possessing a firearm if the court finds reasonable grounds to believe that the respondent is substantially likely to injure himself or herself or another person if the respondent possesses a firearm. A lethal violence protective injunction is effective for ~~one year~~ and may be renewed for additional ~~one-year~~ terms. Any person who is subject to a lethal violence protective injunction may petition ~~no more than once a year~~ to vacate the injunction. A person who possesses a firearm while subject to a lethal violence protective TRO or injunction is guilty of a Class G felony. In addition, a person who files a petition for a lethal violence protective TRO or injunction, knowing the information in the petition to be false or with the intent to harass, is subject to a fine of up to \$10,000 and imprisonment for up to nine months or both.

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

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

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 (8) (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 (8) (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

1 determine whether a person is prohibited from possessing a firearm under s. 51.20  
2 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check  
3 system to determine whether a person has been ordered not to possess a firearm  
4 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search  
5 to determine whether the person is subject to an injunction under s. 813.12 or  
6 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court  
7 established by any federally recognized Wisconsin Indian tribe or band, except the  
8 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he  
9 or she is subject to the requirements and penalties under s. 941.29 and that has been  
10 filed with the circuit court under s. 813.128 (3g), and a search to determine whether  
11 the person is prohibited from possessing a firearm under s. 813.123 (5m), 813.124 (3)  
12 or (4), or 813.125 (4m).

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

14 175.60 (9g) (a) 2. The department shall conduct a criminal history record  
15 search and shall search its records and conduct a search in the national instant  
16 criminal background check system to determine whether the applicant is prohibited  
17 from possessing a firearm under federal law; whether the applicant is prohibited  
18 from possessing a firearm under s. 941.29; whether the applicant is prohibited from  
19 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant  
20 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,  
21 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction  
22 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued  
23 by a court established by any federally recognized Wisconsin Indian tribe or band,  
24 except the Menominee Indian tribe of Wisconsin, that includes notice to the  
25 respondent that he or she is subject to the requirements and penalties under s.

1 941.29 and that has been filed with the circuit court under s. 813.128 (3g); and  
2 whether the applicant is prohibited from possessing a firearm under s. 813.123 (5m),  
3 813.124 (3) or (4), or 813.125 (4m); and to determine if the court has prohibited the  
4 applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1)  
5 (c) and if the applicant is prohibited from possessing a dangerous weapon as a  
6 condition of release under s. 969.01.

7 **SECTION 5.** 757.69 (1) (j) of the statutes is amended to read:

8 757.69 (1) (j) Hold hearings, make findings and issue temporary restraining  
9 orders under s. 813.122 ~~or~~, 813.123, or 813.124.

10 **SECTION 6.** 801.50 (5s) of the statutes is amended to read:

11 801.50 (5s) Venue of an action under s. 813.122, 813.124, or 813.125 shall be  
12 in the county in which the cause of action arose or where the petitioner or the  
13 respondent resides.

14 **SECTION 7.** 813.06 of the statutes is amended to read:

15 **813.06 Security for damages.** In proceedings under s. 767.225 the court or  
16 judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122,  
17 813.124, 813.125 and 823.113 the court or judge shall, require a bond of the party  
18 seeking an injunction, with sureties, to the effect that he or she will pay to the party  
19 enjoined such damages, not exceeding an amount to be specified, as he or she may  
20 sustain by reason of the injunction if the court finally decides that the party was not  
21 entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon  
22 the party enjoined and the officer serving the same shall, within 8 days after such  
23 service, file his or her return in the office of the clerk of the court.

24 **SECTION 8.** 813.124 of the statutes is created to read:



INSERT 5.3

1           **813.124 Lethal violence protective orders and injunctions. (1)**

2           DEFINITIONS. In this section:

3           (a) "Firearms dealer" has the meaning given in s. 175.35 (1) (ar).

4           (b) "Reasonable grounds" means more likely than not that a specific event will  
5           occur. <sup>c</sup>

6           (2) COMMENCEMENT OF ACTION AND RESPONSE. (a) No action under this section  
7           may be commenced by complaint and summons. An action under this section may  
8           be commenced only by a petition described under sub. (5) (a). The action commences  
9           with the sheriff serving the petition on the respondent if a copy of the petition is filed  
10          before service or promptly after service. If the judge or a circuit court commissioner  
11          extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit  
12          with the court stating that personal service by the sheriff under s. 801.11 (1) (a) or  
13          (b) was unsuccessful because the respondent is avoiding service by concealment or  
14          otherwise, the judge or circuit court commissioner shall inform the petitioner that  
15          he or she may serve the respondent by publication of a summary of the petition as  
16          a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the  
17          respondent's post-office address or facsimile number is known or can with due  
18          diligence be ascertained. The mailing or sending of a facsimile may be omitted if the  
19          post-office address or facsimile number cannot be ascertained with due diligence.  
20          A summary of the petition published as a class 1 notice shall include the name of the  
21          respondent and of the petitioner, notice of the temporary restraining order, and  
22          notice of the date, time, and place of the hearing regarding the injunction. The court  
23          shall inform the petitioner in writing that the petitioner should contact the sheriff  
24          to verify the proof of service of the petition.

1 (b) Section 813.06 does not apply to an action under this section. The  
2 respondent may respond to the petition either in writing before or at the hearing on  
3 the issuance of the injunction or orally at that hearing.

4 (c) When the respondent is served with the petition under this subsection, the  
5 respondent shall be provided notice of the requirements and penalties under s.  
6 941.29.

7 **(2m) TWO-PART PROCEDURE.** Procedure for an action under this section is in 2  
8 parts. First, if the petitioner requests a temporary restraining order, the court shall  
9 issue or refuse to issue that order. Second, the court shall hold a hearing under sub.  
10 (4) on whether to issue an injunction, which is the final relief. If the court issues a  
11 temporary restraining order, the order shall set forth the date for the hearing on an  
12 injunction. If the court does not issue a temporary restraining order, the date for the  
13 hearing shall be set upon motion by either party.

14 **(3) TEMPORARY RESTRAINING ORDER.** (a) 1. A judge or circuit court commissioner  
15 shall issue a temporary restraining order prohibiting the respondent from  
16 possessing a firearm and ordering the respondent to surrender all of his or her  
17 firearms if the judge or circuit court commissioner finds reasonable grounds to  
18 believe that the respondent is substantially likely to injure himself or herself or  
19 another person if the respondent possesses a firearm.

20 2. The judge or circuit court commissioner shall base the finding under subd.

21 1. on the following:

22 a. Any testimony.

23 b. The petition.

24 c. A recent threat of violence or act of violence by the respondent directed  
25 toward himself or herself or another person.

1           d. A pattern of violent acts or violent threats by the respondent within the past  
2           12 months, including threats of violence or acts of violence directed toward himself  
3           or herself or another person.

4           3. The judge or circuit court commissioner may base the finding under subd.  
5           1. on any factors in addition to those under subd. 2., including any of the following:

6           a. Any unlawful or reckless use, display, or brandishing of a firearm by the  
7           respondent.

8           b. The respondent's history of use, attempted use, or threatened use of physical  
9           force against himself or herself or another person.

10          c. A prior arrest of the respondent for a felony.

11          d. Evidence that the respondent has abused controlled substances or alcohol.

12          e. Evidence that the respondent has recently acquired firearms, ammunition,  
13          or other dangerous weapons.

14          (am) The order issued under par. (a) requires one of the following:

15           1. If the respondent is present at the hearing, the respondent to immediately  
16           surrender all firearms that he or she has in his or her possession to the sheriff of the  
17           county in which the action under this section was commenced or to the sheriff of the  
18           county in which the respondent resides. The sheriff to whom the firearms are  
19           surrendered may, at the request of the respondent, arrange for the sale of the  
20           firearms to a firearms dealer.

21           2. One of the following:

22           a. If the respondent is not present at the hearing and the sheriff personally  
23           serves the respondent with the order issued under par. (a), the sheriff to request the  
24           respondent to immediately surrender all firearms in his or her possession. The

1 sheriff may, at the request of the respondent, arrange for the sale of the firearms to  
2 a firearms dealer.

3 b. If the respondent is not present at the hearing and the sheriff does not  
4 personally serve the respondent with the order issued under par. (a), the respondent  
5 to, within 24 hours of service, surrender all firearms in his or her possession to the  
6 sheriff or sell all firearms in his or her possession to a firearms dealer. Within 48  
7 hours of service, the respondent shall file with the court that issued the order under  
8 par. (a) a receipt from the sheriff or firearms dealer indicating that the respondent  
9 surrendered the firearms.

10 (an) If the respondent does not comply with par. (am) and a law enforcement  
11 officer has probable cause to believe that the respondent possesses a firearm, the law  
12 enforcement officer shall request a search warrant to seize the firearms and may use  
13 information contained in the petition to establish probable cause.

14 (b) Notice need not be given to the respondent before issuing a temporary  
15 restraining order under this subsection. A temporary restraining order may be  
16 entered only against the respondent named in the petition.

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

1 (d) The judge or circuit court commissioner shall advise the petitioner of the  
2 right to serve the respondent the petition by published notice if with due diligence  
3 the respondent cannot be served as provided under s. 801.11 (1) (a) or (b). The clerk  
4 of the circuit court shall assist the petitioner with the preparation of the notice and  
5 filing of the affidavit of printing.

6 (4) INJUNCTION. (a) A judge may grant an injunction prohibiting the respondent  
7 from possessing a firearm and, if the respondent was not subject to a temporary  
8 restraining order under sub. (3), ordering the respondent to surrender his or her  
9 firearms if all of the following occur:

10 1. The petitioner files a petition alleging the elements set forth under sub. (5)  
11 (a).

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

16 3. The judge finds reasonable grounds to believe that the respondent is  
17 substantially likely to injure himself or herself or another person if the respondent  
18 possesses a firearm.

19 4. The judge or circuit court commissioner shall base the finding under subd.  
20 3. on the following:

21 a. Any testimony.

22 b. The petition.

23 c. Any recent threat of violence or act of violence by the respondent directed  
24 toward himself or herself or another person.

1 d. Any pattern of violent acts or violent threats by the respondent within the  
2 past 12 months, including threats of violence or acts of violence directed toward  
3 himself or herself or another person.

4 5. The judge or circuit court commissioner may base the finding under subd.  
5 3. on any factors in addition to those under subd. 4., including any of the following:

6 a. Any unlawful or reckless use, display, or brandishing of a firearm by the  
7 respondent.

8 b. The respondent's history of use, attempted use, or threatened use of physical  
9 force against himself or herself or another person.

10 c. A prior arrest of the respondent for a felony.

11 d. Evidence that the respondent has abused controlled substances or alcohol.

12 e. Evidence that the respondent has recently acquired firearms, ammunition,  
13 or other dangerous weapons.

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

16 (c) 1. An injunction under this subsection is effective for one year unless a judge  
17 vacates the injunction under par. (d).

18 2. When an injunction expires, the court shall extend the injunction, upon  
19 petition filed up to 3 months before the expiration of the injunction, for one year if  
20 the judge finds reasonable grounds to believe that the respondent is substantially  
21 likely to injure himself or herself or another person if the respondent possesses a  
22 firearm. *There is no limit to the number of extensions that  
may be made under this subsection.*

23 (d) A respondent who is subject to an injunction under this subsection may  
24 request a judge to vacate the injunction one time during the initial <sup>any</sup> injunction period  
25 and one time during each extended injunction period. The judge shall vacate the

*180 days ✓*

*180 days*

*other than the initial*

*W/C 10-25*

*that has been extended under par. (c)*

1 order if the judge does not find reasonable grounds to believe that the respondent is  
2 substantially likely to injure himself or herself or another person if the respondent  
3 possesses a firearm.

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

6 (5) PETITION. (a) The petition shall allege facts sufficient to show the following:

7 1. The name of the petitioner and, unless the petitioner is a law enforcement  
8 officer, his or her relationship to the respondent, *as provided under par. (c) 2.*

9 2. The name of the respondent.

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

12 4. The name of at least one adult who has personal knowledge of the conduct  
13 of the respondent, who is not the petitioner, and who is able to testify that the  
14 respondent is substantially likely to injure himself or herself or another person if the  
15 respondent possesses a firearm.

16 5. If the petitioner knows, the number, types, and locations of any firearms that  
17 the respondent possesses.

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

20 (c) Only *the following persons* a law enforcement officer or a spouse, sibling, parent, child, or current  
21 or recent household member of the respondent may prepare and file a petition under  
22 this section. *(C)*

23 (6) ENFORCEMENT ASSISTANCE. (a) 1. If an injunction is issued, extended, or  
24 vacated under sub. (4), the clerk of the circuit court shall notify the department of  
25 justice of the action and shall provide the department of justice with information

*ms  
11-4*

*ms  
11-23*

1 concerning the period during which the injunction is in effect or the date on which  
2 the injunction is vacated and with information necessary to identify the respondent  
3 for purposes of responding to a request under s. 165.63 or for purposes of a firearms  
4 restrictions record search under s. 175.35 (2g) (c) or a background check under s.  
5 175.60 (9g) (a).

6 2. Except as provided in subd. 3., the department of justice may disclose  
7 information that it receives under subd. 1. only to respond to a request under s.  
8 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or  
9 a background check under s. 175.60 (9g) (a).

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

13 (b) Within one business day after an order or injunction is issued, extended, or  
14 vacated under this section, the clerk of the circuit court shall send a copy of the order  
15 or injunction, or of the order extending or vacating an order or injunction, to the  
16 sheriff or to any other local law enforcement agency which is the central repository  
17 for orders and injunctions and which has jurisdiction over the petitioner's premises.

18 (c) No later than 24 hours after receiving the information under par. (b), the  
19 sheriff or other appropriate local law enforcement agency under par. (b) shall enter  
20 the information concerning an order or injunction issued, extended, or vacated under  
21 this section into the transaction information for management of enforcement system.  
22 The sheriff or other appropriate local law enforcement agency shall also make  
23 available to other law enforcement agencies, through a verification system,  
24 information on the existence and status of any order or injunction issued under this



1 section. The information need not be maintained after the order or injunction is no  
2 longer in effect.

3 (7) PENALTY. Whoever files a petition under this section for a temporary  
4 restraining order or injunction knowing the information in the petition to be false or  
5 with the intent to harass shall be fined not more than \$10,000 or imprisoned for not  
6 more than 9 months or both.

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

11 1. That the temporary restraining order or injunction has been vacated or has  
12 expired and not been extended.

13 2. That the person is not prohibited from possessing a firearm under any state  
14 or federal law or by the order of any federal court or state court, other than an order  
15 from which the judge or circuit court commissioner is competent to grant relief. The  
16 court or commissioner shall use the information provided under s. 165.63 to aid in  
17 making the determination under this subdivision.

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

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

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

5 STATE OF WISCONSIN

6 IN CIRCUIT COURT FOR .... COUNTY

7 Petition to Return Firearm(s)

8 In re the Return of Firearms to (name of person required to surrender firearms  
9 in an action under s. 813.124)

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

12 Under oath I state that:

13 1. The court issued a temporary restraining order or injunction against me on  
14 (date of order or injunction).

15 2. The court ordered me to surrender any firearms I had in my possession, and  
16 I surrendered the firearms to the sheriff of this county or the sheriff of the county in  
17 which I resided, which is (name of county).

18 3. I surrendered the following firearms as provided in item 2 and have attached  
19 a receipt from the sheriff.

20 4. The temporary restraining order or injunction has (been vacated) (expired  
21 and has not been extended).

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

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

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

4           I request that the court enter an order directing that the sheriff named under  
5 item 2 return to me those firearms that were surrendered under the order of the  
6 court.

7           Subscribed and sworn to before me on (date)

8           (Signature of person requesting return of firearms)

9           (Signature of notary public, state of Wisconsin)

10          My commission expires on (date)

11          Dated this .... day of ....., .... (year)

12          Distribution:

13          1. Court - original 2. Petitioner in action under s. 813.124 3. Sheriff to whom  
14 firearm(s) were surrendered

15          **SECTION 9.** 813.126 (1) of the statutes is amended to read:

16          813.126 (1) TIME LIMITS. If a party seeks to have the judge conduct a hearing  
17 de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court  
18 commissioner in an action under s. 813.12, 813.122, 813.123, 813.124, or 813.125,  
19 including a denial of a request for a temporary restraining order, the motion  
20 requesting the hearing must be filed with the court within 30 days after the circuit  
21 court commissioner issued the determination, order, or ruling. The court shall hold  
22 the de novo hearing within 30 days after the motion requesting the hearing is filed  
23 with the court unless the court finds good cause for an extension. Any determination,  
24 order, or ruling entered by a court commissioner in an action under s. 813.12,

1 813.122, 813.123, 813.124, or 813.125 remains in effect until the judge in the de novo  
2 hearing issues his or her final determination, order, or ruling.

3 **SECTION 10.** 813.127 of the statutes is amended to read:

4 **813.127 Combined actions; domestic abuse, child abuse /and**  
5 **harassment.** A petitioner may combine in one action 2 or more petitions under one  
6 or more of the provisions in ss. 813.12, 813.122, 813.124, and 813.125 if the  
7 respondent is the same person in each petition. In any such action, there is only one  
8 fee applicable under s. 814.61 (1) (a). In any such action, the hearings for different  
9 types of temporary restraining orders or injunctions may be combined.

10 **SECTION 11.** 813.128 (2g) (b) of the statutes is amended to read:

11 813.128 (2g) (b) A foreign protection order or modification of the foreign  
12 protection order that meets the requirements under this section has the same effect  
13 as an order issued under s. 813.12, 813.122, 813.123, 813.124, or 813.125, except that  
14 the foreign protection order or modification shall be enforced according to its own  
15 terms.

16 **SECTION 12.** 941.29 (1m) (g) of the statutes is amended to read:

17 941.29 (1m) (g) The person is subject to an order not to possess a firearm under  
18 s. 813.123 (5m), 813.124 (3) or (4), or 813.125 (4m).

19 (END)

**2017-2018 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2543/p3ins  
CMH:...

Insert 5-3

(b) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c). ✓

Insert 11-4

2. When an injunction expires, the court shall extend the injunction, upon petition, for 180 days if the judge finds reasonable grounds to believe that the respondent is substantially likely to injure himself or herself or another person if the respondent possesses a firearm. There is no limit to the number of extensions that may be made under this subdivision. ✓

(d) A respondent who is subject to an injunction that has been extended under par. (c) may request a judge to vacate the injunction during any injunction period other than the initial injunction period. If a respondent files a request under this paragraph, the petitioner shall be notified of the request before the judge considers the request. The judge shall vacate the ~~order~~ <sup>injunction</sup> if the judge does not find reasonable grounds to believe that the respondent is substantially likely to injure himself or herself or another person if the respondent possesses a firearm. ✓

Insert 11-23

1. A law enforcement officer.
2. A spouse, sibling, parent, or child of the respondent. ✓
3. A household member, as defined in s. 813.12 (1) (c), of the respondent.
4. A person with whom the respondent has or had a dating relationship, as defined in s. 813.12 (1) (ag). ✓

5. An adult who is a close friend of the respondent. A court shall determine if an adult is a close friend by considering the length of the relationship, the type of the relationship, and the frequency of the interaction between the adult individuals involved in the relationship.

6. A coworker of the respondent.

77. A resident assistant employed by a postsecondary institution if the resident assistant would have necessary knowledge of the respondent, as determined by the court.



State of Wisconsin  
2017 - 2018 LEGISLATURE

11

LRB-2543/P3  
CMH:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No  
Changes

1 AN ACT *to amend* 165.63 (3), 165.63 (4) (d), 175.35 (1) (at), 175.60 (9g) (a) 2.,  
2 757.69 (1) (j), 801.50 (5s), 813.06, 813.126 (1), 813.127, 813.128 (2g) (b) and  
3 941.29 (1m) (g); and *to create* 813.124 of the statutes; **relating to:** lethal  
4 violence protective temporary restraining orders and injunctions and providing  
5 criminal penalties.

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*Analysis by the Legislative Reference Bureau*

Under current law, a person is prohibited from possessing a firearm, and must surrender any firearm he or she possesses, if he or she 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 he or she 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 if he or she violates the prohibition.

This bill creates a lethal violence protective temporary restraining order and a lethal violence protective injunction. Upon receiving a petition filed by certain persons, such as a law enforcement officer or a family member, household member, or close friend of the respondent, a court shall issue a temporary restraining order prohibiting the respondent from possessing a firearm and ordering the respondent to surrender all of his or her firearms if the court finds reasonable grounds to believe

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 12.** 941.29 (1m) (g) of the statutes is amended to read:

5 941.29 (**1m**) (g) The person is subject to an order not to possess a firearm under  
6 s. 813.123 (5m), 813.124 (3) or (4), or 813.125 (4m).

7 (END)