



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-1125/P3  
CMH:cdc/emw/skw

DOA:.....Potts, BB0397 - Extreme risk protection injunction

**FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION**

**AN ACT ...; relating to:** the budget.

---

*Analysis by the Legislative Reference Bureau*

**COURTS**

***Extreme risk protection injunctions***

Under current law, a person is prohibited from possessing a firearm and must surrender all firearms, if the person is subject to a domestic abuse injunction, a child abuse injunction, or, in certain cases, a harassment or an individuals-at-risk injunction. If a person surrenders a firearm because he or she is subject to one of those injunctions, the firearm may not be returned 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 possesses a firearm in violation of the injunction is guilty of a Class G felony.

This bill creates an extreme risk protection temporary restraining order and an extreme risk protection injunction. Such an order or injunction prohibits a person from possessing a firearm because he or she is a danger to himself or herself or another. Under the bill, only a law enforcement officer or a family or household member of the respondent may file a petition for an extreme risk protection injunction. Upon receipt of such a petition, a court shall schedule an injunction hearing. The court also shall issue a temporary restraining order prohibiting the respondent from possessing a firearm and ordering the respondent to surrender all firearms if the court finds reasonable grounds that the respondent is substantially likely to injure the respondent or another person if the respondent possesses a

firearm. The temporary restraining order remains in effect until the injunction hearing. At the injunction hearing, the court may grant an extreme risk protection injunction ordering the respondent to refrain from possessing a firearm and to surrender all firearms if the court finds by clear and convincing evidence that the respondent is substantially likely to injure himself or herself or another person if the respondent possesses a firearm. Under the bill, an extreme risk protection injunction is effective for up to one year and may be renewed. A person who is subject to an extreme risk protection injunction may petition to vacate the injunction. A person who possesses a firearm in violation of an extreme risk protection temporary restraining order or injunction is guilty of a Class G felony.

Under this bill, a person who files a petition for an extreme risk protection injunction, knowing the information in the petition to be false, is guilty of the crime of false swearing, a Class H felony.

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

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

---

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

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

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

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

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

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

175.35 (1) (at) “Firearms restrictions record search” means a search of department of justice records to determine whether a person seeking to purchase be

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

\*\*\*NOTE: This is reconciled s. 175.35 (1) (at). This SECTION has been affected by drafts with the following LRB numbers: -1125/p2 and -1109/p1.

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

175.60 **(9g)** (a) 2. The department shall conduct a criminal history record search and shall search its records and conduct a search in the national instant criminal background check system to determine whether the applicant is prohibited from possessing a firearm under federal law; whether the applicant is prohibited from possessing a firearm under s. 941.29; whether the applicant is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction

**SECTION 4**

under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. 813.128 (3g); and whether the applicant is prohibited from possessing a firearm under s. 813.123 (5m), 813.124 (2t) or (3), or 813.125 (4m); and to determine if the court has prohibited the applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the applicant is prohibited from possessing a dangerous weapon as a condition of release under s. 969.01.

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

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

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

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

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

**813.06 Security for damages.** In proceedings under s. 767.225 the court or judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122, 813.124, 813.125 and 823.113 the court or judge shall, require a bond of the party seeking an injunction, with sureties, to the effect that he or she will pay to the party enjoined such damages, not exceeding an amount to be specified, as he or she may sustain by reason of the injunction if the court finally decides that the party was not entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon

the party enjoined and the officer serving the same shall, within 8 days after such service, file his or her return in the office of the clerk of the court.

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

**813.124 Extreme risk protection injunctions. (1) DEFINITIONS.** In this section:

(a) "Family or household member" means any of the following:

1. A person related by blood, adoption, or marriage to the respondent.
2. A person with whom the respondent has or had a dating relationship, as defined in s. 813.12 (1) (ag), or with whom the respondent has a child in common.
3. A person who resides with, or within the 6 months before filing a petition, had resided with, the respondent.
4. A domestic partner under ch. 770 of the respondent.
5. A person who is acting or has acted as the respondent's legal guardian or who is or was a foster parent or other physical custodian described in s. 48.62 (2) of the respondent.
6. A person for whom the respondent is acting or has acted as a legal guardian or for whom the respondent is or was the foster parent or other physical custodian described in s. 48.62 (2).

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

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

**(2) COMMENCEMENT OF ACTION AND RESPONSE.** (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (4) (a). The action commences with the sheriff serving the petition on the respondent if a copy of the petition is filed before service or promptly after service. If the petitioner files an affidavit with the

court stating that personal service by the sheriff under s. 801.11 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the judge or circuit court commissioner shall inform the petitioner that the petitioner may serve the respondent by publication of a summary of the petition as a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the respondent's post-office address or facsimile number is known or can with due diligence be ascertained. The mailing or sending of a facsimile may be omitted if the post-office address or facsimile number cannot be ascertained with due diligence. A summary of the petition published as a class 1 notice shall include the name of the respondent and of the petitioner, notice of the temporary restraining order, and notice of the date, time, and place of the hearing regarding the injunction. The court shall inform the petitioner in writing that the petitioner should contact the sheriff to verify the proof of service of the petition.

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

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

**(2m)** TWO-PART PROCEDURE. Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court shall issue or refuse to issue that order. Second, the court shall hold a hearing on whether to issue an injunction, which is the final relief, under sub. (3). If the court issues a temporary restraining order, the order shall set forth the date for the hearing on an

injunction. If the court does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

**(2t) TEMPORARY RESTRAINING ORDER.** (a) A judge or circuit court commissioner shall issue a temporary restraining order prohibiting the respondent from possessing a firearm and ordering the respondent to surrender all of the firearms in the respondent's possession if the judge or circuit court commissioner finds reasonable grounds that the respondent is substantially likely to injure the respondent or another person if the respondent possesses a firearm.

(am) The order issued under par. (a) shall require one of the following:

1. If the respondent is present at the hearing, the respondent to immediately surrender all firearms in the respondent's possession to the sheriff of the county in which the action under this section was commenced or to the sheriff of the county in which the respondent resides. The sheriff to whom the firearms are surrendered may, at the request of the respondent, arrange for the transfer or sale of the firearms to a firearms dealer.

2. One of the following:

a. If the respondent is not present at the hearing and the sheriff personally serves the respondent with the order issued under par. (a), the sheriff to require the respondent to immediately surrender all firearms in the respondent's possession. The sheriff may, at the request of the respondent, arrange for the transfer or sale of the firearms to a firearms dealer.

b. If the respondent is not present at the hearing and the sheriff does not personally serve the respondent with the order issued under par. (a), the respondent to, within 24 hours of service, surrender all firearms in the respondent's possession to the sheriff or transfer or sell all firearms in the respondent's possession to a

firearms dealer. Within 48 hours of service, the respondent shall file with the court that issued the order under par. (a) a receipt from the sheriff or firearms dealer indicating that the respondent surrendered the firearms.

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

2. If the respondent does not comply with par. (am) or, if applicable, an order issued at a hearing to surrender firearms, or a law enforcement officer has probable cause to believe that the respondent possesses a firearm, the law enforcement officer shall request a search warrant to seize the firearms and may use information contained in the petition to establish probable cause.

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

(c) A temporary restraining order issued under this subsection is in effect until a hearing is held on issuance of an injunction under sub. (3). A judge shall hold a hearing on issuance of an injunction under sub. (3) within 14 days after the temporary restraining order is issued, unless the time is extended once for up to 14 days upon the written consent of the parties or upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence. A judge may not extend the temporary restraining order in lieu of ruling on the issuance of an injunction.

(d) The judge or circuit court commissioner shall advise the petitioner of the right to serve the respondent the petition by published notice if with due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or (b). The clerk



of the circuit court shall assist the petitioner with the preparation of the notice and filing of the affidavit of printing.

**(3) INJUNCTION.** (a) A judge may grant an injunction prohibiting the respondent from possessing a firearm and, if the respondent was not subject to a temporary restraining order under sub. (2t), ordering the respondent to surrender all firearms in the respondent's possession if all of the following occur:

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

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

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

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

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

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

(d) A respondent who is subject to an injunction issued under this subsection may request in writing a judge to vacate the injunction one time during any 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 injunction if the respondent demonstrates by clear and convincing evidence that the respondent is no longer substantially likely to injure himself or herself or another person if the respondent possesses a firearm.

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

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

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

2. The name of the respondent.

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

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

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

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

1. A law enforcement officer.

2. A family or household member of the respondent.

**(5) ENFORCEMENT ASSISTANCE.** (a) 1. If an injunction is issued, extended, or vacated under sub. (3), the clerk of the circuit court shall notify the department of justice of the action and shall provide the department of justice with information

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

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

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

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

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

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

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

**(6) PENALTY FOR FALSE SWEARING.** Whoever files a petition under this section for an injunction knowing the information in the petition to be false is subject to prosecution for false swearing under s. 946.32 (1), a Class H felony.

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

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

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

(b) If a respondent surrenders under this section a firearm that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers

adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.2905.

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

**(8) NOTICE OF FULL FAITH AND CREDIT.** An order or injunction issued under sub. (2t) or (3) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state, and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

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

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

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

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

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

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

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

941.29 **(1m)** (g) The person is subject to an order not to possess a firearm under s. 813.123 (5m), 813.124 (2t) or (3), or 813.125 (4m).

**(END)**