

## MISCELLANEOUS PROVISIONS

### Budget Change Items

#### 1. EXTREME RISK PROTECTION TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

**Governor:** Create an extreme risk protection temporary restraining order and extreme risk protection injunction, prohibiting a person from possessing a firearm if he or she is a danger to him/herself or others. The bill specifies that the intent of the provision is to implement a state crisis intervention court proceeding in the form of an extreme risk protection order program that is eligible for federal grants.

*a. Extreme Risk Protection Temporary Restraining Orders and Injunctions - General.* Establish a two-part procedure for an extreme risk protection injunction action. First, if the petitioner requests an extreme risk protection temporary restraining order, the court must issue or refuse to issue the order. If issued, the order must set a date for the injunction hearing, which must be within 14 days of issuing the temporary restraining order for the hearing on the injunction, and must forward a copy of the order, hearing date, and petition to the appropriate law enforcement agency. The law enforcement agency must immediately, or as soon as practicable, service it on the respondent or have the court order other appropriate service. If a temporary restraining order is not issued, the respondent must be served notice of the petition by a law enforcement officer or have the court order other appropriate service, and the date for the hearing must be set in motion. Service must include the name of the respondent and petition, and the date, time and place of the injunction hearing, if known. The date for the hearing must be set upon motion by either party. Second, the court must hold a hearing on whether to issue an injunction (the final relief).

Specify that an extreme risk protection order or injunction must 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, any other state, and tribal courts, to the extent that the court has personal jurisdiction. In addition, specify that an extreme risk protection action must be filed in the county in which the case of action arose, or where the petitioner or respondent resides.

*b. Petition and Service.* Specify that no extreme risk protection temporary restraining order and injunction action may be commenced by complaint and summons (only by petition). Specify petition requirements for extreme risk protection restraining orders and injunctions. Provide that only a law enforcement officer or a family or household member of the respondent may file a petition. Require that the petition must allege specific facts to show: (a) the name of the petitioner and how the petitioner is a family or household member of the respondent (unless the petitioner is a law enforcement officer); (b) the name of the respondent; (c) that the respondent is substantially likely to injure him/herself, or another person if the respondent possesses a firearm; (d) information on the number, types, and locations of firearms possessed by the respondent; and

(e) evidence of an immediate and present danger (increased by waiting for an injunction hearing), if requested a temporary restraining order. Specify that the Clerk of Circuit Court must provide simplified forms to assist a person in filing a petition. In addition, specify that a petitioner for an injunction that knowingly provides false information in the petition is subject to prosecution for false swearing (a Class H felony, a maximum sentence of three years confinement and three years extended supervision and/or a fine of up to \$10,000).

*c. Temporary Restraining Orders.* Establish an extreme risk protection temporary restraining order, prohibiting the respondent from possessing a firearm and ordering the respondent to surrender all firearms in the respondent's possession if all of the following occur: (1) a petitioner files a petition containing the appropriate information and requesting a temporary restraining order. The petition must be heard by the court in an expedited manner and the petitioner and any witnesses may be examined under oath and may produce or rely on an a submitted affidavit; or (2) the judge finds all of the following: (a) substantial likelihood the petition will be successful; and (b) good cause that there is an immediate and president danger. If the petition is successful, the temporary restraining order remains in effect until a hearing is held and may not be renewed or extended. The order must inform the respondent named in the petition of the requirements and penalties related to a violation.

Upon issuance of a temporary order, either a law enforcement officer may require the respondent to immediately surrender all firearms in his or her possession, if the officer is able to serve the respondent with the order, or, order the respondent to surrender all firearms to a law enforcement officer or transfer or sell all firearms in his or her possession within 24 hours of service, if the officer is not able to serve the respondent with the order. Specify that the respondent must file with the court a receipt, containing certain information, indicating that the respondent's firearms were surrendered, transferred, or sold within 48 hours of service.

Under the bill, if the respondent does not comply with the requirements of an order issued to surrender firearms, or if a law enforcement officer has probable cause to believe that the respondent possesses a firearm, a law enforcement officer must request a search warrant to seize the firearms and may use information contained in the petition to establish probable cause. In addition, the court may schedule a hearing to surrender firearms for any reason relevant to the surrender of firearms.

*d. Injunctions.* Establish an extreme risk protection injunction prohibiting the respondent from possessing a firearm and, if the respondent was not subject to an extreme risk protection temporary restraining order, requiring the respondent to surrender all firearms in the respondent's possession if: (a) the petitioner files a petition and serves a copy or summary of the petition and notice of the injunction hearing time on the respondent, or the respondent serves a notice of the injunction hearing time on the petitioner; and (b) the judge finds by clear and convincing evidence that the respondent is substantially likely to injure him/herself or another person if the respondent possesses a firearm. Specify that the judge may enter an injunction only against the respondent named in the petition, and any issued injunction must inform the named respondent of possession of firearm requirements and penalties.

Under the bill, unless a judge vacates the extreme risk protection injunction, an injunction

is effective for a period determined by the judge that is no longer than one year (although the court can extend an expired injunction, upon petition, for up to one additional year, if the judge finds the respondent is still substantially likely to injure him/herself or another person if the respondent possesses a firearm).

Specify that an injunction may be vacated upon written request by the respondent to a judge (one request during any injunction period). The petitioner must be notified of the request before it is considered, and the judge must vacate the injunction if the respondent demonstrates by clear and convincing evidence that the respondent is no longer substantially likely to injure him/herself or another person if the respondent possesses a firearm.

Provide that if an injunction is issued, extended, or vacated, the Clerk of Circuit Court must notify the Department of Justice of the action, and provide information concerning the effective period of the injunction or the date on which the injunction is vacated, along with information necessary to identify the respondent (this information may be disclosed only to: (a) a law enforcement agency for law enforcement purposes; or (b) to respond to a request to access firearm prohibition orders, for a firearms restrictions record search, or for a background check). The Clerk must also send a copy of the injunction or order extending or vacating an injunction to the sheriff or to any other local law enforcement agency which is the central repository for injunctions, with jurisdiction over the petitioner's premises, within one business day after the injunction is issued, extended, or vacated. No later than 24 hours after receiving a copy of the issued, extended, or vacated injunction, the sheriff or law enforcement agency must enter the information into the transaction information for management enforcement system and make the information available to other law enforcement agencies. Specify that the information does not need to be maintained after the injunction is no longer in effect.

*e. Modification of Court Procedure, Criminal Statutes, and Enforcement of Actions.* Modify statutory language to add extreme risk protection orders: (a) to the time limits statutes for parties seeking a hearing de novo ("anew"); (b) to the list of actions for which a petitioner may combine with other actions, in certain circumstances; (c) to the list of orders for which a foreign protection order or modification with the same effect must be enforced; (d) to the list of actions circuit court commissioners have the power to hold hearings, make findings, and issue temporary orders on; (e) to the list of actions that must be extended in the case of needing a substitute judge; (f) to the list of statutes prohibiting firearm possession, used by the Department of Justice to conduct background checks to determine whether an applicant for a license to carry a concealed weapon is prohibited from possessing a firearm; and (g) to the list of orders for which a person subject to the order may not possess a firearm (or otherwise be subject to a Class G felony for possession of a firearm, a maximum sentence of five years confinement and five years extended supervision and/or a fine of up to \$25,000).

*f. Return of a Firearm.* Specify that a firearm surrendered under extreme risk protection statutes cannot be returned until the respondent completes a petition and the judge or commissioner determines: (a) the temporary restraining order or injunction has been vacated or has expired and not been extended; and (b) the person is not prohibited from possessing a firearm under any state or federal law or order, other than the order relevant to the present petition. The judge or commissioner must use information maintained by law enforcement, identified above, to aid in

their determination.

Specify that if a surrendered firearm is owned by a person other than the respondent, the owner may apply to the court for its return in the county in which the respondent is located. The court must order notice to be given to all persons who have or may have an interest in the firearm and must hold a hearing on all claims to the true ownership. The court must order the firearm returned, along with information on the requirements and penalties of straw purchasing firearms, if rightful possession is proved to the court's satisfaction.

Specify that the Director of State Courts is required to develop a petition for the return of firearms form that is substantially the same as the notice and process for firearm surrender form, available under current law.

*g. Definitions.* For the purposes of the extreme risk protections provisions, define "family or household member," to mean: (a) a person related by blood, adoption, or marriage to the respondent; (b) a person with whom the respondent has or had a dating relationship, or with whom the respondent has a child in common; (c) a person who resides with, or within the six months before filing a petition, had resided with, the respondent; (d) a domestic partner of the respondent as defined under state law; (e) 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 of the respondent; or (f) 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. Use current law definitions of "firearms dealer" and "law enforcement officer" in conjunction with extreme risk protection injunctions.

Modify the statutory language to define "firearms restrictions record search" to mean a search of Department of Justice records to determine whether a person seeking to purchase a handgun is prohibited from possessing a firearm under possession of a firearm statutes, and require a search to determine whether a person is subject to an extreme risk protection order or injunction as prohibitive of firearm possession within the definition.

**Joint Finance/Legislature:** Provision not included. (Removed from budget consideration pursuant to Joint Finance Motion #10.)

## 2. GENDER-NEUTRAL STATUTORY REFERENCES

**Governor:** Modify current statutes by replacing all references to "husband" or "wife" with "spouse." Modify current statutes to make applicable to married persons of the same sex all provisions under current law that apply to married persons of different sexes, consistent with the U.S. Supreme Court decision *Obergefell v. Hodges*. Define "spouse" as a person who is legally married to another person of the same sex or a different sex.

Specify the ways in which married couples of the same sex may be the legal parents of a child, and with some exceptions, make current references in the statutes to "mother" and "father," and related terms, gender-neutral.

*Adoption.* Modify current law to expressly permit same sex spouses to jointly adopt a minor child. Under current law a husband and wife may jointly adopt a minor child. Further, expressly permit a same-sex spouse of a person who is the parent of a minor child to adopt the child and become the legal parent of the spouse's child.

*Artificial Insemination.* Specify that a same or opposite sex spouse may consent to the artificial insemination of their spouse and upon successful insemination become the natural parent of any child conceived from the procedure. Delete the requirement that artificial insemination occur under the supervision of a physician but specify that if the procedure is not supervised by a physician the semen used must have been obtained from a sperm bank. Under current law, a same or opposite sex spouse may consent to the artificial insemination of his or her wife, but while a husband would be considered the natural parent of any child conceived, a same sex spouse would not be automatically considered a natural parent. Further, under current law, the insemination must occur under the supervision of a licensed physician.

*Marital Presumption of Paternity.* Expand the legal marital presumption of paternity to become a legal marital presumption of parentage and apply that presumption to spouses of either sex. Under this provision, a person is presumed to be the natural parent of a child if he or she: (a) was married to the child's established natural parent when the child was conceived or born; or (b) married the child's established natural parent after the child was born but had a relationship with the established natural parent when the child was conceived and no person has been adjudicated to be the father and no other person is presumed to be the child's parent because he or she was married to the natural parent when the child was conceived or born. Modify the current law allowing for the rebuttal of the marital presumption of paternity, to allow a person to rebut the marital presumption of parentage by the results of a genetic test showing that the statistical probability of another person's parentage is 99.0 percent or higher. Specify that the marital presumption may be rebutted regardless of whether the presumption applies to a male or female spouse.

*Voluntary Acknowledgement of Paternity.* Expand voluntary paternity acknowledgements to allow for voluntary parentage acknowledgements. Permit both natural parents to sign a voluntary parentage acknowledgement and file it with the state registrar. If the state registrar receives such a statement, the two people who signed the statement are presumed to be the parents of the child. Specify that a statement acknowledging parentage that is not rescinded, in accordance with state law, conclusively establishes parentage with regard to the person who did not give birth to the child and who signed the statement. Under current law, the mother and a man may sign and file a statement acknowledging paternity in order for the man to become the presumed father of the child.

Modify current statutes by replacing a number of references to "biological parent" with the term "natural parent." Define "natural parent" to mean an individual who is the parent of a child who is not an adoptive parent, whether the parent is biologically related to the child or not. By replacing references to "biological parent" with "natural parent" additional rights are awarded to spouses who do not rebut the marital presumption of parentage, without requiring the non-biological parent to adopt the minor child. Additional rights are also awarded to non-biological parents who voluntarily acknowledge parentage. Under current law, these rights apply to parents

and pertain to areas of the law including, but not limited to, education, medical information and decision-making, and parental responsibilities such as child support.

**Joint Finance/Legislature:** Provision not included. (Removed from budget consideration pursuant to Joint Finance Motion #10.)

### 3. QUARRY HOURS OF OPERATION

**Governor:** Prohibit a political subdivision from limiting the times that quarry operations may occur, if the materials produced by the quarry are to be used in a public works project that requires construction work to be performed during the night or an emergency repair. Specify that a "political subdivision" would mean a town, city, village, or county. Define the following:

(a) "Public works project" would mean a federal, state, county, or municipal project that involves the construction, maintenance, or repair of a public transportation facility or other public infrastructure, and in which nonmetallic minerals are used;

(b) "Quarry" would mean the surface area from which nonmetallic minerals (including soil, clay, gravel, and construction aggregate) that are used for a public works project, or a private construction or transportation project, are extracted and processed; and

(c) "Quarry operations" would mean the extraction and processing of minerals at a quarry and all related activities, including blasting, vehicle and equipment access to the quarry, and loading and hauling of material to and from the quarry.

**Legislature:** Provision included in 2023 Wisconsin Act 12.