



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-4582/1
CMH:wlj&amn

2019 SENATE BILL 530

October 25, 2019 - Introduced by Senators L. TAYLOR, JOHNSON, CARPENTER, ERPENBACH, HANSEN, LARSON, MILLER, RINGHAND, RISSER, SHILLING, SMITH and WIRCH, cosponsored by Representatives SARGENT, CROWLEY, ANDERSON, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, EMERSON, FIELDS, GOYKE, GRUSZYNSKI, HAYWOOD, HEBL, HESSELBEIN, HINTZ, KOLSTE, L. MYERS, NEUBAUER, OHNSTAD, SINICKI, SPREITZER, STUBBS, STUCK, C. TAYLOR, VINING and ZAMARRIPA. Referred to Committee on Judiciary and Public Safety.

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

Analysis by the Legislative Reference Bureau

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

This bill creates an extreme risk protection temporary restraining order and an extreme risk protection injunction. Upon receiving a petition filed by a law enforcement officer or a family or household member of the respondent, 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

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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 if the court finds by clear and convincing evidence that the respondent is substantially likely to injure the respondent or another person if the respondent possesses a firearm. An extreme risk protection injunction is effective for up to one year and may be renewed. Any person who is subject to an extreme risk protection injunction may petition to vacate the injunction. A person who possesses a firearm while subject to an extreme risk protection temporary restraining order or injunction is guilty of a Class G felony. In addition, a person who files a petition for an extreme risk protection temporary restraining order or 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:

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

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

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

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

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1 except the Menominee Indian tribe of Wisconsin, that includes notice to the
2 respondent that he or she is subject to the requirements and penalties under s.
3 941.29 and that has been filed with the circuit court under s. 813.128 (3g); and
4 whether the applicant is prohibited from possessing a firearm under s. 813.123 (5m),
5 813.124 (3) or (4), or 813.125 (4m); and to determine if the court has prohibited the
6 applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1)
7 (c) and if the applicant is prohibited from possessing a dangerous weapon as a
8 condition of release under s. 969.01.

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

10 757.69 (1) (j) Hold hearings, make findings and issue temporary restraining
11 orders under s. 813.122 ~~or~~, 813.123, or 813.124.

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

13 801.50 (5sb) Venue of an action under s. 813.124 shall be in the county in which
14 the cause of action arose or where the petitioner or the respondent resides.

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

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

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

SENATE BILL 530**1 813.124 Extreme risk protection orders and injunctions. (1)**

2 DEFINITIONS. In this section:

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

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

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

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

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

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

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

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

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

18 (d) “Reasonable grounds” has the meaning given in s. 813.12 (1) (cg).

19 **(2) COMMENCEMENT OF ACTION AND RESPONSE.** (a) No action under this section
20 may be commenced by complaint and summons. An action under this section may
21 be commenced only by a petition described under sub. (5) (a). The action commences
22 with the sheriff serving the petition on the respondent if a copy of the petition is filed
23 before service or promptly after service. If the judge or a circuit court commissioner
24 extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit
25 with the court stating that personal service by the sheriff under s. 801.11 (1) (a) or

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

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

16 (c) When the respondent is served with the petition under this subsection, the
17 respondent shall be provided notice of the requirements and penalties under s.
18 941.29.

19 **(2m)** TWO-PART PROCEDURE. Procedure for an action under this section is in 2
20 parts. First, if the petitioner requests a temporary restraining order, the court shall
21 issue or refuse to issue that order. Second, the court shall hold a hearing under sub.
22 (4) on whether to issue an injunction, which is the final relief. If the court issues a
23 temporary restraining order, the order shall set forth the date for the hearing on an
24 injunction. If the court does not issue a temporary restraining order, the date for the
25 hearing shall be set upon motion by either party.

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1 **(3) TEMPORARY RESTRAINING ORDER.** (a) A judge or circuit court commissioner
2 shall issue a temporary restraining order prohibiting the respondent from
3 possessing a firearm and ordering the respondent to surrender all of the firearms in
4 the respondent's possession if the judge or circuit court commissioner finds
5 reasonable grounds that the respondent is substantially likely to injure the
6 respondent or another person if the respondent possesses a firearm.

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

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

14 2. One of the following:

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

20 b. If the respondent is not present at the hearing and the sheriff does not
21 personally serve the respondent with the order issued under par. (a), the respondent
22 to, within 24 hours of service, surrender all firearms in the respondent's possession
23 to the sheriff or transfer or sell all firearms in the respondent's possession to a
24 firearms dealer. Within 48 hours of service, the respondent shall file with the court

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1 that issued the order under par. (a) a receipt from the sheriff or firearms dealer
2 indicating that the respondent surrendered the firearms.

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

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

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

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

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

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

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

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

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

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

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

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

23 (d) A respondent who is subject to an injunction issued under this subsection
24 may request in writing a judge to vacate the injunction one time during any
25 injunction period. If a respondent files a request under this paragraph, the

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1 petitioner shall be notified of the request before the judge considers the request. The
2 judge shall vacate the injunction if the respondent demonstrates by clear and
3 convincing evidence that the respondent is no longer substantially likely to injure
4 the respondent or another person if the respondent possesses a firearm.

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

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

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

10 2. The name of the respondent.

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

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

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

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

18 1. A law enforcement officer.

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

20 **(6) ENFORCEMENT ASSISTANCE.** (a) 1. If an injunction is issued, extended, or
21 vacated under sub. (4), the clerk of the circuit court shall notify the department of
22 justice of the action and shall provide the department of justice with information
23 concerning the period during which the injunction is in effect or the date on which
24 the injunction is vacated and with information necessary to identify the respondent
25 for purposes of responding to a request under s. 165.63 or for purposes of a firearms

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1 restrictions record search under s. 175.35 (2g) (c) or a background check under s.
2 175.60 (9g) (a).

3 2. Except as provided in subd. 3., the department of justice may disclose
4 information that it receives under subd. 1. only to respond to a request under s.
5 165.63 or as part of a firearms restrictions record search under s. 175.35 (2g) (c) or
6 a background check under s. 175.60 (9g) (a).

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

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

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

24 **(7) PENALTY FOR FALSE SWEARING.** Whoever files a petition under this section for
25 a temporary restraining order or injunction knowing the information in the petition

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1 to be false is subject to prosecution for false swearing under s. 946.32 (1), a Class H
2 felony.

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

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

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

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

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

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1 **(9) NOTICE OF FULL FAITH AND CREDIT.** An order or injunction issued under sub.
2 (3) or (4) shall include a statement that the order or injunction may be accorded full
3 faith and credit in every civil or criminal court of the United States, civil or criminal
4 courts of any other state, and Indian tribal courts to the extent that such courts may
5 have personal jurisdiction over nontribal members.

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

7 813.126 **(1) TIME LIMITS.** If a party seeks to have the judge conduct a hearing
8 de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court
9 commissioner in an action under s. 813.12, 813.122, 813.123, 813.124, or 813.125,
10 including a denial of a request for a temporary restraining order, the motion
11 requesting the hearing must be filed with the court within 30 days after the circuit
12 court commissioner issued the determination, order, or ruling. The court shall hold
13 the de novo hearing within 30 days after the motion requesting the hearing is filed
14 with the court unless the court finds good cause for an extension. Any determination,
15 order, or ruling entered by a court commissioner in an action under s. 813.12,
16 813.122, 813.123, 813.124, or 813.125 remains in effect until the judge in the de novo
17 hearing issues his or her final determination, order, or ruling.

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

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

