



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3215/1
CMH:wlj

2015 ASSEMBLY BILL 395

October 13, 2015 - Introduced by Representatives BARNES, JOHNSON, SARGENT, YOUNG, POPE, BERCEAU, GOYKE, BROSTOFF, C. TAYLOR, SINICKI, SUBECK, OHNSTAD, BOWEN and ZAMARRIPA, cosponsored by Senators HARRIS DODD and L. TAYLOR. Referred to Committee on Judiciary.

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, 813.127, 813.128 (1) (a), 941.29 (1)
3 (f) and 941.29 (2) (e); 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.

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 (TRO) 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

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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.

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 FOR INJUNCTIONS. In making a determination required
3 under s. 813.124 (8) (a) or 813.1285 (7) (a), a judge or court commissioner shall
4 request information under sub. (2) from the department or from a law enforcement
5 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) or 813.1285 (7) (a).

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

10 175.35 (1) (at) “Firearms restrictions record search” means a search of
11 department of justice records to determine whether a person seeking to purchase a
12 handgun is prohibited from possessing a firearm under s. 941.29. “Firearms
13 restrictions record search” includes a criminal history record search, a search to
14 determine whether a person is prohibited from possessing a firearm under s. 51.20

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1 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
2 system to determine whether a person has been ordered not to possess a firearm
3 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
4 to determine whether the person is subject to an injunction under s. 813.12 or
5 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
6 established by any federally recognized Wisconsin Indian tribe or band, except the
7 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
8 or she is subject to the requirements and penalties under s. 941.29 and that has been
9 filed with the circuit court under s. 806.247 (3), and a search to determine whether
10 the person is prohibited from possessing a firearm under s. 813.123 (5m), 813.124 (3)
11 or (4), or 813.125 (4m).

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

13 175.60 **(9g)** (a) 2. The department shall conduct a criminal history record
14 search and shall search its records and conduct a search in the national instant
15 criminal background check system to determine whether the applicant is prohibited
16 from possessing a firearm under federal law; whether the applicant is prohibited
17 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
18 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
19 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
20 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction
21 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
22 by a court established by any federally recognized Wisconsin Indian tribe or band,
23 except the Menominee Indian tribe of Wisconsin, that includes notice to the
24 respondent that he or she is subject to the requirements and penalties under s.
25 941.29 and that has been filed with the circuit court under s. 806.247 (3); and

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

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

7 757.69 (1) (j) Hold hearings, make findings and issue temporary restraining
8 orders under s. 813.122 ~~or~~, 813.123, or 813.124.

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

10 801.50 (5s) Venue of an action under s. 813.122, 813.124, or 813.125 shall be
11 in the county in which the cause of action arose or where the petitioner or the
12 respondent resides.

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

14 **813.06 Security for damages.** In proceedings under s. 767.225 the court or
15 judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122,
16 813.124, 813.125 and 823.113 the court or judge shall, require a bond of the party
17 seeking an injunction, with sureties, to the effect that he or she will pay to the party
18 enjoined such damages, not exceeding an amount to be specified, as he or she may
19 sustain by reason of the injunction if the court finally decides that the party was not
20 entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon
21 the party enjoined and the officer serving the same shall, within 8 days after such
22 service, file his or her return in the office of the clerk of the court.

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

24 **813.124 Lethal violence protective orders and injunctions. (1)**

25 **DEFINITIONS.** In this section:

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

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

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

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

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1 (c) When the respondent is served with the petition under this subsection, the
2 respondent shall be provided notice of the requirements and penalties under s.
3 941.29 (1) (f) and (2) (e).

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

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

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

19 a. Any testimony.

20 b. The petition.

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

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

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- 1 3. The judge or circuit court commissioner may base the finding under subd.
2 1. on any factors in addition to those under subd. 2., including any of the following:
- 3 a. Any unlawful or reckless use, display, or brandishing of a firearm by the
4 respondent.
- 5 b. The respondent's history of use, attempted use, or threatened use of physical
6 force against another person.
- 7 c. A prior arrest of the respondent for a felony.
- 8 d. Evidence that the respondent has abused controlled substances or alcohol.
- 9 e. Evidence that the respondent has recently acquired firearms, ammunition,
10 or other dangerous weapons.
- 11 (am) The order issued under par. (a) requires one of the following:
- 12 1. If the respondent is present at the hearing, the respondent to immediately
13 surrender all firearms that he or she has in his or her possession to the sheriff of the
14 county in which the action under this section was commenced or to the sheriff of the
15 county in which the respondent resides. The sheriff to whom the firearms are
16 surrendered may, at the request of the respondent, arrange for the sale of the
17 firearms to a firearms dealer.
- 18 2. One of the following:
- 19 a. If the respondent is not present at the hearing and the sheriff personally
20 serves the respondent with the order issued under par. (a), the sheriff to request the
21 respondent to immediately surrender all firearms in his or her possession. The
22 sheriff may, at the request of the respondent, arrange for the sale of the firearms to
23 a firearms dealer.
- 24 b. If the respondent is not present at the hearing and the sheriff does not
25 personally serve the respondent with the order issued under par. (a), the respondent

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1 to, within 24 hours of service, surrender all firearms in his or her possession to the
2 sheriff or sell all firearms in his or her possession to a firearms dealer. Within 48
3 hours of service, the respondent shall file with the court that issued the order under
4 par. (a) a receipt from the sheriff or firearms dealer indicating that the respondent
5 surrendered the firearms.

6 (an) If the respondent does not comply with par. (am) and a law enforcement
7 officer has probable cause to believe that the respondent possesses a firearm, the law
8 enforcement officer shall request a search warrant to seize the firearms and may use
9 information 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 or circuit court
15 commissioner shall hold a hearing on issuance of an injunction under sub. (4) within
16 14 days after the temporary restraining order is issued, unless the time is extended
17 once for up to 14 days upon the written consent of the parties or upon a finding that
18 the respondent has not been served with a copy of the temporary restraining order
19 although the petitioner has exercised due diligence. A judge or court commissioner
20 may not extend the temporary restraining order in lieu of ruling on the issuance of
21 an injunction.

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

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

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

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

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

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

16 4. The judge or circuit court commissioner shall base the finding under subd.

17 3. on the following:

18 a. Any testimony.

19 b. The petition.

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

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

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1 5. The judge or circuit court commissioner may base the finding under subd.

2 3. on any factors in addition to those under subd. 4., including any of the following:

3 a. Any unlawful or reckless use, display, or brandishing of a firearm by the
4 respondent.

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

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

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

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

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

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

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

20 (d) A respondent who is subject to an injunction under this subsection may
21 request a judge to vacate the injunction one time during the initial injunction period
22 and one time during each extended injunction period. The judge shall vacate the
23 order if the judge does not find reasonable grounds to believe that the respondent is
24 substantially likely to injure himself or herself or another person if the respondent
25 possesses a firearm.

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

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

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

6 2. The name of the respondent.

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

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

13 5. 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 a law enforcement officer or a spouse, sibling, parent, child, or current
18 or recent household member of the respondent may prepare and file a petition under
19 this section.

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.** Whoever files a petition under this section for a temporary
25 restraining order or injunction knowing the information in the petition to be false or

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1 with the intent to harass shall be fined not more than \$10,000 or imprisoned for not
2 more than 9 months or both.

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. 941.29
23 (4).

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

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1 STATE OF WISCONSIN

2 IN CIRCUIT COURT FOR COUNTY

3 Petition to Return Firearm(s)

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

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

8 Under oath I state that:

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

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

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

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

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

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

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

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

4 Subscribed and sworn to before me on (date)

5 (Signature of person requesting return of firearms)

6 (Signature of notary public, state of Wisconsin)

7 My commission expires on (date)

8 Dated this day of, (year)

9 Distribution:

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

12 **SECTION 9.** 813.126 of the statutes is amended to read:

13 **813.126 New hearing.** If a party seeks to have the judge conduct a hearing
14 de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court
15 commissioner in an action under s. 813.12, 813.122, 813.123, 813.124, or 813.125,
16 including a denial of a request for a temporary restraining order, the motion
17 requesting the hearing must be filed with the court within 30 days after the circuit
18 court commissioner issued the determination, order, or ruling. The court shall hold
19 the de novo hearing within 30 days after the motion requesting the hearing is filed
20 with the court unless the court finds good cause for an extension. Any determination,
21 order, or ruling entered by a court commissioner in an action under s. 813.12,
22 813.122, 813.123, 813.124, or 813.125 remains in effect until the judge in the de novo
23 hearing issues his or her final determination, order, or ruling.

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

