



2013 SENATE BILL 161

April 25, 2013 - Introduced by Senators PETROWSKI, GUDEx, HANSEN, HARRIS, JAUCH, LEHMAN, OLSEN, RISSER and SHILLING, cosponsored by Representatives JACQUE, SPIROS, RICHARDS, BERCEAU, BERNARD SCHABER, BERNIER, BIES, BILLINGS, BORN, BROOKS, CZAJA, HEBL, HINTZ, KAUFERT, KERKMAN, KLEEFISCH, KOLSTE, LOUDENBECK, A. OTT, SCHRAA, SINICKI and C. TAYLOR. Referred to Committee on Transportation, Public Safety, and Veterans and Military Affairs.

1 **AN ACT to renumber** 813.122 (3) (bm); **to renumber and amend** 813.122 (3)
2 (b) 2. and 3.; **to consolidate, renumber and amend** 813.122 (3) (b) (intro.)
3 and 1.; **to amend** 786.37 (4), 813.12 (1) (am) 6., 813.12 (3) (c), 813.12 (4) (c) 4.,
4 813.122 (4) (c), 813.122 (5) (d) 4., 813.123 (4) (c), 813.123 (5) (c) 4., 813.125 (3)
5 (a) (intro.), 813.125 (3) (c), 813.125 (4) (a) (intro.) and 813.126; and **to create**
6 48.235 (8) (c) 3., 801.58 (2m), 813.12 (1) (am) 4., 813.122 (5g) and 813.123 (5g)
7 of the statutes; **relating to:** temporary restraining orders and injunctions for
8 domestic abuse, child abuse, individuals at risk, and harassment, confidential
9 name change petitions, and ex parte orders with a judge substitution.

Analysis by the Legislative Reference Bureau

Current law defines domestic abuse, for the purpose of issuing a domestic abuse temporary restraining order (TRO) or injunction, as intentionally inflicting pain, injury, or illness on another, impairing another's physical condition, sexual assault, damage to another's property, or a threat to do any of those actions if the actor is engaging in the action against another adult family or household member, an adult who is under the actor's care, the actor's former spouse, a person with whom the actor has or had a dating relationship, or an adult with whom the actor has a child in

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common. This bill adds stalking, or a threat to stalk, to the actions that constitute domestic abuse.

Under current law, when issuing a harassment TRO or injunction, the court may order the respondent to cease or avoid the harassment of another person or to avoid the petitioner's residence, any premises temporarily occupied by the petitioner, or both. Under this bill, the court may order the respondent to avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner without the petitioner's written consent.

Under current law, in an action involving the issuance of a child abuse TRO or injunction, the court may exclude from the hearing all persons except the parties, their attorneys, witnesses, child victim advocates, and certain others (essential persons) and may deny access to persons who are not essential persons to any records of the action. Under this bill, all persons who are not essential persons are excluded and any records of the action are confidential and available only to essential persons.

In actions involving the issuance of a domestic abuse or harassment TRO or injunction, current law provides for the confidentiality of the victim's addresses. This bill provides for the confidentiality of the addresses of a victim in an action involving the issuance of an individual-at-risk or a child abuse TRO or injunction.

Under current law, in general, a judge must hold a hearing on the issuance of a domestic abuse, child abuse, individual-at-risk, or harassment injunction within 14 days of issuing a TRO. This bill specifies that a court may not extend the TRO in lieu of ruling on the injunction.

This bill specifies that, in an action involving the issuance of a child abuse TRO or injunction, the victim or the victim's parent, stepparent, or legal guardian does not have to pay the compensation of the guardian ad litem. This bill also specifies that, if a person seeks a new hearing of a determination, order, or ruling a court makes in an action involving the issuance of a domestic abuse, child abuse, individual-at-risk, or harassment TRO or injunction, the determination, order, or ruling made in the original hearing remains in effect until the final determination, order, or ruling is made in the new hearing. Finally, the bill specifies that, in the event that a new judge substitutes for the original judge, any ex parte order, which includes a TRO, granted by the original judge remains in effect and the new judge must hear any subsequent motion to modify or vacate the order and any TRO issued by the original judge is automatically extended until the new judge holds an injunction hearing.

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.** 48.235 (8) (c) 3. of the statutes is created to read:
- 2 48.235 (8) (c) 3. In a proceeding under s. 813.122 or 813.125, the court may not
- 3 order the child victim or any parent, stepparent, or legal guardian of the child victim

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1 who is not a party to the action, to pay any part of the compensation of the guardian
2 ad litem.

3 **SECTION 2.** 786.37 (4) of the statutes is amended to read:

4 786.37 (4) ~~Subsection~~ If a petitioner requests that his or her petition to change
5 or establish a name remain confidential, the clerk of court shall ensure that the name
6 change petition is confidential upon the filing of the petition and sub. (1) does not
7 apply if to the petitioner shows. The court may require the petitioner to comply with
8 sub. (1) if the petitioner is unable to show, by a preponderance of the evidence, that
9 publication of his or her petition could endanger him or her and that he or she is not
10 seeking a name change in order to avoid a debt or conceal a criminal record.

11 **SECTION 3.** 801.58 (2m) of the statutes is created to read:

12 801.58 (2m) If, under sub. (2), the judge determines that the request for
13 substitution was made timely and in proper form, any ex parte order granted by the
14 original judge remains in effect according to the terms, except that a temporary
15 restraining order issued under s. 813.12 (3), 813.122 (4), 813.123 (4), or 813.125 (3)
16 by the original judge is extended until the newly assigned judge holds a hearing on
17 the issuance of an injunction. The newly assigned judge shall hear any subsequent
18 motion to modify or vacate any ex parte order granted by the original judge.

19 **SECTION 4.** 813.12 (1) (am) 4. of the statutes is created to read:

20 813.12 (1) (am) 4. A violation of s. 940.32.

21 **SECTION 5.** 813.12 (1) (am) 6. of the statutes is amended to read:

22 813.12 (1) (am) 6. A threat to engage in the conduct under subd. 1., 2., 3., 4.,
23 or 5.

24 **SECTION 6.** 813.12 (3) (c) of the statutes is amended to read:

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1 813.12 (3) (c) The temporary restraining order is in effect until a hearing is held
2 on issuance of an injunction under sub. (4). The temporary restraining order is not
3 voided if the respondent is admitted into a dwelling that the order directs him or her
4 to avoid. A judge or circuit court commissioner shall hold a hearing on issuance of
5 an injunction within 14 days after the temporary restraining order is issued, unless
6 the time is extended upon the written consent of the parties, extended under s.
7 801.58 (2m), or extended once for 14 days upon a finding that the respondent has not
8 been served with a copy of the temporary restraining order although the petitioner
9 has exercised due diligence. A judge or court commissioner may not extend the
10 temporary restraining order in lieu of ruling on the issuance of an injunction.

11 **SECTION 7.** 813.12 (4) (c) 4. of the statutes is amended to read:

12 813.12 (4) (c) 4. Notice need not be given to the respondent before extending
13 an injunction under subd. 2. The ~~petitioner~~ clerk of courts shall notify the
14 respondent after the court extends an injunction under subd. 2.

15 **SECTION 8.** 813.122 (3) (b) (intro.) and 1. of the statutes are consolidated,
16 renumbered 813.122 (3) (b) 1m. and amended to read:

17 813.122 (3) (b) 1m. The Except as provided in subd. 2m., the court or circuit
18 court commissioner, on its or his or her own motion or the motion of any party, may
19 order ~~one or more of the following:~~ 1. That ~~that~~ a guardian ad litem be appointed
20 for the child victim in accordance with s. 48.235.

21 **SECTION 9.** 813.122 (3) (b) 2. and 3. of the statutes are renumbered 813.122 (3)
22 (bp) and (bq) and amended to read:

23 813.122 (3) (bp) ~~That all~~ All persons, other than the parties, their attorneys,
24 witnesses, child victim advocates, service representatives, as defined in s. 895.45 (1)

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1 (c), court personnel and any guardian ad litem, shall be excluded from any hearing
2 under this section.

3 (bq) ~~That access to any~~ Any record of an action under this section ~~be~~ is
4 confidential and is available only to the parties, their attorneys, any guardian ad
5 litem, court personnel, the child victim, law enforcement, and any applicable court
6 upon appeal, except that a record may be available to any other person as required
7 by law, as necessary to effect service, or upon a court order for good cause shown.

8 **SECTION 10.** 813.122 (3) (bm) of the statutes is renumbered 813.122 (3) (b) 2m.

9 **SECTION 11.** 813.122 (4) (c) of the statutes is amended to read:

10 813.122 (4) (c) The temporary restraining order is in effect until a hearing is
11 held on issuance of an injunction under sub. (5). A judge shall hold a hearing on
12 issuance of an injunction within 14 days after the temporary restraining order is
13 issued, unless the time is extended upon the written consent of the parties, extended
14 under s. 801.58 (2m), or extended once for 14 days upon a finding that the respondent
15 has not been served with a copy of the temporary restraining order although the
16 petitioner has exercised due diligence. A judge or court commissioner may not
17 extend the temporary restraining order in lieu of ruling on the issuance of an
18 injunction.

19 **SECTION 12.** 813.122 (5) (d) 4. of the statutes is amended to read:

20 813.122 (5) (d) 4. Notice need not be given to the respondent before extending
21 an injunction under subd. 2. or 3. The ~~petitioner~~ clerk of courts shall notify the
22 respondent after the court extends an injunction under subd. 2. or 3.

23 **SECTION 13.** 813.122 (5g) of the statutes is created to read:

24 813.122 (5g) CONFIDENTIALITY OF ADDRESSES. The petition under sub. (6) and
25 the court order under sub. (4) or (5) may not disclose the address of the petitioner or

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1 of the alleged child victim. The petitioner shall provide the clerk of circuit court with
2 the address of the petitioner and of the alleged child victim when he or she files a
3 petition under this section. The clerk shall maintain the addresses in a confidential
4 manner.

5 **SECTION 14.** 813.123 (4) (c) of the statutes is amended to read:

6 813.123 (4) (c) The temporary restraining order is in effect until a hearing is
7 held on issuance of an injunction under sub. (5). A judge shall hold a hearing on
8 issuance of an injunction within 14 days after the temporary restraining order is
9 issued, unless the time is extended upon the written consent of the parties, extended
10 under s. 801.58 (2m), or extended once for 14 days upon a finding that the respondent
11 has not been served with a copy of the temporary restraining order although the
12 petitioner has exercised due diligence. A judge or court commissioner may not
13 extend the temporary restraining order in lieu of ruling on the issuance of an
14 injunction.

15 **SECTION 15.** 813.123 (5) (c) 4. of the statutes is amended to read:

16 813.123 (5) (c) 4. Notice need not be given to the respondent before extending
17 an injunction under subd. 2. or 3. The ~~petitioner~~ clerk of courts shall notify the
18 respondent after the court extends an injunction under subd. 2. or 3.

19 **SECTION 16.** 813.123 (5g) of the statutes is created to read:

20 813.123 (5g) CONFIDENTIALITY OF ADDRESSES. The petition under sub. (6) and
21 the court order under sub. (4) or (5) may not disclose the address of the petitioner or
22 of the individual at risk. The petitioner shall provide the clerk of circuit court with
23 the address of the petitioner and of the individual at risk when he or she files a
24 petition under this section. The clerk shall maintain the addresses in a confidential
25 manner.

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1 **SECTION 17.** 813.125 (3) (a) (intro.) of the statutes is amended to read:

2 813.125 (3) (a) (intro.) A judge or circuit court commissioner may issue a
3 temporary restraining order ordering the respondent to avoid contacting or causing
4 any person other than a party's attorney or a law enforcement officer to contact the
5 petitioner without the petitioner's written consent; to cease or avoid the harassment
6 of another person; to avoid the petitioner's residence, except as provided in par. (am),
7 or any premises temporarily occupied by the petitioner or both; or any combination
8 of these remedies requested in the petition, if all of the following occur:

9 **SECTION 18.** 813.125 (3) (c) of the statutes is amended to read:

10 813.125 (3) (c) The temporary restraining order is in effect until a hearing is
11 held on issuance of an injunction under sub. (4). A judge or circuit court
12 commissioner shall hold a hearing on issuance of an injunction within 14 days after
13 the temporary restraining order is issued, unless the time is extended upon the
14 written consent of the parties, extended under s. 801.58 (2m), or extended once for
15 14 days upon a finding that the respondent has not been served with a copy of the
16 temporary restraining order although the petitioner has exercised due diligence. A
17 judge or court commissioner may not extend the temporary restraining order in lieu
18 of ruling on the issuance of an injunction.

19 **SECTION 19.** 813.125 (4) (a) (intro.) of the statutes is amended to read:

20 813.125 (4) (a) (intro.) A judge or circuit court commissioner may grant an
21 injunction ordering the respondent to avoid contacting or causing any person other
22 than a party's attorney or a law enforcement officer to contact the petitioner without
23 the petitioner's written consent; to cease or avoid the harassment of another person;
24 to avoid the petitioner's residence, except as provided in par. (am), or any premises

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1 temporarily occupied by the petitioner or both, or any combination of these remedies
2 requested in the petition, if all of the following occur:

3 **SECTION 20.** 813.126 of the statutes is amended to read:

4 **813.126 New hearing.** If a party seeks to have the judge conduct a hearing
5 de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court
6 commissioner in an action under s. 813.12, 813.122, 813.123, or 813.125, including
7 a denial of a request for a temporary restraining order, the motion requesting the
8 hearing must be filed with the court within 30 days after the circuit court
9 commissioner issued the determination, order, or ruling. The court shall hold the de
10 novo hearing within 30 days after the motion requesting the hearing is filed with the
11 court unless the court finds good cause for an extension. Any determination, order,
12 or ruling entered by a court commissioner in an action under s. 813.12, 813.122,
13 813.123, or 813.125 remains in effect until the judge in the de novo hearing issues
14 his or her final determination, order, or ruling.

15 **SECTION 21. Initial applicability.**

16 (1) NAME CHANGE PETITIONS. The treatment of section 786.37 (4) of the statutes
17 first applies to petitions filed on the effective date of this subsection.

18 (2) CLOSED HEARINGS AND SEALED RECORDS IN ACTIONS FOR CHILD ABUSE TEMPORARY
19 RESTRAINING ORDERS AND INJUNCTIONS. The treatment of section 813.122 (3) (b)
20 (intro.), 1., 2., and 3. and (bm) of the statutes first applies to a petition filed under
21 section 813.122 of the statutes on the effective date of this subsection.

22 (3) CONFIDENTIALITY OF ADDRESSES. The treatment of sections 813.122 (5g) and
23 813.123 (5g) of the statutes first applies to a petition filed under section 813.122 or
24 813.123 of the statutes on the effective date of this subsection.

