

2001 SENATE BILL 438

February 13, 2002 – Introduced by Senators BURKE, HUELSMAN, BRESKE, COWLES, DARLING, GEORGE, HANSEN, MOORE, PLACHE, RISSER, ROESSLER and HARSDORF, cosponsored by Representatives WIECKERT, ALBERS, BOYLE, COGGS, HAHN, KAUFERT, LA FAVE, LASSA, J. LEHMAN, MUSSER, OLSEN, POCAN, RICHARDS, SHILLING, SYKORA, TURNER, WASSERMAN and BERCEAU. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1 **AN ACT** *to renumber and amend* 813.12 (1) (a) (intro.), 1., 2., and 3. and 813.12
 2 (1) (a) 4.; *to amend* 106.50 (5m) (d), 767.11 (8) (b) 2., 767.11 (10) (e) 2., 767.24
 3 (1m) (b), 767.24 (1m) (c), 767.24 (1m) (o), 767.24 (2) (b) 2. c., 767.24 (5) (i), 813.12
 4 (2) (a), 813.12 (3) (a) (intro.), 813.12 (3) (a) 2., 813.12 (3) (c), 813.12 (4) (a) (intro.),
 5 813.12 (4) (a) 2., 813.12 (4) (a) 3., 813.12 (4) (c) 1., 813.12 (4) (c) 2., 814.61 (1) (e),
 6 814.70 (1), 814.70 (3) (intro.) and 895.73 (1) (a); and *to create* 813.12 (1) (ad),
 7 813.12 (1) (ag), 813.12 (1) (am) 5., 813.12 (1) (am) 6., 813.12 (1) (cg), 813.12 (1)
 8 (cj), 813.12 (5) (d), 813.12 (5m), 813.12 (6) (d) and 813.12 (7) (c) of the statutes;
 9 **relating to:** domestic abuse restraining orders and injunctions.

Analysis by the Legislative Reference Bureau

Under current law, “domestic abuse” for purposes of obtaining an injunction, is defined as certain types of behavior engaged in by an adult against another adult if the two adults are involved in one of the following relationships:

1. Are members of the same family.
2. Are members of the same household.
3. Are former spouses.
4. Have a child in common.

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This bill expands the types of relationships that adults may be in for purposes of domestic abuse injunctions to include an adult who is being cared for by another adult and adults who have a dating relationship. The bill defines a “dating relationship” as a social relationship between two adults that involves a romantic or intimate association, and requires the court to consider the length and type of the relationship and the frequency of the interaction between the parties when determining if a dating relationship exists. The bill provides that a dating relationship is not a casual relationship or ordinary fraternization between two adult individuals.

Currently, the types of behavior that are considered domestic abuse include sexual assault, intentional infliction of pain or injury, intentional impairment of physical condition, and the threat to commit one of those acts. This bill expands the types of behavior that are considered domestic abuse to include destruction of property of the other person and mistreatment of an animal belonging to the other person.

Under current law, a court action is started by petitioning the court for a temporary restraining order, then the petitioner serves the other party, the court schedules a hearing and after determining the merits, the court issues a permanent injunction. If the petitioner is unable to serve the respondent personally with the petition, currently the petitioner may publish the petition and mail a copy of the petition to the respondent. The bill replaces the requirement to publish the petition when personal service is impossible with a requirement to publish a summary of the petition, which includes the the name of the petitioner and respondent and the date, time, and place of the hearing regarding the requested injunction. The bill allows the petitioner to send the summary of the petition to the respondent by facsimile or mail. The bill also allows the guardian of an incompetent individual to file the petition for a domestic abuse order on behalf of the incompetent individual.

Currently, a hearing on the request to issue an injunction must be held within seven days after the temporary restraining order is issued, unless the hearing is extended once for 14 days to allow the petitioner more time to serve the respondent or is extended for a period of time agreed to by the parties in writing. This bill changes the requirement to hold the hearing within seven days after the issuance of the temporary restraining order to 14 days after that order is issued. Under current law, a domestic abuse injunction is issued for the period requested by the petitioner, but not more than two years and can be extended for an additional period up to the two-year maximum if the extension is necessary to protect the petitioner. This bill extends the maximum period to four years.

The bill prohibits the inclusion of the petitioner’s address in the petition, temporary restraining order, or injunction.

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:

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1 **SECTION 1.** 106.50 (5m) (d) of the statutes is amended to read:

2 106.50 **(5m)** (d) Nothing in this section requires that housing be made available
3 to an individual whose tenancy would constitute a direct threat to the safety of other
4 tenants or persons employed on the property or whose tenancy would result in
5 substantial physical damage to the property of others, if the risk of direct threat or
6 damage cannot be eliminated or sufficiently reduced through reasonable
7 accommodations. A claim that an individual's tenancy poses a direct threat or a
8 substantial risk of harm or damage must be evidenced by behavior by the individual
9 which that caused harm or damage, which that directly threatened harm or damage,
10 or which that caused a reasonable fear of harm or damage to other tenants, persons
11 employed on the property, or the property. No claim that an individual's tenancy
12 would constitute a direct threat to the safety of other persons or would result in
13 substantial damage to property may be based on the fact that a tenant has been or
14 may be the victim of domestic abuse, as defined in s. 813.12 (1) ~~(a)~~ (am).

15 **SECTION 2.** 767.11 (8) (b) 2. of the statutes is amended to read:

16 767.11 **(8)** (b) 2. Interspousal battery as described under s. 940.19 or 940.20
17 (1m) or domestic abuse as defined in s. 813.12 (1) ~~(a)~~ (am).

18 **SECTION 3.** 767.11 (10) (e) 2. of the statutes is amended to read:

19 767.11 **(10)** (e) 2. There is evidence of interspousal battery as described under
20 s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) ~~(a)~~ (am).

21 **SECTION 4.** 767.24 (1m) (b) of the statutes is amended to read:

22 767.24 **(1m)** (b) Where the parent lives currently and where the parent intends
23 to live during the next 2 years. If there is evidence that the other parent engaged in
24 interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse,
25 as defined in s. 813.12 (1) ~~(a)~~ (am), with respect to the parent providing the parenting

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1 plan, the parent providing the parenting plan is not required to disclose the specific
2 address but only a general description of where he or she currently lives and intends
3 to live during the next 2 years.

4 **SECTION 5.** 767.24 (1m) (c) of the statutes is amended to read:

5 767.24 **(1m)** (c) Where the parent works and the hours of employment. If there
6 is evidence that the other parent engaged in interspousal battery, as described under
7 s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) ~~(a)~~ (am), with
8 respect to the parent providing the parenting plan, the parent providing the
9 parenting plan is not required to disclose the specific address but only a general
10 description of where he or she works.

11 **SECTION 6.** 767.24 (1m) (o) of the statutes is amended to read:

12 767.24 **(1m)** (o) If there is evidence that either party engaged in interspousal
13 battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined
14 in s. 813.12 (1) ~~(a)~~ (am), with respect to the other party, how the child will be
15 transferred between the parties for the exercise of physical placement to ensure the
16 safety of the child and the parties.

17 **SECTION 7.** 767.24 (2) (b) 2. c. of the statutes is amended to read:

18 767.24 **(2)** (b) 2. c. The parties will not be able to cooperate in the future decision
19 making required under an award of joint legal custody. In making this finding the
20 court shall consider, along with any other pertinent items, any reasons offered by a
21 party objecting to joint legal custody. Evidence that either party engaged in abuse,
22 as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2), or evidence of
23 interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse,
24 as defined in s. 813.12 (1) ~~(a)~~ (am), creates a rebuttable presumption that the parties
25 will not be able to cooperate in the future decision making required.

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1 **SECTION 8.** 767.24 (5) (i) of the statutes is amended to read:

2 767.24 **(5)** (i) Whether there is evidence of interspousal battery as described
3 under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) ~~(a)~~ (am).

4 **SECTION 9.** 813.12 (1) (a) (intro.), 1., 2., and 3. of the statutes are renumbered
5 813.12 (1) (am) (intro.), 1., 2., and 3., and 813.12 (1) (am) (intro.), as renumbered, is
6 amended to read:

7 813.12 **(1)** (am) (intro.) “Domestic abuse” means any of the following engaged
8 in by an adult family member or adult household member against another adult
9 family member or adult household member, by an adult caregiver against an adult
10 who is under the caregiver’s care by an adult against his or her adult former spouse,
11 by an adult against an adult with whom the individual has or had a dating
12 relationship. or by an adult against an adult with whom the person has a child in
13 common:

14 **SECTION 10.** 813.12 (1) (a) 4. of the statutes is renumbered 813.12 (1) (am) 8.
15 and amended to read:

16 813.12 **(1)** (am) 8. A threat to engage in the conduct under subd. 1., 2. ~~or~~ 3., 5.,
17 or 6.

18 **SECTION 11.** 813.12 (1) (ad) of the statutes is created to read:

19 813.12 **(1)** (ad) “Caregiver” means an individual who is a provider of in-home
20 or community care to an individual through regular and direct contact.

21 **SECTION 12.** 813.12 (1) (ag) of the statutes is created to read:

22 813.12 **(1)** (ag) “Dating relationship” means a romantic or intimate social
23 relationship between 2 adult individuals but “dating relationship” does not include
24 a casual relationship or an ordinary fraternization between 2 individuals in a
25 business or social context. A court shall determine if a dating relationship existed

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1 by considering the length of the relationship, the type of the relationship, and the
2 frequency of the interaction between the adult individuals involved in the
3 relationship.

4 **SECTION 13.** 813.12 (1) (am) 5. of the statutes is created to read:

5 813.12 (1) (am) 5. A violation of s. 943.01, involving property that belongs to
6 the individual.

7 **SECTION 14.** 813.12 (1) (am) 6. of the statutes is created to read:

8 813.12 (1) (am) 6. A violation of s. 951.02, involving an animal that belongs to
9 the individual.

10 **SECTION 15.** 813.12 (1) (cg) of the statutes is created to read:

11 813.12 (1) (cg) “Reasonable grounds” means more likely than not that a specific
12 event has occurred or will occur.

13 **SECTION 16.** 813.12 (1) (cj) of the statutes is created to read:

14 813.12 (1) (cj) “Regular and direct contact” means face-to-face physical
15 proximity to an individual that is planned, scheduled, expected, or periodic.

16 **SECTION 17.** 813.12 (2) (a) of the statutes is amended to read:

17 813.12 (2) (a) No action under this section may be commenced by complaint and
18 summons. An action under this section may be commenced only by a petition
19 described under sub. (5) (a). The action commences with service of the petition upon
20 the respondent if a copy of the petition is filed before service or promptly after service.
21 If the judge or family court commissioner extends the time for a hearing under sub.
22 (3) (c) and the petitioner files an affidavit with the court stating that personal service
23 by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful
24 because the respondent is avoiding service by concealment or otherwise, the judge
25 or family court commissioner shall inform the petitioner that he or she may serve the

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1 respondent by publication of a summary of the petition as a class 1 notice, under ch.
2 985, and by mailing or sending a facsimile if the respondent's post-office address or
3 facsimile number is known or can with due diligence be ascertained. The mailing or
4 sending of a facsimile may be omitted if the post-office address or facsimile number
5 cannot be ascertained with due diligence. A summary of the petition published as
6 a class 1 notice shall include the name of the respondent and of the petitioner, notice
7 of the temporary restraining order, and notice of the date, time, and place of the
8 hearing regarding the injunction.

9 **SECTION 18.** 813.12 (3) (a) (intro.) of the statutes is amended to read:

10 813.12 **(3)** (a) (intro.) A judge or family court commissioner shall issue a
11 temporary restraining order ordering the respondent to refrain from committing acts
12 of domestic abuse against the petitioner, to avoid the petitioner's residence, except
13 as provided in par. (am), or any ~~premises~~ other location temporarily occupied by the
14 petitioner or both, or to avoid contacting or causing any person other than a party's
15 attorney or a law enforcement officer to contact the petitioner unless the petitioner
16 consents in writing, or any combination of these remedies requested in the petition,
17 or any other appropriate remedy not inconsistent with the remedies requested in the
18 petition, if all of the following occur:

19 **SECTION 19.** 813.12 (3) (a) 2. of the statutes is amended to read:

20 813.12 **(3)** (a) 2. The judge or family court commissioner finds reasonable
21 grounds to believe that the respondent has engaged in, or based on prior conduct of
22 the petitioner and the respondent may engage in, domestic abuse of the petitioner.

23 (aj) In determining whether to issue a temporary restraining order, the judge
24 or family court commissioner shall consider the potential danger posed to the
25 petitioner and the pattern of abusive conduct of the respondent but may not base his

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1 or her decision solely on the length of time since the last domestic abuse or the length
2 of time since the relationship ended. The judge or family court commissioner may
3 grant only the remedies requested or approved by the petitioner. The judge or family
4 court commissioner may not dismiss or deny granting a temporary restraining order
5 because of the existence of a pending action or of any other court order that bars
6 contact between the parties, nor due to the necessity of verifying the terms of an
7 existing court order.

8 **SECTION 20.** 813.12 (3) (c) of the statutes is amended to read:

9 813.12 (3) (c) The temporary restraining order is in effect until a hearing is held
10 on issuance of an injunction under sub. (4). The temporary restraining order is not
11 voided if the respondent is admitted into a dwelling that the order directs him or her
12 to avoid. A judge or family court commissioner shall hold a hearing on issuance of
13 an injunction within 7 14 days after the temporary restraining order is issued, unless
14 the time is extended upon the written consent of the parties or extended once for 14
15 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.

17 **SECTION 21.** 813.12 (4) (a) (intro.) of the statutes is amended to read:

18 813.12 (4) (a) (intro.) A judge or family court commissioner may grant an
19 injunction ordering the respondent to refrain from committing acts of domestic abuse
20 against the petitioner, to avoid the petitioner's residence, except as provided in par.
21 (am), or any ~~premises~~ other location temporarily occupied by the petitioner or both,
22 or to avoid contacting or causing any person other than a party's attorney or a law
23 enforcement officer to contact the petitioner unless the petitioner consents to that
24 contact in writing, or any combination of these remedies requested in the petition,

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1 or any other appropriate remedy not inconsistent with the remedies requested in the
2 petition, if all of the following occur:

3 **SECTION 22.** 813.12 (4) (a) 2. of the statutes is amended to read:

4 813.12 (4) (a) 2. The petitioner serves upon the respondent a copy or summary
5 of the petition and notice of the time for hearing on the issuance of the injunction,
6 or the respondent serves upon the petitioner notice of the time for hearing on the
7 issuance of the injunction.

8 **SECTION 23.** 813.12 (4) (a) 3. of the statutes is amended to read:

9 813.12 (4) (a) 3. After hearing, the judge or family court commissioner finds
10 reasonable grounds to believe that the respondent has engaged in, or based upon
11 prior conduct of the petitioner and the respondent may engage in, domestic abuse of
12 the petitioner.

13 (aj) In determining whether to issue an injunction, the judge or family court
14 commissioner shall consider the potential danger posed to the petitioner and the
15 pattern of abusive conduct of the respondent but may not base his or her decision
16 solely on the length of time since the last domestic abuse or the length of time since
17 the relationship ended. The judge or family court commissioner may grant only the
18 remedies requested by the petitioner. The judge or family court commissioner may
19 not dismiss or deny granting an injunction because of the existence of a pending
20 action or of any other court order that bars contact between the parties, nor due to
21 the necessity of verifying the terms of an existing court order.

22 **SECTION 24.** 813.12 (4) (c) 1. of the statutes is amended to read:

23 813.12 (4) (c) 1. An injunction under this subsection is effective according to its
24 terms, for the period of time that the petitioner requests, but not more than 24 years.
25 An injunction granted under this subsection is not voided if the petitioner allows or

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1 initiates contact with the respondent or by the admittance of the respondent into a
2 dwelling that the injunction directs him or her to avoid.

3 **SECTION 25.** 813.12 (4) (c) 2. of the statutes is amended to read:

4 813.12 (4) (c) 2. When an injunction granted for less than ~~2~~ 4 years expires, the
5 court shall extend the injunction if the petitioner states that an extension is
6 necessary to protect him or her. This extension shall remain in effect until ~~2~~ 4 years
7 after the date the court first entered the injunction.

8 **SECTION 26.** 813.12 (5) (d) of the statutes is created to read:

9 813.12 (5) (d) A petition may be prepared and filed by the person who alleges
10 that he or she has been the subject of domestic abuse or by the guardian, as defined
11 in s. 880.01 (3), of an incompetent individual, as defined in s. 880.01 (4), who has been
12 the subject of domestic abuse.

13 **SECTION 27.** 813.12 (5m) of the statutes is created to read:

14 813.12 (5m) CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5)
15 and the court order under sub. (3) or (4) shall not disclose the address of the alleged
16 victim.

17 **SECTION 28.** 813.12 (6) (d) of the statutes is created to read:

18 813.12 (6) (d) The issuance of an order under s. 813.12 (3) or (4) is enforceable
19 despite the existence of any other criminal or civil order restricting or prohibiting
20 contact.

21 **SECTION 29.** 813.12 (7) (c) of the statutes is created to read:

22 813.12 (7) (c) A respondent who does not appear at a hearing at which the court
23 orders an injunction under s. 813.12 (4) but who has been served with a copy of the
24 petition and notice of the time for hearing under s. 813.12 (3) has constructive
25 knowledge of the existence of the injunction and shall be arrested for violation of the

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1 injunction regardless of whether he or she has been served with a copy of the
2 injunction.

3 **SECTION 30.** 814.61 (1) (e) of the statutes is amended to read:

4 814.61 (1) (e) No fee charged under this subsection in any action commenced
5 under s. 813.122, 813.123, or 813.125 may be collected from a petitioner under s.
6 813.122, 813.123, or 813.125 if the petition alleges conduct that is the same as or
7 similar to conduct that is prohibited by s. 940.32 or that is listed in s. 813.12 (1) (a)
8 (am) 1. to -4. 8. If no fee is collected under this paragraph, the fee charged under this
9 subsection for petitions filed and granted under s. 813.122, 813.123, or 813.125 shall
10 be collected from the respondent under s. 813.122, 813.123, or 813.125 if he or she
11 is convicted of violating a temporary restraining order or injunction issued under s.
12 813.122 (4) or (5), 813.123 (4) or (5), or 813.125 (3) or (4).

13 **SECTION 31.** 814.70 (1) of the statutes is amended to read:

14 814.70 (1) SERVICE OF PROCESS. For each service or attempted service of a
15 summons or any other process for commencement of an action, a writ, an order of
16 injunction, a subpoena, or any other order, \$12 for each defendant or person. If there
17 is more than one defendant or person to be served at a given address, \$6 for each
18 additional defendant or person. No fee charged under this subsection in any action
19 commenced under s. 813.12, 813.122, or 813.123 may be collected from a petitioner
20 under s. 813.12, 813.122, or 813.123. The fee charged under this subsection in any
21 action commenced under s. 813.12, 813.122, 813.123, or 813.125 shall be collected
22 from the respondent under s. 813.12, 813.122, or 813.123 if he or she is convicted of
23 violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4),
24 813.122 (4) or (5), 813.123 (4) or (5), or 813.125 (3) or (4). No fee charged under this
25 subsection in any action commenced under s. 813.125 may be collected from a

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1 petitioner under s. 813.125 if the petition alleges conduct that is the same as or
2 similar to conduct that is prohibited by s. 940.32 or that is listed in s. 813.12 (1) ~~(a)~~
3 (am) 1. to ~~4.~~ 8. If no fee is collected under this subsection from a petitioner under
4 s. 813.125, the fee charged under this subsection in any action commenced under s.
5 813.125 shall be collected from the respondent under s. 813.125 if he or she is
6 convicted of violating a temporary restraining order or injunction issued under s.
7 813.125 (3) or (4).

8 **SECTION 32.** 814.70 (3) (intro.) of the statutes is amended to read:

9 814.70 **(3)** (intro.) For travel in serving any summons, writ or other process,
10 except criminal warrants, and except that a fee under this subsection in any action
11 commenced under s. 813.12, 813.122, or 813.123 may not be collected from a
12 petitioner but shall be collected from the respondent if he or she is convicted of
13 violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4),
14 813.122 (4) or (5), 813.123 (4) or (5), or 813.125 (3) or (4), and except that a fee under
15 this subsection in any action commenced under s. 813.125 may not be collected from
16 a petitioner if the petition alleges conduct that is the same as or similar to conduct
17 that is prohibited by s. 940.32 or that is listed in s. 813.12 (1) ~~(a)~~ (am) 1. to ~~4.~~ 8. but
18 shall be collected from the respondent if he or she is convicted of violating a
19 temporary restraining order or injunction issued under s. 813.125 (3) or (4):

20 **SECTION 33.** 895.73 (1) (a) of the statutes is amended to read:

21 895.73 **(1)** (a) “Abusive conduct” means domestic abuse, as defined under s.
22 46.95 (1) (a), 813.12 (1) ~~(a)~~ (am), or 968.075 (1) (a), harassment, as defined under s.
23 813.125 (1), sexual exploitation by a therapist under s. 940.22, sexual assault under
24 s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss.
25 948.02 to 948.11.

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1 **SECTION 34. Initial applicability.**

2 (1) This act first applies to actions commenced on the effective date of this
3 subsection.

4 (END)