

## CHAPTER 813

## INJUNCTIONS, NE EXEAT AND RECEIVERS

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**813.01 Order substituted for injunction.** The writ of injunction is abolished. An injunction may be the final judgment in the action or may be allowed as a provisional remedy therein; and when so allowed it shall be by order as prescribed by this chapter.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.01.

An injunction may be used to prevent prospective violations of a restrictive covenant. *Cobb v. Milwaukee County*, 60 Wis. 2d 99, 208 N.W.2d 848 (1973).

**813.02 Temporary injunction; when granted.** (1) (a) When it appears from a party's pleading that the party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure the party, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

(b) Prior to granting a temporary injunction or temporary restraining order, the court may attempt to contact the party sought to be restrained, or his or her counsel if known, by telephone and allow all parties to be heard on the equities between the parties, the availability of other remedies, the damages which may be sustained if the temporary injunction or restraining order is granted, and other relevant matters.

(c) If the court determines that a temporary injunction may be granted under par. (a) to a prisoner, as defined in s. 801.02 (7) (a) 2., in any action or special proceeding with respect to prison or jail conditions, as defined in s. 801.02 (7) (a) 3., the following apply:

1. The court may not issue the injunction until giving notice and an opportunity to be heard on the request for a preliminary injunction to the attorney general, if the case involves a prisoner in a state correctional institution, as defined in s. 801.02 (7) (a) 1., or to the attorney representing the local correctional institution involved and to all other interested parties. Any injunction issued without giving notice and an opportunity to be heard is void.

2. Any temporary injunction issued shall meet the requirements in s. 813.40 (1) (b). When determining what to require in the temporary injunction, the court shall give substantial weight to any adverse impact on public safety or on the operation of the facility involved in the action or special proceeding caused by the temporary injunction.

3. Any temporary injunction issued under this paragraph shall expire no later than 90 days after the day the temporary injunction is issued unless the court makes a finding that the requirements

under s. 813.40 (1) (b) are met and makes the order final before the expiration of the 90-day period.

(2) If, after the commencement of any action for waste or to restrain waste, or any action for the recovery of land or the possession or partition thereof or after any real estate has been levied upon by execution, any party to such action or execution shall commit waste or shall threaten or make preparations to commit waste upon the lands, tenements, or anything appertaining thereto, that party may be restrained by injunction from committing any waste or further waste thereto. Such injunction may be issued in any of said actions or in cases of the levy above mentioned by the court from which the execution issued.

(4) No temporary restraining order or injunction shall be issued by any judge or court in any action where it does not appear that the county where the application for such temporary restraining order or injunction is made is within the judicial circuit in which is located the county that is the proper place of trial of the action, and no temporary restraining order or injunction shall issue unless the residence of each defendant is stated if known. Any temporary restraining order or injunction issued in violation of this subsection shall be void.

**History:** Sup. Ct. Order, 67 Wis. 2d 760; Stats. 1975 s. 813.02; Sup. Ct. Order, 141 Wis. 2d xxv; 1993 a. 112, 486; 1995 a. 400; 1997 a. 133.

**Judicial Council Note, 1988:** Sub. (1) (b) [created] allows the court to attempt to hold a telephone conference prior to granting a temporary injunction or temporary restraining order. The telephone conference procedure minimizes the risk of an improvident injunction and aids the court in fixing a realistic security. [Re Order effective Jan. 1, 1988]

A trial court does not abuse its discretion in denying a motion for a temporary injunction when it appears that the moving party has not established a reasonable probability of will ultimately prevailing in a trial of the issues. *Akin v. Kewaskum Community Schools*, 64 Wis. 2d 154, 218 N.W.2d 494 (1974).

The purpose of a temporary injunction is to maintain the status quo, not to change the position of the parties, compel acts that constitute the ultimate relief sought, or craft a remedy that the court believes to be equitable. *School District of Slinger v. WIAA*, 210 N.W.2d 366, 563 N.W.2d 366 (Ct. App. 1997).

**813.025 Ex parte restraining orders.** (1) No circuit or supplemental court commissioner may issue any injunction or order suspending or restraining the enforcement or execution of any statute of the state or of any order of an administrative officer, board, department, commission or other state agency purporting to be made pursuant to the statutes of the state. If so issued, the injunction or order shall be void.

(2) The application for such an injunction or restraining order made to a court shall not be heard except upon notice to the attorney general and to such other persons as may be defendants in the action; but if the court is of the opinion that irreparable loss or

damage will result to the applicant unless a temporary restraining order is granted, the court may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction. However, such temporary restraining order shall be effective only for 5 days unless extended after notice and hearing thereon, or upon written consent of the parties or their attorneys, and in no event shall such temporary restraining order remain in force beyond the time of the determination of the application for an interlocutory injunction.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.025; 1979 c. 111; 1983 a. 204; 2001 a. 61.

**813.026 Remedy against heirs and legatees; temporary injunction; receivership; judgment.** In an action, in a court of record, for damages founded upon contract or upon a judgment, when it appears that the defendant is interested, as heir, legatee, or devisee, in the estate of a decedent and that the defendant's property that is liable to execution is probably insufficient to satisfy the plaintiff's claim for damages, the defendant may be enjoined by the court, pending the action, from assigning or otherwise disposing of the defendant's interest in the estate, and a receiver for the defendant's interest may be appointed. The judgment may compel the defendant to transfer sufficient of the defendant's interest to satisfy the judgment or may adjudge the transfer. The remedy given by this section is in addition to that given by proceedings supplementary to execution under ch. 816. If a receiver is appointed, he or she shall give prompt notice of the appointment to the personal representative.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975), 779; Stats. 1975 s. 813.026; 1993 a. 486; 2001 a. 102.

**813.03 When granted defendant.** A temporary injunction may also be granted on the application of the defendant, when it shall appear that the plaintiff is doing, or threatens, or is about to do, or is procuring or suffering to be done some act in violation of the defendant's rights respecting the subject of the action and tending to the defendant's injury or to render ineffectual such judgment as may be rendered in the defendant's favor.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.03; 1993 a. 486.

**813.04 Same; when granted; Sunday or holiday.** The injunction may be granted at any time before judgment upon its appearing satisfactorily to the court or judge, by the complaint or answer or by affidavit that sufficient grounds exist therefor. A copy of the pleading or affidavit on which granted must be served with the injunction unless previously served. In case of exigency an injunction may be granted and may be served on Sunday or on a legal holiday.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.04.

**813.05 Notice required. (1)** An injunction shall not be allowed after the defendant shall have answered, unless upon notice or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

**(2)** In an action against an insurance company or fraternal benefit society for an injunction or a receiver the commissioner of insurance shall be notified. Mailing a copy of such notice addressed to the commissioner of insurance at Madison, Wisconsin, shall be sufficient service.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.05.

**813.06 Security for damages.** In proceedings under s. 767.23 the court or judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122, 813.125 and 823.113 the court or judge shall, require a bond of the party seeking an injunction, with sureties, to the effect that he or she will pay to the party enjoined such damages, not exceeding an amount to be specified, as he or she may sustain by reason of the injunction if the court finally decides that the party was not entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon the party enjoined and the officer serving the same shall, within 8 days

after such service, file his or her return in the office of the clerk of the court.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.06; 1979 c. 32 s. 92 (4); 1983 a. 204; 1985 a. 234 s. 8; 1989 a. 122.

An order of the trial court limiting the amount of annual compensation that the corporation could pay the individual defendants until further order was an injunction, and the trial court was required to demand a bond. *Becker v. Becker*, 66 Wis. 2d 731, 225 N.W.2d 884 (1975).

**813.07 Assessment of damages; bill of particulars; costs.** Upon an assessment of the damages caused by an injunction the defendant may be required to serve upon the plaintiff and the plaintiff's sureties, within such time and in such manner as the court or referee shall direct, a bill of particulars. The plaintiff or the sureties may within 10 days after such service offer in writing to permit the court or referee to assess the defendant's damages at a specified sum together with the costs of such proceeding incurred up to the time of such offer. If such offer be not accepted in writing within 5 days after it is made, it shall be considered withdrawn, and cannot be given in evidence. If the defendant fails to obtain a more favorable assessment of damages, the defendant cannot recover costs, but must pay the costs of the opposite party from the time of the offer.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.07; 1993 a. 486.

Increased construction costs were recoverable even though not in existence when the injunction was issued. *Byrnes v. Metz*, 53 Wis. 2d 627, 193 N.W.2d 675 (1972).

**813.08 Injunction, defendant may be heard before enjoined.** The court or judge may, before granting the injunction, make an order requiring cause to be shown why the injunction should not be granted, and the defendant may in the meantime be restrained.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.08.

**813.11 Injunction, additional security.** The party enjoined may, upon notice, apply for additional security and may combine such application with one to vacate or modify the injunction, and the presiding judge may require a further bond, in a sum and with sureties to be approved by the presiding judge, as a condition of the continuance of the injunction.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.11; 1993 a. 486.

**813.12 Domestic abuse restraining orders and injunctions. (1) DEFINITIONS.** In this section:

(ad) "Caregiver" means an individual who is a provider of in-home or community care to an individual through regular and direct contact.

(ag) "Dating relationship" means a romantic or intimate social relationship between 2 adult individuals but "dating relationship" does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context. A court shall determine if a dating relationship existed by considering the length of the relationship, the type of the relationship, and the frequency of the interaction between the adult individuals involved in the relationship.

(am) "Domestic abuse" means any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregiver's care, by an adult against his or her adult former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).
5. A violation of s. 943.01, involving property that belongs to the individual.
6. A threat to engage in the conduct under subd. 1., 2., 3., or 5.

(b) “Family member” means a spouse, a parent, a child or a person related by blood or adoption to another person.

(c) “Household member” means a person currently or formerly residing in a place of abode with another person.

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

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

(d) “Tribal court” means a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin.

(e) “Tribal order or injunction” means a temporary restraining order or injunction issued by a tribal court under a tribal domestic abuse ordinance adopted in conformity with this section.

**(2) COMMENCEMENT OF ACTION AND RESPONSE.** (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (5) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or a circuit court commissioner extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit with the court stating that personal service by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the judge or family court commissioner shall inform the petitioner that he or she may serve the respondent by publication of a summary of the petition as a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the respondent’s post-office address or facsimile number is known or can with due diligence be ascertained. The mailing or sending of a facsimile may be omitted if the post-office address or facsimile number cannot be ascertained with due diligence. A summary of the petition published as a class 1 notice shall include the name of the respondent and of the petitioner, notice of the temporary restraining order, and notice of the date, time, and place of the hearing regarding the injunction.

**NOTE:** Par. (a) is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c).

(b) A petition may be filed in conjunction with an action affecting the family commenced under ch. 767, but commencement of an action affecting the family or any other action is not necessary for the filing of a petition or the issuance of a temporary restraining order or an injunction. A judge or circuit court commissioner may not make findings or issue orders under s. 767.23 or 767.24 while granting relief requested only under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

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

**(3) TEMPORARY RESTRAINING ORDER.** (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner’s residence, except as provided in par. (am), or any other location temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party’s attorney or a law enforcement officer to contact the petitioner unless the petitioner consents in writing, or any combination of these remedies requested in the

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

**NOTE:** Par. (a) (intro.) is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c).

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (5) (a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

**NOTE:** Subd. 2. is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c).

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

**NOTE:** Par. (aj) is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language indicates the correct term. Corrective legislation is pending.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner’s residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

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

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

**NOTE:** Par. (c) is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c).

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

**(4) INJUNCTION.** (a) A judge or circuit court commissioner may grant an injunction ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner’s residence, except as provided in par. (am), or any other location temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party’s attorney or a law enforcement officer to contact the petitioner unless the petitioner consents to that contact in writing, or any combination of these remedies requested in the petition, or any



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

**NOTE:** Par. (a) (intro.) is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c).

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

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

3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

**NOTE:** Subd. 3. is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c).

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

**NOTE:** Par. (aj) is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language indicates the correct term. Corrective legislation is pending.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) The judge or circuit court commissioner may enter an injunction only against the respondent named in the petition. No injunction may be issued under this subsection under the same case number against the person petitioning for the injunction. The judge or circuit court commissioner may not modify an order restraining the respondent based solely on the request of the respondent.

(c) 1. An injunction under this subsection is effective according to its terms, for the period of time that the petitioner requests, but not more than 4 years. An injunction granted under this subsection is not voided if the petitioner allows or initiates contact with the respondent or by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid.

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

4. Notice need not be given to the respondent before extending an injunction under subd. 2. The petitioner shall notify the respondent after the court extends an injunction under subd. 2.

**(4m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.** (a) An injunction issued under sub. (4) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.

2. Except as provided in par. (ag), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this

section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner. The judge or circuit court commissioner shall approve the person designated by the respondent unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(ag) If the respondent is a peace officer, an injunction issued under sub. (4) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(am) 1. When a respondent surrenders a firearm under par. (a) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (b), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (b).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(aw) A sheriff may store a firearm surrendered to him or her under par. (a) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.

(b) A firearm surrendered under par. (a) 2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (4) has been vacated or has expired and not been extended.

2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

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

1. The name of the petitioner and that the petitioner is the alleged victim.

2. The name of the respondent and that the respondent is an adult.

3. That the respondent engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(am) The petitioner shall request that the respondent be restrained from committing acts of domestic abuse against the petitioner, that the respondent be ordered to avoid the petitioner's residence, or that the respondent be ordered to avoid contacting the petitioner or causing any person other than the respondent's attorney to contact the petitioner unless the petitioner consents to the contact in writing, or any combination of these requests.

(b) The clerk of circuit court shall provide the simplified forms provided under s. 46.95 (3) (c) to help a person file a petition.

(c) A judge or circuit court commissioner shall accept any legible petition for a temporary restraining order or injunction.

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

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

**(6) ENFORCEMENT ASSISTANCE.** (a) If an order is issued under this section, upon request by the petitioner the court or circuit court commissioner shall order the sheriff to accompany the petitioner and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction. The petitioner may, at the petitioner's expense, use a private process server to serve papers on the respondent.

(am) 1. If an injunction is issued or extended under sub. (4) or if a tribal injunction is filed under s. 806.247 (3), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of a firearms restrictions record search under s. 175.35 (2g) (c).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only as part of a firearms restrictions record search under s. 175.35 (2g) (c).

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

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

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

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

**(7) ARREST.** A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) A petitioner under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4) by any circuit court in this state.

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

**(7m) TRANSCRIPTS.** The judge or circuit court commissioner shall record the temporary restraining order or injunction hearing upon the request of the petitioner.

**(8) PENALTY.** (a) Whoever knowingly violates a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

(b) The petitioner does not violate the court order under sub. (3) or (4) if he or she admits into his or her residence a person ordered under sub. (3) or (4) to avoid that residence.

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

**History:** 1983 a. 204, 540; 1985 a. 29, 135; 1989 a. 193; 1993 a. 319; 1995 a. 71, 306; 1999 a. 162; 2001 a. 61, 109; s. 13.93 (2) (c).

This section is constitutional. *Schramek v. Bohren*, 145 Wis. 2d 695, 429 N.W.2d 501 (Ct. App. 1988).

Sub. (3) (am) provides for a limited-term injunction as an alternative to a restraining order under sub. (3) (a) when 3 stated conditions are met. *Johnson v. Miller*, 157 Wis. 2d 482, 459 N.W.2d 886 (Ct. App. 1990).

A person convicted of violating a harassment injunction may not collaterally attack the validity of the injunction in a criminal prosecution to enforce the injunction. *State v. Bouzel*, 168 Wis. 2d 642, 484 N.W.2d 362 (Ct. App. 1992).

Under sub. (4) (c), the total length of an injunction, plus extensions, may not exceed 2 years. *State v. Jankowski*, 173 Wis. 2d 522, 694 N.W.2d 215 (Ct. App. 1992).

An injunction granted under this section must be for the period requested, not exceeding 2 years. This section does not authorize granting an injunction without filing a formal petition, thus precluding an injunction against the petitioner. *Laluzerne v. Stange*, 200 Wis. 2d 179, 546 N.W.2d 182 (Ct. App. 1996).

The definition of "household member" requires a continuous residential living arrangement between the parties. They need not reside in only one place, but must reside together on a continuous basis. *Petrowsky v. Krause*, 223 Wis. 2d 32, 588 N.W.2d 318 (Ct. App. 1998).

It is error to grant an injunction under this section for other than the length of time requested or to refuse to order the sheriff to place the petitioner in possession of his or her residence. The requirement that the injunction granted be for the length of time requested is constitutional. *Hayen v. Hayen*, 2000 WI App 29, 232 Wis. 2d 447, 606 N.W.2d 606.

Construing this section to include a requirement of showing imminent danger, it is constitutional. *Blazel v. Bradley*, 698 F. Supp. 756 (1988).

Using Restraining Orders to Protect Elder Victims. *Meuer*. Wis. Law. Sept. 2000.

### 813.122 Child abuse restraining orders and injunctions. (1) DEFINITIONS. In this section:

(a) "Abuse" has the meaning given in s. 48.02 (1) (a) and (b) to (gm) and, in addition, includes a threat to engage in any conduct under s. 48.02 (1), other than conduct under s. 48.02 (1) (am).

(b) "Child" means any person under 18 years of age.

(c) "Child victim" means the child who is the victim or the alleged victim of abuse.

(d) "Child victim advocate" means any person who counsels child victims, assists child victims in coping with the impact of the crime or otherwise acts in support of child victims.

**(2) COMMENCEMENT OF ACTION AND RESPONSE.** No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the

petition is filed before service or promptly after service. The child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

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

(b) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed for the child victim in accordance with s. 48.235.

2. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.73 (1) (c), court personnel and any guardian ad litem, be excluded from any hearing under this section.

3. That access to any record of an action under this section be available only to the parties, their attorneys, any guardian ad litem, court personnel and any applicable court upon appeal.

(bm) The court or circuit court commissioner shall appoint a guardian ad litem if the respondent is a parent of the child.

(c) An action under this section may pertain to more than one child victim.

**(4) TEMPORARY RESTRAINING ORDER.** (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6) (a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

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

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

**(5) INJUNCTION.** (a) A judge may grant an injunction ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, if all of the following occur:

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

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

3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) If the respondent is the parent of the child victim, the judge shall modify the order under par. (a) to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.

(c) The injunction may be entered only against the respondent named in the petition.

(d) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years or until the child victim attains 18 years of age, whichever occurs first.

2. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.

3. If the petitioner states that an extension is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first.

4. Notice need not be given to the respondent before extending an injunction under subd. 2. or 3. The petitioner shall notify the respondent after the court extends an injunction under subd. 2. or 3.

(e) An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25.

**(5m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.** (a) An injunction issued under sub. (5) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.

2. Except as provided in par. (ag), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner. The judge or circuit court commissioner shall approve the person designated by the respondent unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(ag) If the respondent is a peace officer, an injunction issued under sub. (5) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(am) 1. When a respondent surrenders a firearm under par. (a) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.



2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (b), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (b).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(aw) A sheriff may store a firearm surrendered to him or her under par. (a) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.

(b) A firearm surrendered under par. (a) 2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (5) has been vacated or has expired and not been extended.

2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

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

1. The name of the petitioner and the child victim.
2. The name of the respondent.
3. That the respondent engaged in, or based on prior conduct of the respondent and the child victim may engage in, abuse of the child victim.

4. If the payment of child support is requested, that the payment of child support is reasonable or necessary based on criteria provided under s. 767.25.

(b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 46.03 (7) (d) to a petitioner.

(7) CONTACT. Any order under this section directing a person to avoid contact with a child victim prohibits the person from knowingly touching, meeting, communicating or being in visual or audio contact with the child victim, except as provided in any modifications of the order under sub. (5) (b).

(9) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner, the court or circuit court commissioner, as applicable, shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

(am) 1. If an injunction is issued or extended under sub. (5), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for

purposes of a firearms restrictions record search under s. 175.35 (2g) (c).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only as part of a firearms restrictions record search under s. 175.35 (2g) (c).

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

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

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

(10) ARREST. A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) A petitioner under sub. (6) (a) presents the law enforcement officer with a copy of an order issued under sub. (4) or (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or (5).

(11) PENALTY. Whoever knowingly violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

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

**History:** 1985 a. 234; 1987 a. 332 s. 64; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 276; 1993 a. 227, 318; 1995 a. 71, 275, 306, 456; 1997 a. 292; 2001 a. 61.

This section implicitly envisions a change of placement and custody if the trial court issues a child abuse injunction against a parent who has custody or placement of a child under a divorce order or judgment. *Scott M.H. v. Kathleen M.H.* 218 Wis. 2d 605, 581 N.W.2d 564 (Ct. App. 1998).

### 813.123 Vulnerable adult restraining orders and injunctions. (1) DEFINITIONS. In this section:

- (a) "Abuse" has the meaning given in s. 55.01 (1).
- (b) "Bodily harm" has the meaning given in s. 939.22 (4).
- (c) "County protective services agency" means the county department designated in s. 55.02.
- (d) "False representation" includes a promise that is made with the intent not to fulfill the promise.
- (e) "Great bodily harm" has the meaning given in s. 939.22 (14).
- (f) "Misappropriation of property" has the meaning given in s. 55.01 (4p).
- (g) "Neglect" has the meaning given in s. 55.01 (4r).
- (h) "Vulnerable adult" has the meaning given in s. 940.285 (1) (e).

(2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by

a petition described under sub. (6). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The vulnerable adult, a parent, an adult sibling, an adult child or the legal guardian of the vulnerable adult or a county protective services agency may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

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

(b) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed under s. 880.331 (1) for the vulnerable adult.
2. That all persons, other than the vulnerable adult, the parties, their attorneys, a representative of the county protective services agency, witnesses, court personnel and any guardian or any guardian ad litem, be excluded from any hearing under this section.
3. That access to any record of an action under this section be available only to the vulnerable adult, the parties, their attorneys, any guardian or any guardian ad litem, the county protective services agency, court personnel and any applicable court upon appeal.

**(4) TEMPORARY RESTRAINING ORDER.** (a) Unless the vulnerable adult, guardian or guardian ad litem consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the vulnerable adult, a judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to avoid interference with an investigation of the vulnerable adult under s. 55.043, the delivery of protective services to the vulnerable adult under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6).
2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has interfered with, or based on prior conduct of the respondent may interfere with, an investigation of the vulnerable adult under s. 55.043, the delivery of protective services to the vulnerable adult under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06.

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

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

**(5) INJUNCTION.** (a) Unless the vulnerable adult, guardian or guardian ad litem consents to that contact in writing and the judge agrees that the contact is in the best interests of the vulnerable adult, a judge may grant an injunction ordering the respondent to avoid interference with an investigation of the vulnerable adult under s. 55.043, the delivery of protective services to the vulner-

able adult under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 if all of the following occur:

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

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

3. After hearing, the judge finds reasonable cause to believe any of the following:

a. That the respondent has interfered with, or based upon prior conduct of the respondent may interfere with, an investigation of the vulnerable adult under s. 55.043 and that the interference complained of, if continued, would make it difficult to determine if misappropriation of property or abuse or neglect is occurring or may recur.

b. That the respondent has interfered with the delivery to the vulnerable adult of protective services under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 after the offer of services or placement has been made and the vulnerable adult or his or her guardian, if any, has consented to receipt of the protective services or placement.

(b) The injunction may be entered only against the respondent named in the petition.

(c) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years.

2. When an injunction that has been in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the vulnerable adult. This extension shall remain in effect until 6 months after the date on which the court first entered the injunction.

3. If the petitioner states that an extension is necessary to protect the vulnerable adult, the court may extend the injunction for not more than 2 years.

4. Notice need not be given to the respondent before extending an injunction under subd. 2. or 3. The petitioner shall notify the respondent after the court extends an injunction under subd. 2. or 3.

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

- (a) The name of the petitioner and the vulnerable adult.
- (b) The name of the respondent and that the respondent is an adult.

(c) That the respondent interfered with, or based on prior conduct of the respondent may interfere with, an investigation of the vulnerable adult under s. 55.043, the delivery of protective services to the vulnerable adult under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06.

**(7) INTERFERENCE ORDER.** Any order under this section directing a person to avoid interference with an investigation of a vulnerable adult under s. 55.043, the delivery of protective services to a vulnerable adult under s. 55.05 or a protective placement of a vulnerable adult under s. 55.06 prohibits the person from intentionally preventing a representative or employee of the county protective services agency from meeting, communicating or being in visual or audio contact with the vulnerable adult, except as provided in the order.

**(8) ENFORCEMENT ASSISTANCE.** (a) If an order is issued under this section, upon request by the petitioner, the court or circuit court commissioner shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

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



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

**(9) ARREST.** A law enforcement officer may arrest and take a person into custody if all of the following occur:

(a) A petitioner presents the law enforcement officer with a copy of an order issued under sub. (4) or an injunction issued under sub. (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or the injunction issued under sub. (5).

**(10) PENALTY.** Whoever intentionally violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

**(11) APPLICABILITY.** This section does not apply to vulnerable adults who are patients or residents of state-operated or county-operated inpatient institutions unless the alleged interference with an investigation of the vulnerable adult under s. 55.043 or with the delivery to the vulnerable adult of protective services under s. 55.05 or a protective placement of the vulnerable adult under s. 55.06 is alleged to have been done by a person other than an employee of the inpatient institution.

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

**History:** 1993 a. 445; 1995 a. 71, 306; 1997 a. 27; 2001 a. 61.

**813.125 Harassment restraining orders and injunctions.** **(1) DEFINITION.** In this section, “harassment” means any of the following:

(a) Striking, shoving, kicking or otherwise subjecting another person to physical contact or attempting or threatening to do the same.

(b) Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.

**(2) COMMENCEMENT OF ACTION.** An action under this section may be commenced by filing a petition described under sub. (5) (a). No action under this section may be commenced by service of summons. Section 813.06 does not apply to an action under this section.

**(3) TEMPORARY RESTRAINING ORDER.** (a) A judge or circuit court commissioner may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person, to avoid the petitioner’s residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, or any combination of these remedies requested in the petition, if all of the following occur:

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

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has violated s. 947.013.

(am) If the petitioner and the respondent are not married, and the respondent owns the premises where the petitioner resides, and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner’s residence under

par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

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

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4). A judge or circuit court commissioner shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

**(4) INJUNCTION.** (a) A judge or circuit court commissioner may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person, to avoid the petitioner’s residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, or any combination of these remedies requested in the petition, if all of the following occur:

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

2. The petitioner serves upon the respondent a copy of a restraining order obtained under sub. (3) and notice of the time for the hearing on the issuance of the injunction under sub. (3) (c). The restraining order or notice of hearing served under this subdivision shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect.

3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has violated s. 947.013.

(am) If the petitioner and the respondent are not married, and the respondent owns the premises where the petitioner resides, and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner’s residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) The injunction may be entered only against the respondent named in the petition.

(c) An injunction under this subsection is effective according to its terms, but for not more than 2 years.

**(4m) RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.** (a) If a judge or circuit court commissioner issues an injunction under sub. (4) and the judge or circuit court commissioner determines, based on clear and convincing evidence presented at the hearing on the issuance of the injunction, that the respondent may use a firearm to cause physical harm to another or to endanger public safety, the judge or circuit court commissioner may prohibit the respondent from possessing a firearm.

(b) An order prohibiting a respondent from possessing a firearm issued under par. (a) remains in effect until the expiration of the injunction issued under sub. (4).

(c) An order issued under par. (a) that prohibits a respondent from possessing a firearm shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.

2. Except as provided in par. (cg), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner.

The judge or circuit court commissioner shall approve the person designated by the respondent unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(cg) If the respondent is a peace officer, an order issued under par. (a) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(cm) 1. When a respondent surrenders a firearm under par. (c) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (d), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (d).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(cw) A sheriff may store a firearm surrendered to him or her under par. (c) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.

(d) A firearm surrendered under par. (c) 2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (4) has been vacated or has expired.

2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(e) If a respondent surrenders a firearm under par. (c) 2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

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

1. The name of the person who is the alleged victim.
2. The name of the respondent.
3. That the respondent has violated s. 947.013.

(am) The petition shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect.

(b) The clerk of circuit court shall provide simplified forms.

(5g) ENFORCEMENT ASSISTANCE. (a) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the petitioner's premises.

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

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

(5r) NOTICE TO DEPARTMENT OF JUSTICE. (a) If an order prohibiting a respondent from possessing a firearm is issued under sub. (4m), the clerk of the circuit court shall notify the department of justice of the existence of the order prohibiting a respondent from possessing a firearm and shall provide the department of justice with information concerning the period during which the order is in effect and information necessary to identify the respondent for purposes of a firearms restrictions record search under s. 175.35 (2g) (c).

(b) Except as provided in par. (c), the department of justice may disclose information that it receives under par. (a) only as part of a firearms restrictions record search under s. 175.35 (2g) (c).

(c) The department of justice shall disclose any information that it receives under par. (a) to a law enforcement agency when the information is needed for law enforcement purposes.

(6) ARREST. A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) A person named in a petition under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4).

(7) PENALTY. Whoever violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned not more than 90 days or both.

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

**History:** 1983 a. 336; 1991 a. 39, 194; 1995 a. 71, 306; 2001 a. 16, 61, 105.

This section is constitutional. *Bachowski v. Salamone*, 139 Wis. 2d 397, 407 N.W.2d 533 (1987).

A person convicted of violating a harassment injunction may not collaterally attack the validity of the injunction in a criminal prosecution to enforce the injunction. *State v. Bouzel*, 168 Wis. 2d 642, 484 N.W.2d 362 (Ct. App. 1992).

A hearing on issuing an injunction initially held within 7 days of the issuance of the temporary restraining order, then continued for seven months at the defendant's request, did not result in the court losing competency to proceed. *In re Paternity of C.A.S. & C.D.S. 185 Wis. 2d 468, 518 N.W.2d 285* (Ct. App. 1994).

Proof of intent is discussed. *In re Paternity of C.A.S. & C.D.S. 185 Wis. 2d 468, 518 N.W.2d 285* (Ct. App. 1994).

A municipal corporation is a "person" that may bring an action for an injunction under this section. *Village of Tigerton v. Minniecheske*, 211 Wis. 2d 775, 565 N.W.2d 586 (Ct. App. 1997).

Violating an injunction under this section is a crime and is not a lesser-included offense of harassment under s. 947.013 (1r). A defendant may be convicted for violating this section and s. 947.013 without violating the prohibition against double jeopardy, and convictions for violating this section may be counted for purposes of determining whether the defendant may be sentenced as a repeat offender under s. 939.62. *State v. Sveum*, 2002 WI App 105, \_\_\_ Wis. 2d \_\_\_, 648 N.W.2d 496.

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

**History:** 1985 a. 234.

**813.128 Foreign protection orders. (1) ENFORCEMENT OF FOREIGN PROTECTION ORDERS.** (a) A foreign protection order or modification of the foreign protection order that meets the requirements under s. 806.247 (2) has the same effect as an order issued under s. 813.12, 813.122, 813.123 or 813.125, except that the foreign protection order or modification shall be enforced according to its own terms.

(b) A law enforcement officer shall arrest and take the subject of a foreign protection order into custody if all of the following occur:

1. A person protected under a foreign protection order presents the law enforcement officer with a copy of a foreign protection order issued against the subject, or the law enforcement officer determines that a valid foreign protection order exists against the subject through communication with appropriate authorities. If a law enforcement officer examines a copy of a foreign protection order, the order, with any modification, is presumed to be valid if the order or modification appears to be valid on its face and circumstances suggest that the order and any modification are in effect.

2. The law enforcement officer has probable cause to believe that the person has violated the terms of the foreign protection order or modification of the order.

(2) **PENALTY.** A person who knowingly violates a condition of a foreign protection order or modification of a foreign protection order that is entitled to full faith and credit under s. 806.247 shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both. If a foreign protection order and any modification of that order that is entitled to full faith and credit under s. 806.247 remains current and in effect at the time that a court convicts a person for a violation of that order or modification of that order, but that order or modification has not been filed under s. 806.247, the court shall direct the clerk of circuit court to file the order and any modification of the order.

(3) **IMMUNITY.** A law enforcement officer, law enforcement agency, prosecuting attorney or clerk of circuit court is immune from civil and criminal liability for his or her acts or omissions arising out of a decision related to the filing of a foreign protection order or modification or to the detention or arrest of an alleged violator of a foreign protection order or modification if the act or omission is done in a good faith effort to comply with this section and s. 806.247.

**History:** 1995 a. 306.

**813.13 Writ of ne exeat.** The court or a judge may grant the writ of ne exeat to prevent any defendant from going out of the state until the defendant shall give security. It may be granted at any time before judgment.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.13; 1993 a. 486.

**813.14 Same; when granted.** No writ of ne exeat shall be granted unless it appears to the court or judge by the complaint or an affidavit that grounds exist therefor; and the court or judge

granting such writ shall direct to be endorsed thereon the penalty of the bond and security to be given by the defendant.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.14.

**813.15 Same; discharge of.** If the defendant shall satisfy the court or judge granting such writ that there is no reason for the defendant's restraint or shall give security for the performance of the judgment in the action, the writ shall be discharged.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.15; 1993 a. 486.

**813.16 Receivers.** A receiver may be appointed:

(1) On the application of either party, when the applying party establishes an apparent right to or interest in property which is the subject of the action and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially impaired.

(2) By the judgment, or after judgment, to carry it into effect or to dispose of the property according to the judgment.

(3) To preserve the property during the pendency of an appeal; or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment or in an action by a creditor under ch. 816.

(4) When a corporation has been dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights.

(5) In accordance with the practice which obtained when the code of 1856 took effect except as otherwise provided in this chapter.

(6) The receiver shall give to and file with the clerk of the court a bond, conditioned in the usual manner, with sureties to be approved by the judge making the appointment sufficient to cover all property likely to come into the receiver's hands.

(7) If the person seeking the appointment of a receiver under sub. (1) is a corporation supervised by the division of savings institutions, home loan bank board, U.S. office of thrift supervision, federal deposit insurance corporation or resolution trust corporation, the court, unless the opposing party objects, shall appoint an officer of such corporation as receiver to act without compensation and to give such bond as the court requires.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 779 (1975); Stats. 1975 s. 813.16; 1991 a. 221; 1993 a. 486; 1995 a. 27; 1999 a. 9.

A court could appoint a receiver to accept mortgage payments after a foreclosure action was started when the plaintiff refused to accept them on the ground that it would be a waiver and the defendant claimed the right to make them on the ground that the defendant had no right to accelerate the note. *American Medical Services, Inc. v. Mutual Federal Savings & Loan Assoc.* 52 Wis. 2d 198, 188 N.W.2d 529 (1971).

A receiver has a duty to a corporation subject to receivership and its creditors not to deal with receivership property to benefit itself. A consulting contract that was offered to the insolvent corporation's president was a corporate opportunity that the receiver improperly appropriated to itself when it took control of the corporation. *Community National Bank v. Medical Benefit Administrators, LLC*, 2001 WI App 98, 242 Wis. 2d 626, 626 N.W.2d 340.

**813.17 Receiver; payment of employees' wages.**

Whenever a receiver shall be appointed to manage or close up any business, the receiver shall immediately report to the court the amount due the employees in such business; and said court shall order the receiver to pay out of the first receipts of said business, after the payment of costs, debts due the United States or this state, taxes and assessments and the current expenses of carrying on or closing said business, the wages, including pension, welfare and vacation benefits, of such employees earned during the last 3 months of employment and within one year prior to the receiver's appointment.

**History:** 1971 c. 63; Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.17; 1993 a. 486.

**813.22 Uniform absence as evidence of death and absentee's property act; insurance policy provisions invalid.** (1) No provision concerning the effect to be given to evidence of absence or of death in any policy of life or accident



insurance or in the charter or bylaws of any mutual or fraternal insurance association hereafter executed or adopted, shall be valid.

(2) When any such policy, charter or bylaws hereafter executed or adopted contains a provision requiring a beneficiary to bring suit upon a claim of death within one year or other period after the death of the insured, and the fact of the absence of the insured is relied upon by the beneficiary as evidence of the death, the action may be begun, notwithstanding such provision in the policy or charter or bylaws, at any time within the statutory period of limitation for actions on contracts in writing dating from the date of the giving of written notice of such absence to the insurer, which notice shall be given within one year from the date when the beneficiary last heard of the absent insured. If such notice is not given then the statutory period runs from the time when the absent person was last heard of by the beneficiary.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.22; 1979 c. 89.

**813.23 Receiver may be appointed when.** (1) (a) When a person domiciled in this state and having an interest in any form of property disappears and is absent from the person's place of residence without being heard of after diligent inquiry, upon application for a finding of such disappearance and absence and of the necessity for the appointment of a receiver to the circuit court of the county of the absentee's domicile by any person who would have an interest in said property were said absentee deceased or by an insurer or surety or creditor of such absentee, after notice as provided in s. 813.24, and upon good cause being shown, the court may find that the absentee was last heard of as of a date certain and may appoint a receiver to take charge of the absentee's estate. The absentee shall be made a party to said proceeding; and any other person who would have an interest in said property were said absentee deceased, upon direction by the court, may be made a party to said proceeding.

(b) When a person is a member of the armed forces of the United States without this state, or is serving as a merchant seaman outside of the limits of the United States included within the 50 states and the District of Columbia, or is outside such limits by permission, assignment or direction of any department or official of the United States government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged, and has an interest in any form of property in this state and no adequate power of attorney on his or her behalf has been recorded in the office of the register of deeds of the county of his or her domicile or of the county where such property is situated, upon application for findings establishing the foregoing and the necessity for appointment of a receiver, to the circuit court of the county of such person's domicile or of the county where such property is situated, by any person who would have an interest in said property were such person deceased, or by an insurer or surety or creditor of such person, or by any other person or on the court's own motion, after notice as provided in s. 813.24, and upon good cause being shown, the court may, on making such findings, appoint a receiver to take charge of such person's estate. Such person should be made a party to such proceedings; and any other person who would have an interest in said property were said person deceased, upon direction by the court, may be made a party to said proceedings. Such person shall be deemed an "absentee" within the meaning of ss. 813.23 to 813.34.

(2) (a) The receiver, upon giving bond to be fixed in amount and with surety to be approved by the court and upon such conditions as will insure the conservation of such property, shall under the direction of said court administer said property as an equity receivership with power:

1. To take possession of all property of the absentee wherever situated.
2. To collect all debts due the absentee.
3. To bring and defend suits.
4. To pay insurance premiums.

5. With the approval of the court in each case, to pay all debts due by the absentee.

6. To pay over the proceeds of such part or all of said property, or the income thereof as may be necessary for the maintenance and support of the absentee's dependents.

(b) If the personal property of the absentee is not sufficient to pay all of the absentee's debts, and to provide for the maintenance and support of the absentee's dependents, the receiver may apply to the court for an order to sell or mortgage so much of the real estate as may be necessary therefor; said sale or mortgage to be reported to, approved and confirmed by the court and said receiver to be ordered to make deed conveying or mortgaging said real property to the purchaser or lender upon the purchaser's or lender's complying with the terms of sale or mortgage.

(3) Upon the filing of the application referred to in sub. (1), the court may for cause shown appoint a temporary receiver to take charge of the property of the absentee and conserve it pending hearing upon the application. Such temporary receiver shall qualify by giving bond in an amount and with surety to be approved by the court and shall exercise only the powers named by the court. Should a permanent receiver be appointed, the temporary receiver shall turn over all property in the temporary receiver's possession, less such as may be necessary to cover the temporary receiver's expenses and compensation as allowed by the court, to the permanent receiver, shall file the temporary receiver's final account and upon its approval be discharged. Should the application for permanent receiver be denied, the temporary receiver shall restore to those from whom it may have been obtained, all property in the temporary receiver's possession, less such only as may be necessary to cover the temporary receiver's expenses and compensation as allowed by the court, shall file the temporary receiver's final account and be discharged. Where the application is denied, the expenses of the temporary receivership and the compensation of the temporary receiver may in the discretion of the court be taxed as costs of the proceeding to be paid by the applicant and shall be enforceable by the temporary receiver against the applicant.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 779 (1975); Stats. 1975 s. 813.23; 1993 a. 486.

**813.24 Notice.** All notices required under ss. 813.22 to 813.34 shall be served upon all parties ordered by the court to be served as prescribed by statutes or rules, except that in addition thereto service on the absentee shall be by a class 3 notice, under ch. 985, in the county of the absentee's domicile, the last insertion to be not less than 10 nor more than 20 days prior to the time set for any hearing. The original notice prescribed in s. 813.23 (1) shall require each person claiming an interest in the property of the absentee to file in court within a time fixed by the court a statement of the nature and extent of such interest. In relation to a person in military service similar notice shall be given; except that where it appears to the court that such person was not domiciled in this state immediately prior to such service, publication of the notice may be made in the county where property of such person is situated.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 779 (1975); Stats. 1975 s. 813.24.

**813.25 Search for absentee.** (1) The court, upon application, may direct the receiver to make search for the absentee in any manner which the court may deem advisable, including any or all of the following methods:

(a) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the absentee's whereabouts;

(b) By notifying officers of justice and public welfare agencies in appropriate locations of the absentee's disappearance;

(c) By engaging the services of an investigation agency.

(2) The expenses of such search and of the notices provided for in s. 813.24 shall be taxed as costs and paid out of property of the absentee.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 779 (1975); Stats. 1975 s. 813.25.

**813.26 Final hearing and finding. (1)** At any time, during the proceedings, upon application to the court and presentation of satisfactory evidence of the absentee's death, the court may make a final finding and decree that the absentee is dead; in which event the decree and a transcript of all of the receivership proceedings shall be certified to the proper court for any administration required by law upon the estate of a decedent, and the receivership court shall proceed no further except for the purposes set forth in s. 813.28 (1) and (3).

**(2)** After the lapse of 5 years from the date of the finding provided for in s. 813.23 (1), if the absentee has not appeared, the court may proceed to take further evidence and thereafter make a final finding and enter a decree declaring that all interest of the absentee in the absentee's property has ceased and devolved upon others by reason of the absentee's failure to appear and make claim.

**(3)** At any time, upon proof to the court that a power of attorney has been recorded as provided by s. 813.23 (1) (b), the court shall direct termination of the receivership proceedings and transfer of property held thereunder to the person in military service or to the attorney named in such power of attorney upon payment of reasonable expenses and compensation of the receiver in the discretion of the court.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 779 (1975); Stats. 1975 s. 813.26; 1993 a. 486.

**813.27 Claim of absentee barred.** No action shall be brought by an absentee to recover any portion of this property after the final finding and judgment provided for in s. 813.26.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 779 (1975); Stats. 1975 s. 813.27.

**813.28 Termination of receivership and disposition of property of absentee.** Upon the entry of any final finding and decree as provided in s. 813.26, the court shall proceed to wind up the receivership and terminate the proceedings:

**(1)** In the case of a finding under s. 813.26 (1) that the absentee is dead:

(a) By satisfying all outstanding debts and charges of the receivership; and

(b) By then certifying the proceedings to the proper court; or

**(2)** In the case of a finding under s. 813.26 (2):

(a) By satisfying all outstanding debts and charges;

(b) By then deducting for the insurance fund provided in s. 813.31 a sum equal to 5 per cent of the total value of the property remaining, including amounts paid to the receivership estate from policies of insurance on the absentee's life;

(c) By distributing the remaining property as provided in s. 813.29; and

**(3)** In both cases by requiring the receiver's account and upon its approval discharging the receiver and the receiver's bondsmen and entering a final decree terminating the receivership.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 780 (1975); Stats. 1975 s. 813.28; 1993 a. 486.

**813.29 Distribution of property of absentee.** The property remaining for distribution in accordance with s. 813.28 (2) (c) shall be distributed among those persons who would be entitled thereto under the laws of descent and distribution of this state had the absentee died intestate as of the date determined by the court in its final finding and decree; or in case the absentee leaves a document which, had the absentee died, would under the laws of this state be entitled to probate as the absentee's will, the distribution shall be according to the terms of that document as of that date. The validity and effect of the distribution of said property shall be determined by the court administering the receivership and shall be final and binding upon all persons including the absentee.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 780 (1975); Stats. 1975 s. 813.29; 1993 a. 486.

**813.30 Insurance policies. (1)** At the time of the distribution under s. 813.29, the court may direct the payment to the bene-

ficiaries of any sums due and unpaid under any policies of insurance upon the life of the absentee, if the claim is uncontested by the insurer.

**(2)** If the claim is contested, the court shall take jurisdiction of the action and shall submit to a jury, if one be called for, the issue of death of the insured and any other issues arising under the policy.

**(3)** Where the survival of a named beneficiary is not established, ss. 813.22 to 813.34 shall apply as if the proceeds of the insurance were a part of the estate of the absentee.

**(4)** If in any proceeding under subs. (1) and (2) the absentee is not found to be deceased and the policy provides for a surrender value, the beneficiary may request the receiver, acting for the insured, to demand the payment of surrender value. The receiver's receipt for such payment shall be a release to the insurer of all claims under the policy. The receiver shall pay over to the beneficiary, if the beneficiary survives the insured, otherwise to the estate of the absentee, the sum thus received, reserving only an amount allowed by the court as costs of the proceedings under this section.

**(5)** Payment by an insurer hereunder shall be in full discharge of all contractual liability. No action shall be brought by an absentee to recover any portion of the proceeds, or any other benefits or values, arising out of contracts of life insurance issued upon the absentee's life, after any distribution of such property pursuant to this section.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 780 (1975); Stats. 1975 s. 813.30; 1993 a. 486.

**813.31 Absentee insurance fund. (1)** In each case of termination of receivership as provided in s. 813.28, the court, except in cases where the proceedings have been certified to the proper court under s. 813.26 (1), shall set aside the sum there named and direct its payment by the receiver, to the state treasurer.

**(2)** The state treasurer shall retain or invest the funds thus paid in.

**(3)** If at any time thereafter an absentee whose estate has been distributed under a final finding and judgment made as herein provided shall appear and make claim for reimbursement, the court may in a proceeding by the claimant against the state treasurer order payment to the claimant as in its opinion may be fair and adequate under the circumstances.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 780 (1975); Stats. 1975 s. 813.31.

**813.32 Uniformity of interpretation.** Sections 813.22 to 813.34 shall be so construed as to make uniform the law of those states which enact it.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 780 (1975); Stats. 1975 s. 813.32.

**813.33 Name of act.** Sections 813.22 to 813.34 may be cited as the "Uniform Absence as Evidence of Death and Absentee's Property Act."

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 780 (1975); Stats. 1975 s. 813.33.

**813.34 Time of taking effect and not retroactive.** The provisions of ss. 813.22 to 813.34 shall not be retroactive and they shall take effect on July 1, 1942.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 760, 780 (1975); Stats. 1975 s. 813.34.

**813.40 Injunctive relief in prison condition cases. (1)**

(a) In this section:

1. "Prisoner" has the meaning given in s. 801.02 (7) (a) 2.

2. "Prison or jail conditions" has the meaning given in s. 801.02 (7) (a) 3.

(b) If a court determines that an injunction may be granted to a prisoner in any action or special proceeding with respect to prison or jail conditions, any injunction issued shall meet all of the following criteria:

1. Require only what is necessary to correct the harm.

2. Is the least intrusive means necessary to correct that harm.

3. Does not require or permit a government official, employee or agent to exceed his or her authority or to violate a state law or local ordinance unless all of the following apply:

- a. Federal law permits that relief.
- b. The relief is necessary to correct the violation of a federal right.
- c. No other relief will correct the violation of a federal right.
- (c) If an injunction is issued that does not meet the requirements in par. (b), a defendant or intervenor is entitled to immediate termination of any prospective relief or to a revision of the injunction to meet those requirements. Prospective relief need not be terminated if the court makes written findings based on the record that the requirements under par. (b) are met.

(d) A court may not enter into or approve a consent decree in an action for injunctive relief under this section if that consent decree does not meet the requirements in par. (b). This paragraph does not prevent the parties from entering into a private settlement agreement that does not comply with the requirements in par. (b) if the terms of that settlement agreement are not subject to court enforcement other than the dismissal of the action or special proceeding based on the settlement agreement.

(2) When determining the extent of any injunction issued under this section, the court shall give substantial weight to any adverse impact on public safety or on the operation of the criminal justice system caused by the injunction.

(3) Any interested party may, 2 years after the date the court issued an injunction under this section, or one year after the court has denied a request under this subsection for modification or termination of the injunction, request that the court modify or terminate an injunction issued under this section. Any interested party may, 2 years after September 1, 1998, request that the court modify or terminate an injunction related to prison or jail conditions that was issued before September 1, 1998. Any prospective relief issued under this section shall be stayed by the filing of a motion for modification or termination of the injunction for the period beginning on the 90th day after the motion is filed with the court and ending on the day the court enters a final order on the motion.

(4) This section does not prevent the parties from agreeing to terminate or modify an injunction issued under this section.

(5) This section does not authorize a court to order the construction of prisons, jails or other places of incarceration or to order the raising of taxes and does not expand the powers of a court under this chapter.

(6) Except for writs of habeas corpus or as otherwise required by the state or federal constitution, this section does not authorize the court to issue a prisoner release order. In this subsection, “prisoner release order” means any order that has the purpose or effect of reducing or limiting the prison or jail population, or that directs the release or nonadmission of prisoners to a prison or jail.

**History:** 1997 a. 133.