

2009 DRAFTING REQUEST

Bill

Received: 02/05/2009

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Ann Hraychuck (608) 267-2365

By/Representing: Anne Sappenfield

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - garn/injunct

Extra Copies:

Submit via email: YES

Requester's email: Rep.Hraychuck@legis.wisconsin.gov

Carbon copy (CC:) to: anne.sappenfield@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Harassment injunctions

Instructions:

See attached

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	chanaman 08/03/2009			_____			
	phurley 08/07/2009			_____			
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Carbon copy (CC:) to: **anne.sappenfield@legis.wisconsin.gov**

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*Tony Gibant
at tonyg@cadur.org*

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RC 8/19 jld

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FE Sent For:

2/17 <END>

Anne S. Parisi 2/5
(Mike Murray)

125 Harassment

1. ✓ RP 813.125 (child can ~~bring~~ petition
(from .122(2) Ct may
appt GAL

~~Just .122(3)(b.m) GAL for ~~over~~ 12 & under
Want kids over 12 can file.
and "may" appt GAL~~

✓ 2. ✓ Take ~~last~~ ~~sent~~ ~~se~~ ~~of~~ .12(2m)
and add to ~~the~~ .125

✓ 3. Take .12(6)(a) and add to .125

✓ 4. Add last sentence of .12(3)(aj)

✓ 5. Add ~~the~~ last sentence of
.12(9) C. 1.

✓ 6. IF bad guy wants contact,
good guy can give written
permission & file with law
Ent. at least 28 hours
before contact allowed

✓ 7. Add .12(2)(a) - service by publication

✓ 8. RP 814.61(1)(e) & .125 to (1)(d)

✓ 9. In 767.41(1)(b) - say
may not conflict with ...
...any order 12 (3) (aj)

✓ 10. 757.69(8) - limit time ^{business}
frame for .12 & .125 to 15 days
filing & hearing within
15 bus. days

✓ 11. If want to stop to
.125 when start with
.12, court must make
written finding as to
why change & why
.12 not appropriate

✓ 12. 813.12. change (sm)
so court has to pet.
address, but not available
to bad guy

13. If 813.12, ... - .125,
add to facts ~~that~~ as to
whether petitioner has any other
actions pending or orders involving
to respondent.

Nelson, Robert P.

From: Sappenfield, Anne
Sent: Tuesday, February 10, 2009 11:39 AM
To: Nelson, Robert P.
Subject: RE: Parisi draft

One change is to move the s. 813.12 (3) (aj) language to the harassment TRO. As far as the ch. 767 order, Mike requested language saying that a family court order may not conflict with a TRO order or a no contact provision in a criminal case (813.12, 813.122, 813.124, 813.125, and 968.075). I don't remember what you and I discussed drafting. I think you were going to see if Pam K. had any thoughts.

Anne

From: Nelson, Robert P.
Sent: Tuesday, February 10, 2009 11:19 AM
To: Sappenfield, Anne
Subject: RE: Parisi draft

Anne,

I am not sure what you are asking for in the last 2 paragraphs, but maybe I will understand when I work on the draft. I have started on it and have a question about amending s. 767.41 (1) (b) to say the court judgment cannot conflict with a s. 813.12 (3) (aj) TRO. But, (3) (aj) is not the place a TRO is issued. That is under (a) and (am)? Also, what about the injunction under s. 813.12 (4) and a TRO and injunction under s. 813.122?

For now, until I hear from you, I will limit the no conflict to s.813.12 (3) or (4).

From: Sappenfield, Anne
Sent: Tuesday, February 10, 2009 11:06 AM
To: Nelson, Robert P.
Subject: Parisi draft

Hi Bob,

I talked to Mike Murray in Parisi's office about the TRO legislation and have a couple follow ups. First, he does not want the change to s. 814.61. He wants to stick with current law. Secondly, he wants the change relating to review of court commissioners' decisions and the requirement that a TRO petition state whether there are other actions pending or orders in effect relating to the parties to apply to all types of TROs. Finally, he asked if you could put a note after the provision relating to minors filing harassment TROs and allowing a GAL appointment and the stipulation language re: ordering an harassment TRO instead of a domestic abuse TRO to flag those provisions since he isn't sure which way to proceed on those.

Thank you!!!! Let me know if you need me to get any other info.

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council
(608) 267-9485

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

767.225 (1n)

temp orders ??

767.34 (2)

stipulations ??

767.41 (6)

cust/phy pl ??

767.451 + 767.461

??

revisions of

paternity
767.85
767.89

one provision that addresses all ??

may not be in order under this
chapter

in subch. IV ?

767.345



2/10
State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2016/P1

RPN:.....

Wanted 2/19

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-N

X

Gen

1 AN ACT ...; relating to: temporary restraining orders and injunctions. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 757.69 (8) ✓ of the statutes is renumbered 757.69 (8) (a). ✓

3 SECTION 2. 757.69 (8) (b) of the statutes is created to read:

4 757.69 (8) (b) If a party seeks to have the court conduct a ✓ hearing de novo of
5 a determination, order, or ruling ✓ entered in an action under s. 813.12 ✓ or 813.125, ✓ the
6 motion requesting the hearing must be filed with the court within 15 business days
7 after the circuit court commissioner ✓ issued the order and the court shall hold the de
8 novo hearing within 15 ✓ working days after the motion requesting the hearing is filed
9 with the court.

History: 1977 c. 323, 449; 1979 c. 32; 1979 c. 89; 1979 c. 209 s. 4; 1979 c. 352, 356; 1983 a. 279; 1985 a. 126, 202, 234, 332; 1987 a. 3, 27, 71, 378, 398; 1989 a. 7, 12, 31, 246; Sup. Ct. Order, 158 Wis. 2d xxv (1990); 1991 a. 39, 269; 1993 a. 318, 451, 481; 1995 a. 77; 1997 a. 191, 192, 292; 1999 a. 32; 2001 a. 16; 2001 a. 61 ss. 93 to 109, 173, 175, 177, 180; 2001 a. 105; 2005 a. 264, 387; 2007 a. 45, 179.

1 SECTION 3. 767.338 of the statutes is created to read:

2 767.338 Conflict with temporary restraining orders, injunctions, or
3 contact prohibitions. Notwithstanding any other provision of this chapter, the
4 court may not enter an order under this chapter that conflicts with an order entered
5 under s. 813.12, 813.122, 813.123, or 813.125 or with the contact prohibition under
6 s. 968.075 (5).

7 SECTION 4. 813.12 (5) (a) 4. of the statutes is created to read:

8 813.12 (5) (a) 4. If the petitioner has any other action pending in which the
9 respondent is a party or has any current court order that involves the respondent, the
10 name of the action and the court where the action is pending, or the name of the court
11 that issued the court order and the date on which the order was issued.

12 SECTION 5. 813.12 (5g) of the statutes is created to read:

13 813.12 (5g) STIPULATION. If the parties enter into a stipulation to convert a
14 petition under this section to a petition for a temporary restraining order or
15 injunction under s. 813.125, the court may not approve that stipulation unless all of
16 the following occur:

17 (a) Either or both parties submit a written request for the conversion
18 explaining why the conversion of the petition is requested.

19 (b) The court includes on the record the court's explanation as to why the
20 granting of a temporary restraining order or injunction under s. 813.12 was not
21 appropriate. *is this section*

****NOTE: This provision requires the submittal of a written request with an
explanation for the change of a domestic abuse petition to a harassment petition. It also
requires the court to include on the court record an explanation of why the domestic abuse
petition was not appropriate. *is*

22 SECTION 6. 813.12 (5m) of the statutes is amended to read:

1 813.12 (5m) CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5)
 2 and the court order under sub. (3) or (4) ~~shall~~ ^{may} not disclose the address of the alleged
 3 victim. The petitioner shall provide the clerk of circuit court with his or her address
 4 when he or she files a petition under this section. The clerk shall retain the address
 5 in a confidential file.

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; 2003 a. 321; 2005 a. 387; 2005 a. 443 s. 265; 2007 a. 20, 124.

6 SECTION 7. 813.125 (2) of the statutes is renumbered 813.125 (2) (a) and
 7 amended to read:

8 813.125 (2) COMMENCEMENT OF ACTION (a) An action under this section may be
 9 commenced by filing a petition described under sub. (5) (a). No action under this
 10 section may be commenced by service of summons. The action commences with
 11 service of the petition upon the respondent if a copy of the petition is filed before
 12 service or promptly ^{within 3 days} after service. If the judge or a circuit court commissioner extends
 13 the time for a hearing under sub. (3) (c) and the petitioner files an affidavit with the
 14 court stating that personal service by the sheriff or a private server under s. 801.11
 15 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by
 16 concealment or otherwise, the judge or circuit court commissioner shall inform the
 17 petitioner that he or she may serve the respondent by publication of a summary of
 18 the petition as a class 1 notice, under ch. 985, and by mailing or sending a facsimile
 19 if the respondent's post-office address or facsimile number is known or can with due
 20 diligence be ascertained. The mailing or sending of a facsimile may be omitted if the
 21 post-office address or facsimile number cannot be ascertained with due diligence.
 22 A summary of the petition published as a class 1 notice shall include the name of the
 23 respondent and of the petitioner, notice of the temporary restraining order, and
 24 notice of the date, time, and place of the hearing regarding the injunction. The child

keep scored period

1 victim or a parent, stepparent, or legal guardian of the child victim may be a
 2 petitioner under this section. Section 813.06 does not apply to an action under this
 3 section.

History: 1983 a. 336; 1991 a. 39, 194; 1995 a. 71, 306; 2001 a. 16, 61, 105; 2003 a. 321; 2005 a. 272; 2007 a. 124.

SECTION 8. 813.125 (2) (b) of the statutes is created to read:

5 813.125 (2) (b) A child ^{as defined in s. 813.122 (1)(b),} for a parent, stepparent, or legal guardian of a child may
 6 be a petitioner under this section.

* ~~****NOTE: This allows children to bring a harassment action as a petitioner but does not define child. Should I define child as is done in s. 813.122 (1)(b)?~~

SECTION 9. 813.125 (2g) of the statutes is created to read:

8 813.125 (2g) APPOINTMENT OF GUARDIAN AD LITEM. The court or circuit court
 9 commissioner, on its or his or her own motion, or on the motion of any party, may
 10 appoint a guardian ad litem for a child who is the petitioner under this section when
 11 justice so requires.

SECTION 10. 813.125 (2m) of the statutes is created to read:

13 813.125 (2m) TWO-PART PROCEDURE. ^(The) Procedure for an action under this section
 14 is in 2 parts. First, if the petitioner requests a temporary restraining order the court
 15 shall issue or refuse to issue that order. Second, the court shall hold a hearing under
 16 sub. (4) on whether to issue an injunction, which is the final relief. If the court issues
 17 a temporary restraining order, the order shall set forth the date for the hearing on
 18 an injunction. If the court does not issue a temporary restraining order, the date for
 19 the hearing shall be set upon motion by either party.

SECTION 11. 813.125 (3) (d) of the statutes is created to read:

21 813.125 (3) (d) The judge or circuit court commissioner may not dismiss or deny
 22 granting a temporary restraining order because of the existence of a pending action

1 or of any other court order that bars contact between the parties, nor due to the
2 necessity of verifying the terms of an existing court order.✓

3 **SECTION 12.** 813.125 (4) (d)✓ of the statutes is created to read:

4 813.125 (4) (d) 1. An injunction granted under this subsection✓ is not voided if
5 the petitioner allows or initiates contact with the respondent or by the admittance
6 of the respondent into a dwelling that the injunction directs him or her to avoid.✓
e the responden

7 2. If an injunction is granted under this section✓, the respondent may not contact
8 the petitioner unless the petitioner consents in writing✓ and that written consent is
9 filed with the sheriff✓ or other appropriate local law enforcement agency that has
10 jurisdiction over the petitioner's premises.✓ Contact may not be commenced less than
11 24✓ hours before the written consent is filed with the sheriff or other appropriate local
12 law enforcement agency.

13 **SECTION 13.** 813.125 (5) (a) 4.✓ of the statutes is created to read:

14 813.125 (5) (a) 4. If the petitioner has any other actions pending in which the
15 respondent is a party or has any current court orders✓ that involve the respondent,
16 the name of the action and the court where the action is pending✓, or the name of the
17 court that issued the court order and the date on which ~~that~~ the order was issued.

18 **SECTION 14.** 813.125 (5g) (c) of the statutes is created to read:

19 813.125 (5g) (c) If an order is issued under this✓ section, upon request by the
20 petitioner the court or circuit court commissioner shall order the sheriff to
21 accompany the petitioner and assist in placing him or her in physical possession of
22 his or her residence or to otherwise assist in executing or serving the temporary
23 restraining order or injunction.✓ The petitioner may, at the petitioner's expense, use
24 a private process server to serve papers on the respondent.✓

25 **SECTION 15. Initial applicability.**

1 (1) This act first applies to petitions filed with the circuit court on the effective
2 date of this subsection.✓

3

(END)

d-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2016/P1dn

RPN: ↑:....

date

Jld

Please review this draft carefully to ensure that it is consistent with your intent. ✓

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2016/P1dn
RPN;jld:md

February 17, 2009

Please review this draft carefully to ensure that it is consistent with your intent.

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