



J-R d-note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

X Regen

1 AN ACT to renumber 757.69 (8); to renumber and amend 813.125 (2); to
2 amend 813.06, 813.12 (2) (a), 813.12 (5m), 813.122 (2) and 813.123 (2) (a); and
3 to create 757.69 (8) (b), 767.338, 813.12 (5) (a) 4., 813.12 (5g), 813.125 (2) (b),
4 813.125 (2g), 813.125 (2m), 813.125 (3) (d), 813.125 (3) (e), 813.125 (5) (a) 4.,
5 813.125 (5g) (c) and 813.126 of the statutes; relating to: temporary restraining
6 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:

7 SECTION 1. 757.69 (8) of the statutes is renumbered 757.69 (8) (a).
8 SECTION 2. 757.69 (8) (b) of the statutes is created to read:
9 757.69 (8) (b) If a party seeks to have the judge conduct a hearing de novo of
10 a determination, order, or ruling entered in an action under s. 813.12, 813.122,

SECTION 2

including a denial of a request for a temporary restraining order, the motion requesting the hearing must be filed with the court within ~~15~~³⁰ working days after the circuit court commissioner issued the order and the court shall hold the de novo hearing within 15 working days after the motion requesting the hearing is filed with the court.

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

767.338 Conflict with temporary restraining orders, injunctions, or contact prohibitions. Notwithstanding any other provision of this chapter, the court may not enter an order under this chapter that conflicts with an order entered under s. 813.12, 813.122, 813.123, or 813.125, with the contact prohibition under s. 968.075 (5), or with a condition of probation, parole, ~~or~~^{or release} extended supervision.

SECTION 4. 813.06 of the statutes is amended to read:

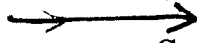
813.06 Security for damages. In proceedings under s. 767.225 the court or judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122, 813.123, 813.125, and 823.113 the court or judge shall, require a bond of the party seeking an injunction, with sureties, to the effect that 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.

SECTION 5. 813.12 (2) (a) of the statutes is amended to read:

813.12 (2) (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.

1 If the judge or a circuit court commissioner extends the time for a hearing under sub.
 2 (3) (c) and the petitioner files an affidavit with the court stating that personal service
 3 by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful
 4 because the respondent is avoiding service by concealment or otherwise, the judge
 5 or circuit court commissioner shall inform the petitioner that he or she may serve the
 6 respondent by publication of a summary of the petition as a class 1 notice, under ch.
 7 985, and by mailing or sending a facsimile if the respondent's post-office address or
 8 facsimile number is known or can with due diligence be ascertained. The mailing or
 9 sending of a facsimile may be omitted if the post-office address or facsimile number
 10 cannot be ascertained with due diligence. A summary of the petition published as
 11 a class 1 notice shall include the name of the respondent and of the petitioner, notice
 12 of the temporary restraining order, and notice of the date, time, and place of the
 13 hearing regarding the injunction. The court shall inform the petitioner as to which
 14 agency the petitioner should contact to verify the proof of service of the petition. ✓

✓ insert
3-14



15 SECTION 6. 813.12 (5) (a) 4. of the statutes is created to read:

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813.12 (5) (a) 4. If the petitioner knows of any other court proceeding, order,
 or judgment in which the petitioner or a member of the petitioner's family was or is
 the alleged victim, ~~any~~ ^{a party to a no-contact order involving the respondent} any of the following that are known by the petitioner:
 a. The name or type of the court proceeding. ✓
 b. The name and location of the court where the proceeding occurred or is
 pending.
 c. The name and location of the court where the order or judgment was issued.
 d. The date on which the order or judgment was issued.

respondent

****NOTE: I am not sure if you want this to apply only to cases that are currently pending in court, or to all current and past court proceedings involving the petitioner or petitioner's family members as victims. You suggest using the term "victim," by which

9

I think that you are trying to limit what kind of cases are subject to this paragraph. But the term "victim" is not defined. Do you want to limit this paragraph to cases involving domestic abuse? If so, I could add "of domestic abuse" after the word "victim" in the introductory sentence.

1 SECTION 7. 813.12 (5g) of the statutes is created to read:

2 813.12 (5g) STIPULATION. If the parties enter into a stipulation to convert a
 3 petition under this section to a petition for a temporary restraining order or
 4 injunction under s. 813.125, the court may not approve that stipulation unless all of
 5 the following occur:

6 (a) Either or both parties submit an oral request on the record for the
 7 conversion explaining why the conversion of the petition is requested.

8 (b) The court informs the petitioner on the record of all of the following:

9 1. The requirements for granting a domestic abuse injunction as specified
 10 under sub. (4) (a).

11 2. The definition of domestic abuse under sub. (1) (am).

12 3. The requirements for granting a harassment injunction as specified under
 13 s. 813.125 (4) (a).

14 4. The definition of harassment under s. 813.125 (1).

15 5. The amount of time that a domestic abuse injunction ^{shall} may be in effect under
 16 sub. (4) (c). *if granted is the amount of time that the petitioner requests*

17 6. The amount of time that a harassment injunction may be in effect under s.
 18 813.125 (4) (c).

19 7. The orders that may be made under sub. (4) and that shall be made under
 20 sub. (4m) upon granting a domestic abuse injunction.

21 8. The orders that may be made under s. 813.125 (4) and (4m) upon granting
 22 a harassment injunction.

1 9. The petitioner's right to refuse to enter into a stipulation to convert a petition
2 under this section to a petition under s. 813.125 and to continue under this section.

3 (c) The court includes on the record the court's explanation as to why the
4 granting of a temporary restraining order or injunction under this section is not
5 appropriate.

6 **SECTION 8.** 813.12 (5m) of the statutes is amended to read:

7 813.12 **(5m)** CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5)
8 and the court order under sub. (3) or (4) ~~shall~~ may not disclose the address of the
9 alleged victim. The petitioner shall provide the clerk of circuit court with the
10 petitioner's address when he or she files a petition under this section. The clerk shall
11 maintain the petitioner's address in a confidential file.

12 **SECTION 9.** 813.122 (2) of the statutes is amended to read:

13 813.122 **(2)** COMMENCEMENT OF ACTION AND RESPONSE. No action under this
14 section may be commenced by complaint and summons. An action under this section
15 may be commenced only by a petition described under sub. (6) (a). The action
16 commences with service of the petition upon the respondent if a copy of the petition
17 is filed before service or promptly after service. The child victim or a parent,
18 stepparent or legal guardian of the child victim may be a petitioner under this
19 section. Section 813.06 does not apply to an action under this section. The
20 respondent may respond to the petition either in writing before or at the hearing on
21 the issuance of the injunction or orally at that hearing. The court shall inform the
22 petitioner as to which agency the petitioner should contact to verify the proof of
23 service of the petition.

24 **SECTION 10.** 813.123 (2) (a) of the statutes is amended to read:

1 813.123 (2) (a) No action under this section may be commenced by complaint
2 and summons. An action under this section may be commenced only by a petition
3 described under sub. (6). The action commences with service of the petition upon the
4 respondent if a copy of the petition is filed before service or promptly after service.
5 The individual at risk, any person acting on behalf of an individual at risk, an
6 elder-adult-at-risk agency, or an adult-at-risk agency may be a petitioner under
7 this section. If the petition is filed by a person other than the individual at risk, the
8 petitioner shall serve a copy of the petition on the individual at risk. Section 813.06
9 does not apply to an action under this section. The respondent may respond to the
10 petition either in writing before or at the hearing on the issuance of the injunction
11 or orally at that hearing. The court shall inform the petitioner as to which agency
the petitioner should contact to verify the proof of service of the petition.

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14 **SECTION 11.** 813.125 (2) of the statutes is renumbered 813.125 (2) (a) and
amended to read:

15 813.125 (2) (a) An action under this section may be commenced by filing a
16 petition described under sub. (5) (a). No action under this section may be commenced
17 by service of summons. The action commences with service of the petition upon the
18 respondent if a copy of the petition is filed before service or promptly after service.
19 If the judge or a circuit court commissioner extends the time for a hearing under sub.
20 (3) (c) and the petitioner files an affidavit with the court stating that personal service
21 by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful
22 because the respondent is avoiding service by concealment or otherwise, the judge
23 or circuit court commissioner shall inform the petitioner that he or she may serve the
24 respondent by publication of a summary of the petition as a class 1 notice, under ch.
25 985, and by mailing or sending a facsimile if the respondent's post-office address or

1 facsimile number is known or can with due diligence be ascertained. The mailing or
 2 sending of a facsimile may be omitted if the post-office address or facsimile number
 3 cannot be ascertained with due diligence. A summary of the petition published as
 4 a class 1 notice shall include the name of the respondent and of the petitioner, notice
 5 of the temporary restraining order, and notice of the date, time, and place of the
 6 hearing regarding the injunction. The court shall inform the petitioner as to which
 7 agency the petitioner should contact to verify the proof of service of the petition.

8 Section 813.06 does not apply to an action under this section.

9 **SECTION 12.** 813.125 (2) (b) of the statutes is created to read: ✓
 10 **813.125 (2) (b)** ~~child~~ *Notwithstanding s. 803.01 (3)(a),* child, as defined in s. 813.122 (1) (b), or a parent, stepparent,

11 or legal guardian of a child may be a petitioner under this section.

12 **SECTION 13.** 813.125 (2g) of the statutes is created to read:

13 **813.125 (2g) APPOINTMENT OF GUARDIAN AD LITEM.** The court or circuit court
 14 commissioner, on its or his or her own motion, or on the motion of any party, may
 15 appoint a guardian ad litem for a child who is the petitioner under this section when
 16 justice so requires.

17 **SECTION 14.** 813.125 (2m) of the statutes is created to read:

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

25 **SECTION 15.** 813.125 (3) (d) of the statutes is created to read:

Handwritten note: In sec 24 ✓
7-28
25 →

1 813.125 (3) (d) The judge or circuit court commissioner shall advise the
 2 petitioner of the right to serve the respondent the petition by published notice if with
 3 due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or
 4 (b). The clerk of circuit court shall assist the petitioner with the preparation of the
 5 notice and filing of the affidavit of printing.

6 **SECTION 16.** 813.125 (3) (e) of the statutes is created to read:

7 813.125 (3) (e) The judge or circuit court commissioner may not dismiss or deny
 8 granting a temporary restraining order because of the existence of a pending action
 9 or of any other court order that ~~bans~~ ^{restricts} contact between the parties, nor due to the
 10 necessity of verifying the terms of an existing court order.

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SECTION 17. 813.125 (5) (a) 4. of the statutes is created to read:

- 12 813.125 (5) (a) 4. If the petitioner knows of any other court proceeding order,
 13 or judgment in which the petitioner or a member of the petitioner's family was or is
 14 the alleged victim, *a party to a no-contact order involving the respondent* any of the following that are known by the petitioner:
- 15 a. The name or type of the court proceeding.
 - 16 b. The name and location of the court where the proceeding occurred or is
 17 pending.
 - 18 c. The name and location of the court where the order of judgment was issued.
 - 19 d. The date on which the order of judgment was issued.

NOTE: see the * NOTE to s. 813.12 (5) (a) 4.

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

21 813.125 (5g) (c) If an order is issued under this section, upon request by the
 22 petitioner the court or circuit court commissioner shall order the sheriff to
 23 accompany the petitioner and assist in placing him or her in physical possession of
 24 his or her residence or to otherwise assist in executing or serving the temporary

1 restraining order or injunction. The petitioner may, at the petitioner's expense, use
2 a private process server to serve papers on the respondent.

✓
insert
9-2 →

3 SECTION 19. 813.126 of the statutes is created to read:

insert
9-4
When

4 **813.126 Review of petitions; hearing before a judge.** (1) If a person seeks
5 to submit a petition to the court under s. 813.12, 813.122, 813.123, or 813.125, the
6 clerk of circuit court shall assist the person in correctly completing the necessary
7 forms. The clerk of circuit court shall assist the person and review the completed
8 forms within 2 normal business hours after receipt of a request for assistance by a
9 person who seeks to submit a petition to the court under s. 813.12, 813.122, 813.123
10 or 813.125. If the clerk of circuit court is unable to provide the assistance and
11 complete the review within the 2-hour period, the clerk shall make arrangements
12 for the provision of the assistance and review by another court within the 2-hour
13 period.

14 (4) If a party to an action under s. 813.12, 813.122, 813.123, or 813.125 seeks
15 a de novo hearing before the judge of a court commissioner's determination, the
16 procedure under s. 757.69 (8) shall be followed.

✓
insert
9-13 →

17 **SECTION 20. Initial applicability.**

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

20 (END)

D-note (after inserts)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2016/P4ins
RPN:jld:ph

1 insert 3-14:

2 SECTION 1. 813.12 (3) (c) [✓] of the statutes is amended to read:

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

(end ins)

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.

12

13 insert 5-11:

14 SECTION 2. 813.12 (6) (d) [✓] of the statutes is amended to read:

15 813.12 (6) (d) The issuance of an [✓] order [✓] or injunction [✓] under ~~s. 813.12 sub.~~ (3) or (4) is
16 enforceable despite the existence of any other criminal or civil order restricting or
17 prohibiting contact. If a law enforcement officer [✓] is aware of other court orders or
18 judgments that include provisions regarding contacts between the petitioner and
19 respondent, the law enforcement officer shall enforce the most restrictive terms of
20 the court orders or judgments. [✓]

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.

21

22 SECTION 3. 813.12 (10) [✓] of the statutes is created to read:



1 813.12 (10) NOTICE CONCERNING CONFLICTING COURT ORDERS. ✓ If the court
 2 determines that there are other court orders or judgments ✓ that place restrictions on
 3 contacts between the petitioner and respondent, an order or injunction issued under
 4 sub. (3) or (4) ✓ shall include a statement instructing the parties that those other court
 5 orders or judgments must be obeyed if they do not conflict with this court's order or
 6 each other, and that ✓ if an order or judgment conflicts with another order or judgment,
 7 the parties must obey the most restrictive terms of those orders or judgments. ✓

(end ins 5-11)

10 insert 5-23:

11 SECTION 4. 813.122 (6) (a) 5. of the statutes is created to read:

12 813.122 (6) (a) 5. If the petitioner knows of any other court proceeding ✓ in which
 13 the petitioner or a member of the petitioner's family is a party to a ✓ no-contact order
 14 involving the respondent, any of the following that are known by the petitioner:

15 a. The name or type of the court proceeding. ✓

16 b. The name and location of the court where the proceeding occurred or is
 17 pending. ✓

18 c. The name and location of the court where the order ✓ was issued.

19 d. The date on which the order was issued. ✓

20 SECTION 5. 813.122 (13) of the statutes is created to read:

21 813.122 (13) NOTICE CONCERNING CONFLICTING COURT ORDERS. ✓ If the court
 22 determines that there are other court orders or judgments ✓ that place restrictions on
 23 contacts between the petitioner and respondent, an order or injunction ✓ issued under
 24 sub. (4) or (5) ✓ shall include a statement instructing the parties that those other court
 25 orders or judgments must be obeyed if they do not conflict with this court's order or



1 each other, and that [↓]if an order or judgment conflicts with [↑]or another order or
2 judgment, the parties must obey the most restrictive terms of those orders or
3 judgments. ✓

(end ins 5-23)

4
5 insert 6-¹³~~14~~:

6 SECTION 6. 813.123 [×](6) (d) of the statutes is created to read:

7 813.123 (6) (d) If the petitioner knows of any other court proceeding in which
8 the petitioner or a member of the petitioner's family is a party to a [✓]no-contact order
9 involving the respondent, any of the following that are known by the petitioner: ✓

10 ^{e 1.} a. The name or type of the court proceeding. ✓

11 ^{e 2.} b. The name and location of the court where the proceeding occurred or is
12 pending. ✓

13 ^{e 3.} c. The name and location of the court where the order was issued. ✓

14 ^{e 4.} d. The date on which the order was issued. ✓

15 SECTION 7. 813.123 [×](13) of the statutes is created to read:

16 813.123 (13) NOTICE CONCERNING CONFLICTING COURT ORDERS. [✓] If the court
17 determines that there are other court orders or judgments that place restrictions on
18 contacts between the petitioner and respondent, [✓]an order or injunction issued under
19 sub. (4) or (5) shall include a statement instructing the parties that those other court
20 orders or judgments must be obeyed if they do not conflict with with this court's order
21 or each other, and that [↓]if an order or judgment conflicts with another order or
22 judgment, the parties must obey the most restrictive terms of those orders or
23 judgments. ✓

(end ins)

24
25 insert 7-24:



INS 7-24

1 SECTION 8. 813.125 (3) (c) of the statutes is amended to read:

2 813.125 (3) (c) The temporary restraining order is in effect until a hearing is
3 held on issuance of an injunction under sub. (4). A judge or circuit court
4 commissioner shall hold a hearing on issuance of an injunction within 14 days after
5 the temporary restraining order is issued, unless the time is extended upon ~~the~~
6 ~~written consent of the parties~~ motion of the petitioner or extended once for 14 days
7 upon a finding that the respondent has not been served with a copy of the temporary
8 restraining order although the petitioner has exercised due diligence.

9 History: 1983 a. 336; 1991 a. 39, 194; 1995 a. 71, 306; 2001 a. 16, 61, 405; 2003 a. 321; 2005 a. 272; 2007 a. 124.

(end ins 7-24)

10 insert 8-10:

11 SECTION 9. 813.125 (4) (aj) of the statutes is created to read:

12 813.125 (4) (aj)

13 SECTION 10. 813.12 (4) (aj) of the statutes is amended to read:

14 NO 813.12 (4) (aj) In determining whether to issue an injunction, the judge or
15 circuit court commissioner shall consider the potential danger posed to the petitioner
16 and the pattern of abusive conduct of the respondent but may not base his or her
17 decision solely on the length of time since the last domestic abuse or the length of time
18 since the relationship ended. The judge or circuit court commissioner may grant only
19 the remedies requested by the petitioner. The judge or circuit court commissioner
20 may not dismiss or deny granting an injunction because of the existence of a pending
21 action or of any other court order that bars contact between the parties, nor due to
22 the necessity of verifying the terms of an existing court order.

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.

(end ins)

24 insert 9-2:



1 SECTION 11. 813.125 (5g) (d) of the statutes is created to read:

2 813.125 (5g) (d) The issuance of an order ^{or injunction} under sub. (3) or (4) is enforceable
3 despite the existence of any other criminal or civil order restricting or prohibiting
4 contact. If a law enforcement officer is aware of other court orders or judgments that
5 include provisions regarding contacts between the petitioner and respondent, the
6 law enforcement officer shall enforce the most restrictive terms of the court orders
7 or judgments.

8 SECTION 12. 813.125 (5m) of the statutes is amended to read:

9 813.125 (5m) CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5)
10 and the court order under sub. (3) or (4) shall not disclose the address of the alleged
11 victim. The petitioner shall provide the clerk of circuit court with the petitioner's
12 address when he or she files a petition under this section. The clerk shall maintain
13 the petitioner's address in a confidential file.

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

14 SECTION 13. 813.125 (9) of the statutes is created to read:

15 813.125 (9) NOTICE CONCERNING CONFLICTING COURT ORDERS. If the court
16 determines that there are other court orders or judgments that place restrictions on
17 contacts between the petitioner and respondent, an order or injunction issued under
18 sub. (3) or (4) shall include a statement instructing the parties that those other court
19 orders or judgments must be obeyed if they do not conflict with this court's order or
20 with each other, and that if an order or judgment conflicts with another order or
21 judgment, the parties must obey the most restrictive terms of those orders or
22 judgments.

(end ins 9-2)

24 insert 9-4:



1 ~~NO~~ (1) When a person contacts the clerk of circuit court [✓] inquiring about filing a
 2 petition for a temporary restraining order or injunction under s. [✓] 813.12, [✓] 813.122,
 3 813.123, [✓] or 813.125, [✓] the clerk shall provide the person with a document prepared by
 4 the director of state courts that informs the person of the types of restraining orders
 5 and injunctions, who is eligible for each type of order and injunction, [✓] the remedies
 6 available under each order and injunction [↓] and the process necessary to obtain an order
 7 ^{or injunction} in that county. The director of state courts shall, with the assistance of each county,
 8 prepare the document required under this subsection [✓] and provide sufficient copies
 9 to each county without charge.

(end ins 9-2)

11 insert 9-13:
 12 (3) If the court dismisses a ^{request to submit a} petition for a temporary restraining ^{order, the} court shall file
 13 a written record of the dismissal that includes the names of the petitioner and the
 14 reason for the dismissal. [✓] The court shall provide the petitioner with a copy of the
 15 record of the dismissal.

(end ins)

D - Note

to I use the phrase "no [↑]-contact
 order" in this draft. Perhaps that
 is too limiting or too narrow? I
 was thinking about using "an order
^{or prohibits} that restricts contact." [✓] What do you
 think?
 RPN

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

LRB-2016/P4dn
RPN:jld:md

June 22, 2009

I use the phrase “no-contact order” in this draft. Perhaps that is too limiting or too narrow? I was thinking about using “an order that restricts or prohibits contact.” What do you think?

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

Nelson, Robert P.

From: Tony Gibart [tonyg@wcadv.org]
Sent: Monday, June 01, 2009 10:23 AM
To: Nelson, Robert P.
Cc: Murray, Mike
Subject: LRB 2016/3 drafting memo
Attachments: 2016.P3 drafting memo.doc

Here is the drafting memo, outlining revisions to the restraining order bill. Bob, I'll give you a call to follow up.

Thanks!

Tony

Tony Gibart
Policy Coordinator
Wisconsin Coalition Against Domestic Violence
307 S. Paterson St. #1
Madison, WI 53703

Phone: (608) 255-0539 ext. 310
Fax/TTY: (608) 255-3560

To: Bob Nelson, LRB
From: Tony Gibart, WCADV
CC: Mike Murray
Re: LRB-2016/3

I have summarized the bill section by section. I did this mostly for my own reference and to explain the bill to advocates that I have consulted. The changes we are requesting are in italics. Thanks!

Section 1-2.

This provision clarifies the procedure and timeframe for requesting circuit court judge review of court commissioners' rulings (de novo review) on matters pertaining to domestic abuse, child abuse, individual at risk and harassment restraining orders.¹ While current law generally provides for de novo review of commissioner rulings, some counties have not adopted policies and procedures for review of restraining order petitions. Particularly, WCADV has received reports that some petitioners are not currently able to get de novo review of commissioners' denials of temporary restraining order (TRO) petitions. Because most restraining order actions are extremely time sensitive there should be a clear mandate for prompt review, including review of TRO denials. The timeframe proposed under the bill, 15 working days, is both workable and gives litigants timely access to review.

Correction to Draft:

After consulting with other advocates and stakeholders, WCADV requests that the bill specifically mention de novo review of TRO denials or specifically cross-reference the applicable subsections; perhaps specific mention could be made in Section 19. Specificity is needed because some court officials are unduly resistant to de novo review of TRO denials. ✓

Also, a few counties, which have local court rules pertaining to the time limit to file for de novo review, allow a party to file for review 30 days after the commissioner issued the order. In order that this bill not negatively affect petitioners' ability to seek review, WCADV requests that the time limit for filing be changed to 30 days. ✓

Section 3

This section prevents a court in an action affecting the family from issuing orders that would conflict with either (1) a restraining order or (2) conditions placed on the defendant in a criminal proceeding. Currently, some courts are issuing orders in family law proceedings that conflict with victim protections. These conflicting orders lead to confusion among victims, defendants/respondents and law enforcement and impair important protections victims may have gained under the restraining order statutes.

¹ The Statewide Restraining Order Assessment Report p. 17.

①

Correction to Draft:

The draft should include a statement that ^{that} the family court order may not conflict with conditions of bail. See Wis. Stat. sections 969.02(3)(b), 969.03(1)(b) ✓

Section 4

Currently, 813.06 exempts petitioners under sections 813.12, 813.122, and 813.125 (domestic abuse, child abuse and harassment restraining orders) from having to post a security bond. Section 4 clarifies that petitioners under section 813.123 (individual at risk restraining orders) are also exempt. WCADV believes that individual at risk petitioners were inadvertently omitted from the exemption.

Sections 5, 9, 10

The only modifications to current law contained in these sections are instructions to the court to inform the petition which agency to contact to verify service has occurred. This change is necessary so that forms generated by the Wisconsin Court's Office of Records Management will notify the petitioner to contact the service agency (most likely the sheriff's department). Currently, some petitioners are not aware that it is their responsibility to verify service. Petitioners' lack of knowledge and failure to verify service can lead to delay and inefficient use of court resources.

Section 6 and Section 17

Like section 3, section 6 is intended to resolve and manage conflicts between chapter 813 injunctions and orders imposed through family court and criminal proceedings. The purpose of this section is to require the petitioner to inform the court specifically about no-contact orders between the petitioner and the respondent. In addition, WCADV would like courts issuing injunctions under sections 813.12, 813.122, 813.123 and 813.125 to explain to the parties that they must obey all non-conflicting orders. WCADV receives reports that in some situations parties are confused about the affect of different orders. For example, respondents may believe that chapter 813 injunctions are no longer in effect after a similar no-contact bail condition expires. In other cases, parties may believe that less restrictive orders from a family court supplant rather than supplement restraining orders.

Correction to the draft:

After consulting with other advocates and stakeholders, WCADV requests that the language of section 6 be changed. Please modify section 6 so that the statute instructs the petitioner to list on the petition any no-contact orders, criminal or civil, between the petitioner and respondent. This change should be made to sections 813.12, 813.122, 813.123 and 813.125. ✓

Also, please include language that directs the court to instruct petitioners that if multiple orders exist and do not conflict, the parties are to obey each order. The court should

②

further inform the parties that if the terms of orders cannot be reconciled, the parties are to obey the most restrictive terms of the orders. This change should be made to sections 813.12, 813.122, 813.123 and 813.125. ✓

Currently, section 813.12(6)(d) states, "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." WCADV receives reports that law enforcement remains uncertain whether an injunction under section 813.12 is enforceable if a family court order specifically allows contact or implicitly requires contact. Section 813.12(6)(d) should include language that states that if the terms of orders cannot be reconciled the most restrictive terms of the orders are enforceable. A provision that parallels the amended section 813.12(6)(d) should be included in section 813.125. ✓

Section 7

The purpose of section 7 is to ensure that petitioners enter into stipulations to convert a domestic abuse restraining order petition to a harassment restraining order petition knowingly and voluntarily.

Crucial differences exist between the domestic abuse (section 813.12) and harassment restraining orders (section 813.125). For example, under section 813.12 if an injunction is granted, the court must issue the injunction for the amount of time the petitioner requests (but not more than 4 years). Under section 813.125, the court may grant the injunction for any amount of time under four years, irrespective of the petitioner's request. Additionally, under section 813.12, firearms surrender is mandatory. Whereas under section 813.125, court order for the respondent to surrender firearms is contingent on specific findings.

WCADV has received numerous reports that domestic abuse petitioners are asked to stipulate to conversions to harassment restraining orders. The circumstances of these requests often put petitioners at a disadvantage. For example, many times the respondent is represented by an attorney who makes the request in to permit the respondent to avoid mandatory firearms surrender under section 813.12. Commonly, the petitioner is not represented and is not aware of the differences between sections 813.12 and 813.125. Currently, there is no uniform process for converting a domestic abuse petition to a harassment petition. Without these provisions, petitioners are susceptible to unknowingly sacrificing their right to seek the protections of domestic abuse restraining orders.

*Correction to Draft:
Change 5. as follows:*

5. That the amount of time that a domestic abuse injunction shall be in effect if granted is the amount of time the petitioner requests as provided in sub. (4) (c). ✓

Section 8

(3)

This modification addresses a reoccurring problem with domestic abuse and harassment restraining order petitions. For obvious reasons the petitioner is not required to put her address on the petition.² However, it can be problematic if the clerk of courts does not have a record of the petitioner's address. For example, the clerk may require the petitioner's address to reschedule the injunction hearing; rescheduling is necessary when the TRO has not been served. Therefore, as is recommended in the *Statewide Restraining Order Assessment Report*, section 8 allows the clerk to take the petitioners address and retain that information in a confidential file.³

Correction to Draft:
Please put parallel language in 813.125 ✓

Section 11

Section 11 allows a harassment restraining order petitioner to serve the respondent by publication if the respondent is avoiding service. This change imports the same language that currently provides for service by publication under the domestic abuse restraining order statute. Section 11 eliminates unnecessary inconsistency between the domestic abuse and harassment restraining order statutes.⁴

Section 11 also applies the modifications in sections 5, 9 and 10 to the harassment restraining order statute.

Section 12-13

These sections provide clear statutory authorization for minors to seek harassment injunctions. The domestic abuse restraining order statute specifies that an adult must seek the injunction. In contrast, the child abuse statute clearly states a child may be a petitioner. Unlike these statutes, the harassment restraining order statute is ambiguous and does not explicitly state whether a minor may petition for a harassment injunction. As one in three teens will experience some form of dating violence or abuse, it is imperative that minors be able to avail themselves of restraining orders.

In many cases parents will assist their children in obtaining orders. However, the state should give minors an independent ability to seek the protection of the courts. Some minors, out concern for privacy or fear of their parents' response, will not otherwise come forward to end the abusive relationship. In addition, some minors may legitimately fear abuse from their parents if they disclose the dating relationship or incidents of harassment.

These sections also resolve a conflict between the child abuse restraining order statute and another statute which generally requires minors to appear in court with a guardian or attorney. The bill also allows courts to appoint *guardian ad litem*s for minor petitioners.

² See ss. 813.12 (5m) and 813.125 (5m).

³ The Statewide Restraining Order Assessment Report pp. 16, 21

⁴ See s. 813.12 (2)(a)

Correction to the draft:

Although section 813.122 specifically allows a child to petition for a child abuse restraining order, some courts interpret section 813.122 as in conflict with section 803.01(3)(a), which requires minors to appear by attorney, guardian ad litem or guardian.⁵ In order to reconcile these statutes, some courts currently require the appointment of a guardian ad litem before a minor child abuse petitioner may file for a TRO. The appointment process can cause delay and appears at odds with intended design of the child abuse restraining order statute. Therefore WCADV request that language be inserted to resolve the conflict and make section 803.01(3)(a) inapplicable to sections 813.122 and 813.125.

Section 14

Like section 11, section 14 simply imports language that is present in the domestic abuse restraining order statute but is currently absent from the harassment statute. Under the domestic abuse restraining order statute, "...if the petitioner requests a temporary restraining order the court shall [first] issue or refuse to issue that order. Second, the court shall hold a hearing on whether to issue an injunction..."⁶ The harassment restraining statute does not specifically direct the courts to hold an injunction hearing if the court denies the TRO.⁷ Section 14 would add clarity by requiring the same basic procedures under both statutes for issuing a TRO and holding an injunction hearing.

Section 15

Section 15 adds language to the harassment restraining order statute so that a petitioner under that statute has the same option to serve the respondent by publication as a petitioner under the domestic abuse restraining order statute.⁸

Section 16

This section imports language that currently exists in the domestic abuse restraining order statute.⁹ The provision prohibits the court from denying the TRO because of the existence

⁵ Section 803.01(3)(a) *Appearance by guardian or guardian ad litem*. If a party to an action or proceeding is a minor, or if a party is adjudicated incompetent or alleged to be incompetent, the party shall appear by an attorney, by the guardian of the estate of the party who may appear by attorney, or by a guardian ad litem who may appear by an attorney. A guardian ad litem shall be appointed in all cases in which the minor or individual alleged to be incompetent has no guardian of the estate, in which the guardian fails to appear and act on behalf of the ward or individual adjudicated incompetent, or in which the interest of the minor or individual adjudicated incompetent is adverse to that of the guardian. Except as provided in s. 807.10, if the guardian does appear and act and the interests of the guardian are not adverse to the minor or individual adjudicated incompetent, a guardian ad litem may not be appointed. Except as provided in s. 879.23 (4), if the interests of the minor or individual alleged to be or adjudicated incompetent are represented by an attorney of record, the court shall, except upon good cause stated in the record, appoint that attorney as the guardian ad litem.

⁶ See s. 813.125 (2m)

⁷ See s. 813.125 (3)(c)

⁸ See s. 813.12 (3)(d).



of a pending action or other orders. Like domestic abuse restraining orders, harassment restraining orders uniquely address the needs of victims in crisis. For example, unlike many family court actions, restraining order statutes provide relief on an expedited basis. In addition, the procedural structure of restraining order proceedings allows victims to present evidence and testify. These opportunities may not be available in criminal proceedings. Therefore, no-contact orders imposed as a condition of bail or sentencing may not be sufficient, in terms of scope or the length of time they are in effect. The existence of related actions or orders should not prevent a victim from seeking the unique protections that are available under the harassment restraining order statute.

Correction to draft: The same provision should be included in the injunction subsection (section 813.125 (4)), as it is included in section 813.12 (4)(aj). ✓

Section 18

Section 18 adds language that currently exists in the domestic abuse restraining order statute to the harassment statute.¹⁰ This language directs the court to order the sheriff to place the petitioner in possession of his or her home, if the petitioner requests such assistance.

Additionally, section clarifies that upon the petitioner's request, the sheriff shall serve the respondent with the harassment TRO or harassment injunction. Currently, many sheriffs' departments serve harassment restraining order petitions. Section 18 simply provides the same express statutory authorization for service that presently exists under the domestic abuse restraining order statute.¹¹

Section 19

Correction to the draft:

The intent of this section is not to require the clerk of courts to assist petitioners with completing petitions. The intent is to ensure that the court will review the petition and either grant or dismiss the petition for a TRO within a reasonable amount of time.

WCADV suggests language similar to the following be included:

✓ *When a petitioner presents a petition for review, the court shall review and rule on the petition within 2 normal business hours. If the court is unable to provide the review within the 2-hour period, the clerk shall make arrangements for review by another court with jurisdiction¹² within the 2-hour period.*

Additions

⁹ See s. 813.12(3)(aj)

¹⁰ See s. 813.12(6)

¹¹ *Id.*

¹² *With jurisdiction* or other qualifying language may be necessary because court commissioners from neighboring counties may not have jurisdiction to rule on cases originating from another county unless the commissioner has an appointment letter from that county.



1. Creating section 813.126 for review of petitions and hearings before a judge provides an opportunity to address another issue identified by the *Statewide Restraining Order Assessment Report*.¹³ The report found that counties have inconsistent practices for tracking TRO denials. Currently, the State Courts' Office of Records Management provides a form for the court to complete upon dismissing a petition for a TRO; however, courts are not consistently using the form. When the form is not used, there is no record of the denial, and in many instances, petitioners and advocates do not know why the petition was denied. To address this issue WCADV, proposes including language similar to the following in section 813.126

If the court dismisses the petition for a temporary restraining order or denies the injunction, the court shall file a written record of the dismissal that provides the reason for the dismissal. The court shall provide the petitioner with a copy of the record of dismissal.

2. After consulting with other advocates and stakeholders, WCADV has learned that some judges have a practice to extend the TRO and the period of time before the injunction hearing solely upon the motion of the respondent. Sections 813.12 (3)(c) and 813.125 (3)(c) prohibit this practice and state that the injunction hearing must be held within 14 days of the issuance of the TRO, "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..." Petitioners who come to the injunction hearing prepared to testify and face their abusers should not be forced to endure delay. Therefore, in order to make explicit that the petitioner's consent is required to extend the time period leading to the injunction hearing, sections 813.12 (3)(c) and 813.125 (3)(c) should be modified to state:

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 motion of the petitioner 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.

3. *Statewide Restraining Order Assessment Report* discusses issues pertaining to clerks of courts' role in assisting petitioners during the filing process.¹⁴ Clerks and other officials are confused about the difference between legal information and legal advice. Clerks also report that when petitioners do not have access to

¹³ The Statewide Restraining Order Assessment Report p. 15.

¹⁴ The Statewide Restraining Order Assessment Report pp. 11-12.

assistance they often fill out the wrong forms. Therefore WCADV requests that the statutes be amended so that:

When a petitioner inquires about filing a petition for a temporary restraining order, the clerk of courts shall inform the petitioner in writing of the types of restraining orders, who is eligible for each type of order, the remedies which each order allows and the process for obtaining an order in that county.

A simple document, providing basic legal information and outlining county-specific procedures, will minimize confusion about the distinction between legal information and legal advice. Such a document will also make it more likely that petitioners will fill out the correct forms and follow the correct procedures. This basic information will assist petitioners and result in a more efficient use of court resources.

8

Nelson, Robert P.

From: Tony Gibart [tonyg@wcadv.org]
Sent: Thursday, June 25, 2009 9:31 AM
To: Nelson, Robert P.
Cc: Murray, Mike
Subject: LRB 2016.4
Attachments: 2016.P4 drafting memo.doc

Bob,

I really appreciate that you got to this right after the budget. We have a few revisions that I think should be relatively quick. I want to apologize that some slightly different changes in language were not included in the previous memo. I am learning that I can't be drafting by committee here. However, this should be the final round of drafting. Please give me a call if you have any questions, particularly regarding section 31 (2). It is possible we are talking past each other or I wasn't very clear in my last memo.

Thanks again!


Tony

Tony Gibart
Policy Coordinator
Wisconsin Coalition Against Domestic Violence
307 S. Paterson St. #1
Madison, WI 53703

Phone: (608) 255-0539 ext. 310
Fax/TTY: (608) 255-3560

Bob,

This is a great draft. Thank you so much for getting to this right after the budget. I think there will be just a few easy revisions:

Regarding your drafter's note: I think you are right to call our attention to the different ways to specify no-contact orders. I like that in sections 10 and 28 you use the term "other court orders or judgments that include provisions regarding contacts" because when we are talking about conflicts between orders we are dealing with orders that might not bar contact; instead they might actively require contact (i.e. placement exchanges or requirements to communicate about issues regarding children in common). Therefore, please use that phrase in sections dealing with potential conflicts between orders. 

Related to this, please include the modifier "civil or criminal" in sentences dealing with potentially conflicting orders (... "other civil or criminal court orders or judgments that include provisions regarding contacts") We hear about a lot of court officials who do not make the connections between criminal and civil proceedings.

✓ Sections 5, 12, 15, 18

Could you include "...inform the petitioner *in writing*"? The whole point of these revisions is to ensure that this information is included on the State Court's Office of Record Management's forms. I just want to make sure it is clear. Sorry this wasn't mentioned earlier.

- The court shall inform the petitioner in writing as to which agency the petitioner should contact to verify the proof of service of the petition.

✓ Sections 7, 13, 16, 26

✓ First, please strike "or a member of the petitioner's family." Some of our advocates are uncomfortable with this language and do not feel it is necessary.

✓ Second, the phrase "provisions regarding contacts" is appropriate here.

✓ Third, we'd like a.-d. simplified so that all the petitioner has to include are types of provisions regarding contact or the name of the court proceeding and applicable dates.

✓ Lastly, please include the modifier "criminal or civil."

✓ Again, I really apologize that these changes were not included in the last memo.

- If the petitioner knows of any other court proceeding in which the petitioner is a party to civil or criminal court orders or judgments that include provisions regarding contacts involving the respondent, the types of provisions regarding

contacts or the names of the court proceeding in which the orders or judgments were made and the dates of the court orders or judgments.

Section 9

✓ In this section you crossed out "shall" and inserted "may," but did not do so in section 29. I just wanted to call your attention to that.

Sections 10, 28

Thank you for including this provision. Here's what I would suggest:

- ✓
- ...If a law enforcement officer is aware of other criminal or civil court orders or judgments, that include provisions regarding contacts, the law enforcement officer shall enforce all orders and judgments to the extent the orders or judgments do not conflict, and if the orders do conflict, the law enforcement officer shall enforce the most restrictive terms of the court orders or judgments."

Sections 11, 14, 17, ³⁰28

✓ To be consistent with the other sections, I would suggest the following:

- NOTICE CONCERNING CONFLICTING COURT ORDERS. If the court determines that there are criminal or civil court orders or judgments, that include provisions regarding contacts between the petitioner and respondent, an order or injunction issued under sub. (3) or (4) shall include a statement instructing the parties that those other court orders or judgments must be obeyed if they do not conflict with this court's order or each other, and that, if an order or judgment conflicts with another order or judgment, the parties must obey the most restrictive terms of those orders or judgments.

Section 19

✓ This language should also be included in section 813.122 (child abuse ROs). Some courts are requiring minor child abuse petitioners to have a GAL before reviewing an TRO application, even though 813.122 gives minors the explicit right to proceed on their own behalf.

Section 25

✓ I see why you included lines 9-14 (up to, "...by the petitioner."), but I think that addition would be more substantive than what we are trying to do. Lines 9-13 deal more specifically with the dynamics of domestic abuse and may not be applicable in all legitimate harassment cases. I would prefer only lines 13-17 be created. Call me if you have concerns.

- o The judge or circuit court commissioner may grant only the remedies requested by the petitioner. The judge or 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.

Section 31(2)

What we are trying to do here is have the court (commissioner or judge) review and rule on, and return the TRO petition within 2 hours. This is separate from any assistance the clerk may provide, which is not something we want to mandate. Here's the language I propose:

- o *When a petitioner presents a petition for review, the court shall review, rule on and return the petition within 2 normal business hours. If the court is unable to provide the review within the 2-hour period, the clerk shall make arrangements for review by another court with jurisdiction¹ within the 2-hour period.*

In some counties petitioners are sent home and told that the TRO will be mailed to them. We want to make sure that TROs are either granted or denied in two hours and that the court gives notice of the decision within that time period. Please, call me if you have questions or concerns

Section 31(3)

The language here (...“dismisses a request to submit a petition for a temporary restraining order...” seems a little awkward to me. Would it be easier to write, “...denies the temporary restraining order...”? I'll certainly defer to what you think is best.

Not all courts have jurisdiction,

¹ With jurisdiction or other qualifying language may be necessary because court commissioners from neighboring counties may not have jurisdiction to rule on cases originating from another county unless the commissioner has an appointment letter from that county.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

X

regen.

1 AN ACT ~~to renumber~~ 757.69 (8); ~~to renumber and amend~~ 813.125 (2); ~~to~~
2 ~~amend~~ 813.06, 813.12 (2) (a), 813.12 (3) (c), 813.12 (5m), 813.12 (6) (d), 813.122
3 (2), 813.123 (2) (a), 813.125 (3) (c) and 813.125 (5m); and ~~to create~~ 757.69 (8)
4 (b), 767.338, 813.12 (5) (a) 4., 813.12 (5g), 813.12 (10), 813.122 (6) (a) 5., 813.122
5 (13), 813.123 (6) (d), 813.123 (13), 813.125 (2) (b), 813.125 (2g), 813.125 (2m),
6 813.125 (3) (d), 813.125 (3) (e), 813.125 (4) (aj), 813.125 (5) (a) 4., 813.125 (5g)
7 (c), 813.125 (5g) (d), 813.125 (9) and 813.126 of the statutes; **relating to:**
8 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:

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

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

1 757.69 (8) (b) If a party seeks to have the judge conduct a hearing de novo of
2 a determination, order, or ruling entered in an action under s. 813.12, 813.122,
3 813.123, or 813.125, including a denial of a request for a temporary restraining order,
4 the motion requesting the hearing must be filed with the court within 30 working
5 days after the circuit court commissioner issued the order and the court shall hold
6 the de novo hearing within 15 working days after the motion requesting the hearing
7 is filed with the court.

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

9 **767.338 Conflict with temporary restraining orders, injunctions, or**
10 **contact prohibitions.** Notwithstanding any other provision of this chapter, the
11 court may not enter an order under this chapter that conflicts with an order entered
12 under s. 813.12, 813.122, 813.123, or 813.125, with the contact prohibition under s.
13 968.075 (5), or with a condition of probation, parole, extended supervision, or release.

14 **SECTION 4.** 813.06 of the statutes is amended to read:

15 **813.06 Security for damages.** In proceedings under s. 767.225 the court or
16 judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122,
17 813.123, 813.125, and 823.113 the court or judge shall, require a bond of the party
18 seeking an injunction, with sureties, to the effect that he or she will pay to the party
19 enjoined such damages, not exceeding an amount to be specified, as he or she may
20 sustain by reason of the injunction if the court finally decides that the party was not
21 entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon
22 the party enjoined and the officer serving the same shall, within 8 days after such
23 service, file his or her return in the office of the clerk of the court.

24 **SECTION 5.** 813.12 (2) (a) of the statutes is amended to read:

1 813.12 (2) (a) No action under this section may be commenced by complaint and
2 summons. An action under this section may be commenced only by a petition
3 described under sub. (5) (a). The action commences with service of the petition upon
4 the respondent if a copy of the petition is filed before service or promptly after service.
5 If the judge or a circuit court commissioner extends the time for a hearing under sub.
6 (3) (c) and the petitioner files an affidavit with the court stating that personal service
7 by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful
8 because the respondent is avoiding service by concealment or otherwise, the judge
9 or circuit court commissioner shall inform the petitioner that he or she may serve the
10 respondent by publication of a summary of the petition as a class 1 notice, under ch.
11 985, and by mailing or sending a facsimile if the respondent's post-office address or
12 facsimile number is known or can with due diligence be ascertained. The mailing or
13 sending of a facsimile may be omitted if the post-office address or facsimile number
14 cannot be ascertained with due diligence. A summary of the petition published as
15 a class 1 notice shall include the name of the respondent and of the petitioner, notice
16 of the temporary restraining order, and notice of the date, time, and place of the
17 hearing regarding the injunction. The court shall inform the petitioner^{in writing} as to which
18 agency the petitioner should contact to verify the proof of service of the petition.

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

20 813.12 (3) (c) The temporary restraining order is in effect until a hearing is held
21 on issuance of an injunction under sub. (4). The temporary restraining order is not
22 voided if the respondent is admitted into a dwelling that the order directs him or her
23 to avoid. A judge or circuit court commissioner shall hold a hearing on issuance of
24 an injunction within 14 days after the temporary restraining order is issued, unless
25 the time is extended upon ~~the written consent of the parties~~ motion of the petitioner

or judgment that includes provisions regarding contact with

1 or extended once for 14 days upon a finding that the respondent has not been served
2 with a copy of the temporary restraining order although the petitioner has exercised
3 due diligence.

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

5 813.12 (5) (a) 4. If the petitioner knows of any ^{✓ civil or criminal} other court proceeding in which
6 the petitioner or a member of the petitioner's family is a party to a ^{court} no-contact order
7 involving the respondent, any of the following that are known by the petitioner:

8 a. The name or type of the court proceeding.

9 b. The name and location of the court where the proceeding occurred or is
10 pending.

11 c. The name and location of the court where the order was issued.

12 ^{# b.c.} The date on which the order was issued.

13 SECTION 8. 813.12 (5g) of the statutes is created to read:

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

18 (a) Either or both parties submit an oral request on the record for the
19 conversion explaining why the conversion of the petition is requested.

20 (b) The court informs the petitioner on the record of all of the following:

21 1. The requirements for granting a domestic abuse injunction as specified
22 under sub. (4) (a).

23 2. The definition of domestic abuse under sub. (1) (am).

24 3. The requirements for granting a harassment injunction as specified under
25 s. 813.125 (4) (a).

of the court proceeding
The types of provisions regarding contact between the petitioner and respondent.

1 4. The definition of harassment under s. 813.125 (1).

2 5. The amount of time that a domestic abuse injunction shall be in effect if
3 granted is the amount of time that the petitioner requests under sub. (4) (c).

4 6. The amount of time that a harassment injunction shall be in effect if granted
5 is the amount of time that the petitioner requests under s. 813.125 (4) (c).

6 7. The orders that may be made under sub. (4) and that shall be made under
7 sub. (4m) upon granting a domestic abuse injunction.

8 8. The orders that may be made under s. 813.125 (4) and (4m) upon granting
9 a harassment injunction.

10 9. The petitioner's right to refuse to enter into a stipulation to convert a petition
11 under this section to a petition under s. 813.125 and to continue under this section.

12 (c) The court includes on the record the court's explanation as to why the
13 granting of a temporary restraining order or injunction under this section is not
14 appropriate.

15 **SECTION 9.** 813.12 (5m) of the statutes is amended to read:

16 813.12 (5m) CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5)
17 and the court order under sub. (3) or (4) shall may not disclose the address of the
18 alleged victim. The petitioner shall provide the clerk of circuit court with the
19 petitioner's address when he or she files a petition under this section. The clerk shall
20 maintain the petitioner's address in a confidential file.

21 **SECTION 10.** 813.12 (6) (d) of the statutes is amended to read:

22 813.12 (6) (d) The issuance of an order or injunction under s. ~~813.12~~ sub. (3)
23 or (4) is enforceable despite the existence of any other criminal or civil order
24 restricting or prohibiting contact. If a law enforcement officer is aware of other court
25 orders or judgments that include provisions regarding contacts between the

↑
STET

SCORE → the law enforcement officer shall
 enforce all orders and judgments to the extent **SECTION 10**
 that the orders or judgments do not conflict and, if the orders
 or judgments do conflict
 1 petitioner and respondent, the law enforcement officer shall enforce the most
 2 restrictive terms of the court orders or judgments.

3 SECTION 11. 813.12 (10) of the statutes is created to read:

4 813.12 (10) NOTICE CONCERNING CONFLICTING COURT ORDERS. If the court
 5 determines that there are other ^{civil or criminal} court orders or judgments that ^{include provisions} place restrictions on ^{regarding}
 6 contacts between the petitioner and respondent, an order or injunction issued under
 7 sub. (3) or (4) shall include a statement instructing the parties that those other court
 8 orders or judgments must be obeyed if they do not conflict with this court's order or
 9 each other, and that, if an order or judgment conflicts with another order or
 10 judgment, the parties must obey the most restrictive terms of those orders or
 11 judgments.

12 SECTION 12. 813.122 (2) of the statutes is amended to read:

13 813.122 (2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this
 14 section may be commenced by complaint and summons. An action under this section
 15 may be commenced only by a petition described under sub. (6) (a). The action
 16 commences with service of the petition upon the respondent if a copy of the petition
 17 is filed before service or promptly after service. ^{Notwithstanding s. 803.01 (3)(a), the} ~~The~~ child victim or a parent,
 18 stepparent or legal guardian of the child victim may be a petitioner under this
 19 section. Section 813.06 does not apply to an action under this section. The
 20 respondent may respond to the petition either in writing before or at the hearing on
 21 the issuance of the injunction or orally at that hearing. The court shall inform the
 22 ^{in writing} petitioner as to which agency the petitioner should contact to verify the proof of
 23 service of the petition.

24 SECTION 13. 813.122 (6) (a) 5. of the statutes is created to read:

or judgment that includes provisions regarding contact with

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813.122 (6) (a) 5. If the petitioner knows of any other ^(civil or criminal) court proceeding in which

the petitioner ^{or a member of the petitioner's family} is a party to a ^{no-contact} court order

involving the respondent, any of the following that are known by the petitioner:

a. The name or type of the court proceeding.

b. The name and location of the court where the proceeding occurred or is pending. *of provisions regarding contact between the petitioner and respondent.*

c. The name and location of the court where the order was issued.

A B. C. The date on which the order was issued of the court proceeding

SECTION 14. 813.122 (13) of the statutes is created to read:

813.122 (13) NOTICE CONCERNING CONFLICTING COURT ORDERS. If the court

determines that there are other ^(civil or criminal) court orders or judgments that place restrictions on

contacts between the petitioner and respondent, an order or injunction issued under

sub. (4) or (5) shall include a statement instructing the parties that those other court

orders or judgments must be obeyed if they do not conflict with this court's order or

each other, and that, if an order or judgment conflicts with another order or

judgment, the parties must obey the most restrictive terms of those orders or

judgments.

SECTION 15. 813.123 (2) (a) of the statutes is amended to read:

813.123 (2) (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. (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 individual at risk, any person acting on behalf of an individual at risk, an

elder-adult-at-risk agency, or an adult-at-risk agency may be a petitioner under

this section. If the petition is filed by a person other than the individual at risk, the

include provision regarding

or judgment that includes provisions regarding contact with

petitioner shall serve a copy of the petition on the individual at risk. 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. The court shall inform the petitioner ^{in writing} as to which agency the petitioner should contact to verify the proof of service of the petition.

SECTION 16. 813.123 (6) (d) of the statutes is created to read:

813.123 (6) (d) If the petitioner knows of any other ^{civil or criminal} court proceeding in which the petitioner ^{or} a member of the petitioner's family is a party to a ^{no-contact} order involving the respondent, any of the following that are known by the petitioner:

1. The name or type of the court proceeding.
2. The name and location of the court where the proceeding occurred or is pending.
3. The name and location of the court where the order was issued.

4. The date ^{of the court proceeding} on which the order was issued.
5. The type of provisions regarding contact between the petitioner and respondent.

SECTION 17. 813.123 (13) of the statutes is created to read:

813.123 (13) NOTICE CONCERNING CONFLICTING COURT ORDERS. If the court determines that there are other ^{civil or criminal} court orders or judgments that ^{include provisions regarding} place restrictions on contacts between the petitioner and respondent, an order or injunction issued under sub. (4) or (5) shall include a statement instructing the parties that those other court orders or judgments must be obeyed if they do not conflict with with this court's order or each other, and that, if an order or judgment conflicts with another order or judgment, the parties must obey the most restrictive terms of those orders or judgments.

SECTION 18. 813.125 (2) of the statutes is renumbered 813.125 (2) (a) and amended to read:

1 813.125 (2g) APPOINTMENT OF GUARDIAN AD LITEM. The court or circuit court
2 commissioner, on its or his or her own motion, or on the motion of any party, may
3 appoint a guardian ad litem for a child who is the petitioner under this section when
4 justice so requires.

5 **SECTION 21.** 813.125 (2m) of the statutes is created to read:

6 813.125 (2m) TWO-PART PROCEDURE. The procedure for an action under this
7 section is in 2 parts. First, if the petitioner requests a temporary restraining order
8 the court shall issue or refuse to issue that order. Second, the court shall hold a
9 hearing under sub. (4) on whether to issue an injunction, which is the final relief.
10 If the court issues a temporary restraining order, the order shall set forth the date
11 for the hearing on an injunction. If the court does not issue a temporary restraining
12 order, the date for the hearing shall be set upon motion by either party.

13 **SECTION 22.** 813.125 (3) (c) of the statutes is amended to read:

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

21 **SECTION 23.** 813.125 (3) (d) of the statutes is created to read:

22 813.125 (3) (d) The judge or circuit court commissioner shall advise the
23 petitioner of the right to serve the respondent the petition by published notice if with
24 due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or

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

19 Section 813.06 does not apply to an action under this section.

20 **SECTION 19.** 813.125 (2) (b) of the statutes is created to read:

21 813.125 (2) (b) Notwithstanding s. 803.01 (3) (a), a child, as defined in s.
22 813.122 (1) (b), or a parent, stepparent, or legal guardian of a child may be a
23 petitioner under this section.

24 **SECTION 20.** 813.125 (2g) of the statutes is created to read:

1 (b). The clerk of circuit court shall assist the petitioner with the preparation of the
2 notice and filing of the affidavit of printing.

3 SECTION 24. 813.125 (3) (e) of the statutes is created to read:

4 813.125 (3) (e) The judge or circuit court commissioner may not dismiss or deny
5 granting a temporary restraining order because of the existence of a pending action
6 or of any other court order that restricts contact between the parties, nor due to the
7 necessity of verifying the terms of an existing court order.

8 SECTION 25. 813.125 (4) (aj) of the statutes is created to read:

9 813.125 (4) (aj) In determining whether to issue an injunction, the judge or
10 circuit court commissioner shall consider the potential danger posed to the petitioner
11 and the pattern of abusive conduct of the respondent but may not base his or her
12 decision solely on the length of time since the last harassment or the length of time
13 since the relationship ended. The judge or circuit court commissioner may grant only
14 the remedies requested by the petitioner. The judge or circuit court commissioner
15 may not dismiss or deny granting an injunction because of the existence of a pending
16 action or of any other court order that bars contact between the parties, nor due to
17 the necessity of verifying the terms of an existing court order.

civil or criminal includes provisions regarding

18 SECTION 26. 813.125 (5) (a) 4. of the statutes is created to read:

19 813.125 (5) (a) 4. If the petitioner knows of any other court proceeding in which
20 the petitioner or a member of the petitioner's family is a party to a no-contact order
21 involving the respondent, any of the following that are known by the petitioner:

civil or criminal court

- 22 a. The name or type of the court proceeding.
- 23 b. The name and location of the court where the proceeding occurred or is
24 pending.
- 25 c. The name and location of the court where the order was issued.

or judgment that includes provisions regarding contact with

of the court proceeding

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b. d. The date on which the order was issued.

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c. The type of provisions regarding contact between the petitioner and respondent.

SECTION 27. 813.125 (5g) (c) of the statutes is created to read:

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813.125 (5g) (c) If an order is issued under this section, upon request by the

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petitioner the court or circuit court commissioner shall order the sheriff to

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accompany the petitioner and assist in placing him or her in physical possession of

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his or her residence or to otherwise assist in executing or serving the temporary

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restraining order or injunction. The petitioner may, at the petitioner's expense, use

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a private process server to serve papers on the respondent.

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SECTION 28. 813.125 (5g) (d) of the statutes is created to read:

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813.125 (5g) (d) The issuance of an order or injunction under sub. (3) or (4) is

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enforceable despite the existence of any other criminal or civil order restricting or

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prohibiting contact. If a law enforcement officer is aware of other *civil or criminal* court orders or

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judgments that include provisions regarding contacts between the petitioner and

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respondent, the law enforcement officer shall enforce the most restrictive terms of

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the *the* court orders or judgments.

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SECTION 29. 813.125 (5m) of the statutes is amended to read:

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813.125 (5m) CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5)

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and the court order under sub. (3) or (4) ~~shall~~ *may* not disclose the address of the alleged

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victim. The petitioner shall provide the clerk of circuit court with the petitioner's

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address when he or she files a petition under this section. The clerk shall maintain

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the petitioner's address in a confidential file.

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SECTION 30. 813.125 (9) of the statutes is created to read:

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813.125 (9) NOTICE CONCERNING CONFLICTING COURT ORDERS. If the court

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determines that there are other *civil or criminal* court orders or judgments that *include provisions regardi* place restrictions on

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contacts between the petitioner and respondent, an order or injunction issued under

the law enforcement officer shall enforce all orders and judgments to the extent that the orders or judgments do not conflict and, if the orders or judgments do conflict

1 sub. (3) or (4) shall include a statement instructing the parties that those other court
2 orders or judgments must be obeyed if they do not conflict with this court's order or
3 with each other, and that, if an order or judgment conflicts with another order or
4 judgment, the parties must obey the most restrictive terms of those orders or
5 judgments.

6 **SECTION 31.** 813.126 of the statutes is created to read:

7 **813.126 Review of petitions; hearing before a judge.** (1) When a person
8 contacts the clerk of circuit court inquiring about filing a petition for a temporary
9 restraining order or injunction under s. 813.12, 813.122, 813.123, or 813.125, the
10 clerk shall provide the person with a document prepared by the director of state
11 courts that informs the person of the types of restraining orders and injunctions, who
12 is eligible for each type of order and injunction, the remedies available under each
13 order and injunction, and the process necessary to obtain an order or injunction in
14 that county. The director of state courts shall, with the assistance of each county,
15 prepare the document required under this subsection and provide sufficient copies
16 to each county without charge.

17 (2) When a person submits a petition to the court under s. 813.12, 813.122,
18 813.123, or 813.125, the ~~clerk of circuit~~ court shall review the completed forms to
19 determine if they are correctly completed within 2 normal business hours after
20 receipt of the petition. If the ~~clerk of circuit court~~ is unable to complete the review
21 within the 2-hour period, the clerk ^{of circuit court} shall make arrangements for the review by
22 another court within the 2-hour period.

23 (3) If the court ~~dismisses~~ ^{denies} a request to submit a petition for a temporary
24 restraining order, the court shall file a written record of the dismissal that includes

1 the names of the petitioner and the reason for the dismissal. The court shall provide
2 the petitioner with a copy of the record of the dismissal.

3 (4) If a ~~party to~~ ^{petitioner or respondent in} an action under s. 813.12, 813.122, 813.123, or 813.125 seeks
4 a de novo hearing before the judge of a court commissioner's determination, the
5 procedure under s. 757.69 (8) shall be followed.

6 **SECTION 32. Initial applicability.**

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

9 (END)

Effective
SEC #. ~~of~~ ^{of} ~~the~~ ^{the} ~~act~~ ^{act}.
Q (#) This act takes effect on
the first day of the 9th
month beginning after publication.