2009 DRAFTING REQUEST

Bill

Received: **01/05/2010**

Received By: **rnelson2**

Wanted: **Soon**

Identical to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing: **Maggie**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Temporary restraining orders

Instructions:

Companion to -2016

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rnelson2 01/05/2010	jdyer 01/05/2010		_____ _____			S&L
/1			phenry 01/05/2010	_____ _____	mbarman 01/05/2010	mbarman 01/05/2010	

FE Sent For: at intro 1/22/10

<END>

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/?	rnelson2	1/5 jld	1/6 ph	1/6 ph			

FE Sent For:

<END>

Nelson, Robert P.

From: Gau, Maggie
Sent: Monday, January 04, 2010 3:00 PM
To: Nelson, Robert P.
Subject: LRB 2016

Hi Robert,

I believe that Mike from the Parisi office contacted you about our office taking over the responsibilities for LRB 2016.

If we could get a Senate companion drafted for Senator Taylor, in addition to getting the jacket for the bill, that would be wonderful.

Thank you!

Maggie

Maggie Gau
Office of Rep. Ann Hraychuck
608.267.2365 or 1.888.529.0028
Room 6 North State Capitol

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–2016/1
RPN&PJH:jld:md

2009 BILL

Regen

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

Analysis by the Legislative Reference Bureau

This bill makes numerous changes in the laws concerning petitions for temporary restraining orders and injunctions related to domestic abuse, child abuse, adult at risk, or harassment.

Under current law, if a person wants a judge to review a decision of a circuit court commissioner, the person submits a motion to the circuit court asking for a hearing before the judge. The court conducts a de novo hearing in which the judge hears all of the evidence and arguments and makes a decision without regard to the commissioner's decision. Under this bill, a party seeking judicial review of a circuit court commissioner's decision regarding a petition for a domestic abuse, child abuse,

adult–at–risk, or harassment temporary restraining order or injunction must file the motion with the court within 30 days after the court commissioner's decision. The bill requires the judge to hold the hearing on that motion within 15 working days after the hearing is requested.

The bill prohibits a circuit court in an action affecting the family, such as a divorce action, to enter any order that conflicts with an order entered by a circuit court regarding a temporary restraining order or injunction for domestic abuse, child abuse, adult at risk, or harassment; with a contact prohibition issued in conjunction with a domestic abuse criminal action; or with a condition of probation, parole, extended supervision, or release.

The bill requires the circuit court to inform the petitioner of the agency that the person should contact to verify that the petition for a temporary restraining order or injunction for domestic abuse, child abuse, adult at risk, or harassment has been served on the respondent. Currently the circuit court judge or commissioner is prohibited from dismissing or denying a domestic abuse temporary restraining order or injunction because of the existence of a pending action or any court order that bars contact between the parties. The bill expands that prohibition to include any civil or criminal court order that includes provisions regarding contact between the parties.

The bill requires a petitioner seeking a domestic abuse, child abuse, adult–at–risk, or harassment temporary restraining order or injunction to include in the petition identifying information about any other civil or criminal court proceeding that has a court order that includes provisions regarding contact with the person who is the subject of the petition (respondent).

The bill allows the circuit court to approve a stipulation to convert a domestic abuse petition to a harassment petition only if, on the record, one or both parties request the conversion, the court explains the differences between a harassment and domestic abuse injunction, and the court includes an explanation as to why granting a domestic abuse temporary restraining order or injunction is not appropriate.

The bill provides the same procedure for the service of a petition upon the respondent in an action for a harassment temporary restraining order or injunction as is provided in an action for a domestic abuse temporary restraining order or injunction. The bill also provides parallel language in the statutes regarding the procedure for bringing an action for a harassment temporary restraining order or injunction, providing advice regarding service of the petition on the respondent, limiting the remedies to those petitioned for, and for ordering the sheriff to assist the petitioner in his or her residence as is provided in an action for a domestic abuse temporary restraining order or injunction.

Under the bill, a person under the age of 18, or the parent, stepparent, or legal guardian of the person may petition for a harassment temporary restraining order or injunction and the court may appoint a guardian ad litem for a child who is a petitioner.

The bill requires the clerk of circuit court to provide a person who contacts the circuit court about filing a petition for temporary restraining orders and injunctions for domestic abuse, child abuse, adult at risk, or harassment, with a document

prepared by the director of state courts. The bill requires the document to describe the different types of temporary restraining orders and injunctions, who is eligible, the remedies available for each, and the process necessary to obtain one of the temporary restraining orders or injunctions. The director of state courts is required to provide sufficient copies to the courts without charge.

Under the bill, the circuit court is required to review and rule on a petition for a temporary restraining order for domestic abuse, child abuse, adult at risk, or harassment within two business hours after receipt of the petition. If the court is unable to do so, the bill requires the clerk of circuit court to make arrangements for another court to review the petition within the two–hour period. If the court denies the petition, the bill requires the court to file a written record of the denial that includes the name of the petitioner and the reason for the denial, and to provide the petitioner with a copy of that denial.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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

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

11 **767.338 Conflict with temporary restraining orders, injunctions, or**
12 **contact prohibitions.** Notwithstanding any other provision of this chapter, the
13 court may not enter an order under this chapter that conflicts with an order entered

1 under s. 813.12, 813.122, 813.123, or 813.125, with the contact prohibition under s.
2 968.075 (5), or with a condition of probation, parole, extended supervision, or release.

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

4 **813.06 Security for damages.** In proceedings under s. 767.225 the court or
5 judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122,
6 813.123, 813.125, and 823.113 the court or judge shall, require a bond of the party
7 seeking an injunction, with sureties, to the effect that he or she will pay to the party
8 enjoined such damages, not exceeding an amount to be specified, as he or she may
9 sustain by reason of the injunction if the court finally decides that the party was not
10 entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon
11 the party enjoined and the officer serving the same shall, within 8 days after such
12 service, file his or her return in the office of the clerk of the court.

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

14 813.12 **(2)** (a) No action under this section may be commenced by complaint and
15 summons. An action under this section may be commenced only by a petition
16 described under sub. (5) (a). The action commences with service of the petition upon
17 the respondent if a copy of the petition is filed before service or promptly after service.
18 If the judge or a circuit court commissioner extends the time for a hearing under sub.
19 (3) (c) and the petitioner files an affidavit with the court stating that personal service
20 by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful
21 because the respondent is avoiding service by concealment or otherwise, the judge
22 or circuit court commissioner shall inform the petitioner that he or she may serve the
23 respondent by publication of a summary of the petition as a class 1 notice, under ch.
24 985, and by mailing or sending a facsimile if the respondent's post–office address or
25 facsimile number is known or can with due diligence be ascertained. The mailing or

sending of a facsimile may be omitted if the post–office address or facsimile number cannot be ascertained with due diligence. A summary of the petition published as a class 1 notice shall include the name of the respondent and of the petitioner, notice of the temporary restraining order, and notice of the date, time, and place of the hearing regarding the injunction. 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 6. 813.12 (3) (aj) of the statutes is amended to read:

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

SECTION 7. 813.12 (3) (c) of the statutes is amended to read:

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

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 8.** 813.12 (4) (aj) of the statutes is amended to read:

5 813.12 **(4)** (aj) In determining whether to issue an injunction, the judge or
6 circuit court commissioner shall consider the potential danger posed to the petitioner
7 and the pattern of abusive conduct of the respondent but may not base his or her
8 decision solely on the length of time since the last domestic abuse or the length of time
9 since the relationship ended. The judge or circuit court commissioner may grant only
10 the remedies requested by the petitioner. The judge or circuit court commissioner
11 may not dismiss or deny granting an injunction because of the existence of a pending
12 action or of any other civil or criminal court order that ~~bars~~ includes provisions
13 regarding contact between the parties, nor due to the necessity of verifying the terms
14 of an existing court order.

15 **SECTION 9.** 813.12 (5) (a) 4. of the statutes is created to read:

16 813.12 **(5)** (a) 4. If the petitioner knows of any other civil or criminal court
17 proceeding in which the petitioner is a party to a court order or judgment that
18 includes provisions regarding contact with the respondent, any of the following that
19 are known by the petitioner:

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

21 b. The date of the court proceeding.

22 c. The types of provisions regarding contact between the petitioner and
23 respondent.

24 **SECTION 10.** 813.12 (5g) of the statutes is created to read:

1 813.12 **(5g)** STIPULATION. If the parties enter into a stipulation to convert a
2 petition under this section to a petition for a temporary restraining order or
3 injunction under s. 813.125, the court may not approve that stipulation unless all of
4 the following occur:

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. 813.12 (5m) of the statutes is amended to read:

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

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

813.122 **(2)** COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. ~~The~~ Notwithstanding s. 803.01 (3) (a), the child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing. 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 13. 813.122 (6) (a) 5. of the statutes is created to read:

813.122 **(6)** (a) 5. If the petitioner knows of any other civil or criminal court proceeding in which the petitioner is a party to a court order or judgment that

1 includes provisions regarding contact with the respondent, any of the following that
2 are known by the petitioner:
3 a. The name or type of the court proceeding.
4 b. The date of the court proceeding.
5 c. The types of provisions regarding contact between the petitioner and
6 respondent.
7 **SECTION 14.** 813.123 (2) (a) of the statutes is amended to read:
8 813.123 **(2)** (a) No action under this section may be commenced by complaint
9 and summons. An action under this section may be commenced only by a petition
10 described under sub. (6). The action commences with service of the petition upon the
11 respondent if a copy of the petition is filed before service or promptly after service.
12 The individual at risk, any person acting on behalf of an individual at risk, an
13 elder–adult–at–risk agency, or an adult–at–risk agency may be a petitioner under
14 this section. If the petition is filed by a person other than the individual at risk, the
15 petitioner shall serve a copy of the petition on the individual at risk. Section 813.06
16 does not apply to an action under this section. The respondent may respond to the
17 petition either in writing before or at the hearing on the issuance of the injunction
18 or orally at that hearing. <u>The court shall inform the petitioner in writing as to which</u>
19 <u>agency the petitioner should contact to verify the proof of service of the petition.</u>
20 **SECTION 15.** 813.123 (6) (d) of the statutes is created to read:
21 813.123 **(6)** (d) If the petitioner knows of any other civil or criminal court
22 proceeding in which the petitioner is a party to a court order or judgment that
23 includes provisions regarding contact with the respondent, any of the following that
24 are known by the petitioner:
25 1. The name or type of the court proceeding.

1 2. The date of the court proceeding.

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

4 **SECTION 16.** 813.125 (2) of the statutes is renumbered 813.125 (2) (a) and
5 amended to read:

6 813.125 **(2)** (a) An action under this section may be commenced by filing a
7 petition described under sub. (5) (a). No action under this section may be commenced
8 by service of summons. The action commences with service of the petition upon the
9 respondent if a copy of the petition is filed before service or promptly after service.
10 If the judge or a circuit court commissioner extends the time for a hearing under sub.
11 (3) (c) and the petitioner files an affidavit with the court stating that personal service
12 by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful
13 because the respondent is avoiding service by concealment or otherwise, the judge
14 or circuit court commissioner shall inform the petitioner that he or she may serve the
15 respondent by publication of a summary of the petition as a class 1 notice, under ch.
16 985, and by mailing or sending a facsimile if the respondent's post–office address or
17 facsimile number is known or can with due diligence be ascertained. The mailing or
18 sending of a facsimile may be omitted if the post–office address or facsimile number
19 cannot be ascertained with due diligence. A summary of the petition published as
20 a class 1 notice shall include the name of the respondent and of the petitioner, notice
21 of the temporary restraining order, and notice of the date, time, and place of the
22 hearing regarding the injunction. The court shall inform the petitioner in writing
23 as to which agency the petitioner should contact to verify the proof of service of the
24 petition. Section 813.06 does not apply to an action under this section.

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

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

SECTION 18. 813.125 (2g) of the statutes is created to read:

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

SECTION 19. 813.125 (2m) of the statutes is created to read:

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

SECTION 20. 813.125 (3) (c) of the statutes is amended to read:

813.125 **(3)** (c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4). A judge or circuit court commissioner shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon ~~the written consent of the parties~~ <u>motion of the petitioner</u> 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.

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

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 22.** 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 civil or criminal court order that includes provisions regarding contact
10 between the parties, nor due to the necessity of verifying the terms of an existing
11 court order.

12 **SECTION 23.** 813.125 (4) (aj) of the statutes is created to read:

13 813.125 **(4)** (aj) The judge or circuit court commissioner may grant only the
14 remedies requested by the petitioner. The judge or circuit court commissioner may
15 not dismiss or deny granting an injunction because of the existence of a pending
16 action or of any other civil or criminal court order that includes provisions regarding
17 contact between the parties, nor due to the necessity of verifying the terms of an
18 existing court order.

19 **SECTION 24.** 813.125 (5) (a) 4. of the statutes is created to read:

20 813.125 **(5)** (a) 4. If the petitioner knows of any other civil or criminal court
21 proceeding in which the petitioner is a party to a court order or judgment that
22 includes provisions regarding contact with the respondent, any of the following that
23 are known by the petitioner:

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

25 b. The date of the court proceeding.

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

SECTION 25. 813.125 (5g) (c) of the statutes is created to read:

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

SECTION 26. 813.125 (5g) (d) of the statutes is created to read:

813.125 **(5g)** (d) The issuance of an order or injunction under sub. (3) or (4) is enforceable despite the existence of any other criminal or civil order restricting or prohibiting contact.

SECTION 27. 813.125 (5m) of the statutes is amended to read:

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

SECTION 28. 813.126 of the statutes is created to read:

813.126 Review of petitions; hearing before a judge. (1) When a person contacts the clerk of circuit court inquiring about filing a petition for a temporary restraining order or injunction under s. 813.12, 813.122, 813.123, or 813.125, the clerk shall provide the person with a document prepared by the director of state courts that informs the person of the types of restraining orders and injunctions, who

is eligible for each type of order and injunction, the remedies available under each order and injunction, and the process necessary to obtain an order or injunction in that county. The director of state courts shall, with the assistance of each county, prepare the document required under this subsection and provide sufficient copies to the circuit courts without charge.

(2) When a person submits a petition to the court under s. 813.12, 813.122, 813.123, or 813.125, the court shall review, rule on, and return the petition within 2 normal business hours after receipt of the petition. If the court is unable to review the petition within the 2–hour period, the clerk of circuit court shall make arrangements for the review by another court within the 2–hour period.

(3) If the court denies a request for a temporary restraining order, the court shall file a written record of the denial that includes the name of the petitioner and the reason for the denial. The court shall provide the petitioner with a copy of the record of the denial.

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

SECTION 29. Initial applicability.

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

SECTION 30. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.

(END)

Barman, Mike

From: Peterson, Eric
Sent: Tuesday, January 05, 2010 12:33 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-4065/1 Topic: Temporary restraining orders

Please Jacket LRB 09-4065/1 for the SENATE.