

2015 DRAFTING REQUEST

Assembly Amendment (AA-AB615)

Received: 1/22/2016 Received By: phurley
For: Amy Loudenbeck (608) 266-9967 Same as LRB:
May Contact: By/Representing:
Subject: Criminal Law - law enforcement Drafter: phurley
Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Loudenbeck@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Fees for serving to be paid to sheriff

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 1/22/2016	kmochal 1/25/2016	_____	mbarman 1/25/2016	mbarman 1/25/2016	

FE Sent For:

<END>

Hurley, Peggy

From: Bruhn, Michael
Sent: Friday, January 22, 2016 10:59 AM
To: Hurley, Peggy
Subject: Amendment request for AB 615

Hi Peggy,

Rep. Loudenbeck would like an amendment drafted to AB 615 that adds language to Section 10 of the bill. At the end of 813.125(5g)(cm)1., add an additional sentence: "If a service fee is required by the sheriff under s. 814.70 (1), the petitioner shall pay this fee directly to the sheriff." Below is additional background information, if you are interested. Please let me know if you have any questions.

Thanks!

Mike Bruhn
Rep. Loudenbeck's office

Mike,

I have reviewed the email below and thought that some background information might be helpful for you to first understand what is going on with respect to the sheriff's service of process fees. Section 814.70 (1), Stats., provides the following:

SERVICE OF PROCESS. For each service or attempted service of a summons or any other process for commencement of an action, a writ, an order of injunction, a subpoena, or any other order, \$12 for each defendant or person. If there is more than one defendant or person to be served at a given address, \$6 for each additional defendant or person. No fee charged under this subsection in any action commenced under s. 813.12, 813.122, or 813.123 [(i.e. restraining orders/injunctions for domestic abuse, child abuse, and individuals at risk)] may be collected from a petitioner under s. 813.12, 813.122, or 813.123. The fee charged under this subsection in any action commenced under s. 813.12, 813.122, 813.123, or 813.125 shall be collected from the respondent under s. 813.12, 813.122, or 813.123 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4), 813.122 (4) or (5), 813.123 (4) or (5), or 813.125 (3) or (4). No fee charged under this subsection in any action commenced under s. 813.125 may be collected from a petitioner under s. 813.125 if the petition alleges conduct that is the same as or similar to conduct that is prohibited by s. 940.32 [(stalking)] or that is listed in s. 813.12 (1) (am) 1. to 6. If no fee is collected under this subsection from a petitioner under s. 813.125, the fee charged under this subsection in any action commenced under s. 813.125 shall be collected from the respondent under s. 813.125 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.125 (3) or (4).

I highlighted the phrase that I think is at issue. As you can see, only some sheriff service fees for serving a harassment restraining orders are exempt from being paid by the petitioner. My understanding of concern listed below is that these petitioners might not know that they need to pay the sheriff service fee. So to help make sure that these petitioners are aware of the fact that they need to pay the fee, the suggestion is to clarify this fact in the harassment restraining order/injunction statute to clearly state that if the petitioner must pay the sheriff's fee under current law, that they must pay this fee directly to the sheriff.

If my understanding of the concern is correct, the clerk's suggestion below appears to be a clarification of current law. I suspect that added language about where to pay the sheriff service fee would be helpful to the clerks and to the applicable petitioners who may not necessarily know that they must pay the sheriff's fee – or that they have to give it to the sheriff because the clerk is not involved in this process.

Please let me know if you have further questions.

Sincerely,

Melissa Schmidt

Senior Staff Attorney
Wisconsin Legislative Council
Phone: (608) 266-2298
<http://lc.legis.wisconsin.gov/>

From: Bruhn, Michael
Sent: Thursday, January 21, 2016 12:33 PM
To: Schmidt, Melissa <Melissa.Schmidt@legis.wisconsin.gov>
Subject: FW: TRO Bill

Hi Melissa,

One of our clerks emailed Rep. Loudenbeck about AB 615 (see below). Amy was wondering if you believe that an amendment would be necessary to address her concerns? If not, can you help us explain why the amendment would be unnecessary?

Thanks!!

Mike Bruhn
Rep. Loudenbeck's office

From: Rep.Loudenbeck
Sent: Thursday, January 21, 2016 11:55 AM
To: Bruhn, Michael <Michael.Bruhn@legis.wisconsin.gov>
Subject: FW: TRO Bill

Can you ask legislative council if they think this is needed? thanks

From: Sheila Reiff [<mailto:Sheila.Reiff@wicourts.gov>]
Sent: Thursday, January 21, 2016 9:04 AM
To: Rep.Horlacher <Rep.Horlacher@legis.wisconsin.gov>; Rep.Loudenbeck <Rep.Loudenbeck@legis.wisconsin.gov>
Subject: TRO Bill

Cody and Amy - I received the following information as the payment of the Sheriff's Fees. Many of these cases won't require a fee because they'll be a domestic abuse, child abuse, or individual at risk TRO/injunction under 813.12, 813.122, and 813.123, or a harassment TRO/injunction where domestic abuse conduct has been alleged under 813.125, and, therefore, are exempt from a service fee under 814.70(1).

However, there will be some harassment TROs/injunctions where a sheriff's service fee is required. In this situation, the sheriff will have to be paid before the TRO/injunction can be served and clerks can't collect money for another agency. As a result, the petitioner will have to go to the sheriff's department to pay the fee.

To make this point more clear, Sara and I thought it would be helpful to add the following language to Section 10 of the bill. At the end of 813.125(5g)(cm)1., add an additional sentence: "If a service fee is required by the sheriff under s. 814.70 (1), the petitioner shall pay this fee directly to the sheriff."

Have you voted on this bill yet?

Thank you - Sheila

Sheila T. Reiff
Clerk of Circuit Court
Register in Probate/Registrar
Probate Commissioner
P.O. Box 1001
Elkhorn WI 53121
262.741-7000 Direct

"Taking the High Road will always make a more rewarding and sometimes difficult journey. But you never get lost."

-Peg Woods

ASSEMBLY BILL 615**SECTION 10**

1 other document or notice on the respondent. The petitioner may, at his or her
2 expense, elect to use a private server to effect service.

3 2. If the petitioner elects service by the sheriff, the clerk of circuit court shall
4 provide a form supplied by the sheriff to the petitioner that allows the petitioner to
5 provide information about the respondent that may be useful to the sheriff in
6 effecting service. The clerk shall forward the completed form to the sheriff. The clerk
7 shall maintain the form provided under this subdivision in a confidential manner.

8 **SECTION 11.** 813.125 (5g) (e) of the statutes is created to read:

9 813.125 (5g) (e) A law enforcement agency and a clerk of circuit court may use
10 electronic transmission to facilitate the exchange of documents under this section.
11 Any person who uses electronic transmission shall ensure that the electronic
12 transmission does not allow unauthorized disclosure of the documents transmitted.

13 **SECTION 12.** 813.126 of the statutes is renumbered 813.126 (1).

14 **SECTION 13.** 813.126 (1) (title) of the statutes is created to read:

15 813.126 (1) (title) TIME LIMITS.

16 **SECTION 14.** 813.126 (2) of the statutes is created to read:

17 813.126 (2) NOTICE. The clerk of circuit court shall provide notice of a motion
18 under sub. (1) to the nonmoving party. This subsection does not apply to a motion
19 to review a denial of a temporary restraining order.

20 **SECTION 15. Effective date.**

21 (1) This act takes effect on the first day of the 2nd month beginning after
22 publication.

23 (END)



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4039/1
PJH:kjf

2015 ASSEMBLY BILL 615

December 29, 2015 - Introduced by Representatives LOUDENBECK, KLEEFISCH, BALLWEG, BERCEAU, BERNIER, E. BROOKS, HORLACHER, JACQUE, KAHL, KNODL, T. LARSON, MURPHY, MURSAU, A. OTT, RIPP, SKOWRONSKI, SUBECK, THIESFELDT and OHNSTAD, cosponsored by Senators PETROWSKI, HANSEN, MARKLEIN, OLSEN and WANGGAARD. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to renumber** 813.126; **to amend** 813.12 (6) (a) and 813.125 (5g) (c); **to**
2 **repeal and recreate** 813.122 (9) (a) and 813.123 (8) (a); and **to create** 813.115,
3 813.12 (6) (ag), 813.12 (6) (e), 813.122 (9) (d), 813.123 (8) (d), 813.125 (5g) (cm),
4 813.125 (5g) (e), 813.126 (1) (title) and 813.126 (2) of the statutes; **relating to:**
5 serving certain documents relating to restraining orders and injunctions.

Analysis by the Legislative Reference Bureau

Under current law, an individual who is, or who acts on behalf of, a victim of abuse, harassment, or threats (petitioner) may obtain from a court a temporary restraining order against the person who has committed the acts of abuse, harassment, or making a threat (respondent). The restraining order bars the respondent from contacting the petitioner and requires the respondent to stay away from the petitioner's residence and other places temporarily occupied by the petitioner until a court conducts a hearing to determine whether the restraining order should be incorporated into a longer lasting injunction.

If the court determines that the respondent has engaged in, or may engage in, acts of abuse, harassment, or threats against the petitioner, the court may issue an injunction. An injunction may stay in effect for up to four years and bars the respondent from contacting the petitioner, requires the person to stay away from the petitioner's residence, and may require the respondent to stay away from other locations temporarily occupied by the petitioner.

Currently, if a court issues a restraining order or injunction or enters another order relating to a restraining order or injunction, the court can order, upon the

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petitioner's request, a sheriff to assist the petitioner in serving the respondent or in attaining physical possession of the petitioner's residence.

Under this bill, if a court issues a restraining order or injunction or enters another order relating to a restraining order or injunction, the clerk of court is required to forward a copy of the order or injunction to the sheriff and the sheriff is required to assist the petitioner in serving the respondent, unless the petitioner opts to hire a private server at his or her own expense. Under the bill, a sheriff may supply a form that is given to the petitioner by the clerk of court in order to gather information about the respondent that may be useful in effecting service. The bill requires the clerk of court to maintain the form in a confidential manner, and allows the clerk of court to transmit documents to the sheriff electronically, so long as the contents of the documents are protected from unauthorized disclosure. The bill requires a sheriff who serves or executes a document and who uses an automated victim notification system to give the petitioner timely notification of the service.

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.** 813.115 of the statutes is created to read:

2 **813.115 Service notification system.** A sheriff who executes or serves, or
3 who assists a petitioner in executing or serving, a temporary restraining order,
4 injunction, or other document or notice under s. 812.12, 813.122, 813.123, or 813.125
5 may use the Wisconsin Statewide Victim Notification service or another service
6 notification system administered by the department of corrections that enables the
7 petitioner to receive an automated notification of the service of the temporary
8 restraining order, injunction, or other document or notice that must be served on the
9 respondent. A sheriff for a county that uses the system shall enter each order for
10 service into the system as soon as practicable so that the petitioner receives timely
11 notification of the service. The clerk of court for a county that uses a service
12 notification system shall, at the time a petition is filed under s. 812.12, 813.122,

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1 813.123, or 813.125, make available to the petitioner information on how to gain
2 access to the system.

3 **SECTION 2.** 813.12 (6) (a) of the statutes is amended to read:

4 813.12 (6) (a) If an order is issued under this section, upon request by the
5 petitioner the court or circuit court commissioner shall order the sheriff to
6 accompany the petitioner and assist in placing him or her in physical possession of
7 his or her residence ~~or to otherwise assist in executing or serving the temporary~~
8 ~~restraining order or injunction. The petitioner may, at the petitioner's expense, use~~
9 ~~a private process server to serve papers on the respondent.~~

10 **SECTION 3.** 813.12 (6) (ag) of the statutes is created to read:

11 813.12 (6) (ag) 1. The clerk of the circuit court shall forward to the sheriff any
12 temporary restraining order, injunction, or other document or notice that must be
13 served on the respondent under this section and the sheriff shall assist the petitioner
14 in executing or serving the temporary restraining order, injunction, or other
15 document or notice on the respondent. The petitioner may, at his or her expense,
16 elect to use a private server to effect service.

17 2. If the petitioner elects service by the sheriff, the clerk of circuit court shall
18 provide a form supplied by the sheriff to the petitioner that allows the petitioner to
19 provide information about the respondent that may be useful to the sheriff in
20 effecting service. The clerk shall forward the completed form to the sheriff. The clerk
21 shall maintain the form provided under this subdivision in a confidential manner.

22 **SECTION 4.** 813.12 (6) (e) of the statutes is created to read:

23 813.12 (6) (e) A law enforcement agency and a clerk of circuit court may use
24 electronic transmission to facilitate the exchange of documents under this section.

ASSEMBLY BILL 615**SECTION 4**

1 Any person who uses electronic transmission shall ensure that the electronic
2 transmission does not allow unauthorized disclosure of the documents transmitted.

3 **SECTION 5.** 813.122 (9) (a) of the statutes is repealed and recreated to read:

4 813.122 (9) (a) 1. The clerk of the circuit court shall forward to the sheriff any
5 temporary restraining order, injunction, or other document or notice that must be
6 served on the respondent under this section and the sheriff shall assist the petitioner
7 in executing or serving the temporary restraining order, injunction, or other
8 document or notice on the respondent. The petitioner may, at his or her expense,
9 elect to use a private server to effect service.

10 2. If the petitioner elects service by the sheriff, the clerk of circuit court shall
11 provide a form supplied by the sheriff to the petitioner that allows the petitioner to
12 provide information about the respondent that may be useful to the sheriff in
13 effecting service. The clerk shall forward the completed form to the sheriff. The clerk
14 shall maintain the form provided under this subdivision in a confidential manner.

15 **SECTION 6.** 813.122 (9) (d) of the statutes is created to read:

16 813.122 (9) (d) A law enforcement agency and a clerk of circuit court may use
17 electronic transmission to facilitate the exchange of documents under this section.
18 Any person who uses electronic transmission shall ensure that the electronic
19 transmission does not allow unauthorized disclosure of the documents transmitted.

20 **SECTION 7.** 813.123 (8) (a) of the statutes is repealed and recreated to read:

21 813.123 (8) (a) 1. The clerk of the circuit court shall forward to the sheriff any
22 temporary restraining order, injunction, or other document or notice that must be
23 served on the respondent under this section and the sheriff shall assist the petitioner
24 in executing or serving the temporary restraining order, injunction, or other

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1 document or notice on the respondent. The petitioner may, at his or her expense,
2 elect to use a private server to effect service.

3 2. If the petitioner elects service by the sheriff, the clerk of circuit court shall
4 provide a form supplied by the sheriff to the petitioner that allows the petitioner to
5 provide information about the respondent that may be useful to the sheriff in
6 effecting service. The clerk shall forward the completed form to the sheriff. The clerk
7 shall maintained the form provided under this subdivision in a confidential manner.

8 **SECTION 8.** 813.123 (8) (d) of the statutes is created to read:

9 813.123 (8) (d) A law enforcement agency and a clerk of circuit court may use
10 electronic transmission to facilitate the exchange of documents under this section.
11 Any person who uses electronic transmission shall ensure that the electronic
12 transmission does not allow unauthorized disclosure of the documents transmitted.

13 **SECTION 9.** 813.125 (5g) (c) of the statutes is amended to read:

14 813.125 (5g) (c) If an order is issued under this section, upon request by the
15 petitioner the court or circuit court commissioner shall order the sheriff to
16 accompany the petitioner and assist in placing him or her in physical possession of
17 his or her residence ~~or to otherwise assist in executing or serving the temporary~~
18 ~~restraining order or injunction. The petitioner may, at the petitioner's expense, use~~
19 ~~a private process server to serve papers on the respondent.~~

20 **SECTION 10.** 813.125 (5g) (cm) of the statutes is created to read:

21 813.125 (5g) (cm) 1. The clerk of the circuit court shall forward to the sheriff
22 any temporary restraining order, injunction, or other document or notice that must
23 be served on the respondent under this section and the sheriff shall assist the
24 petitioner in executing or serving the temporary restraining order, injunction, or



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LRBa1701/1
PJH...*klem*

ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 615

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1 At the locations indicated, amend the bill as follows:

2 1. Page 6, line 7: after "manner." insert "If a service fee is required by the
3 sheriff under s. 814.70 (1), the petitioner shall pay the fee directly to the sheriff."

4 (END)