

1993 Assembly Bill 735

Date of enactment: **April 15, 1994**
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1993 WISCONSIN ACT 319

AN ACT *to repeal* 813.12 (4) (c) 3; *to renumber* 813.12 (8); *to renumber and amend* 813.12 (2); *to amend* 46.95 (1) (a), 801.50 (5r), 813.12 (1) (a) (intro.), 813.12 (3) (a) (intro.), 813.12 (3) (a) 2, 813.12 (3) (c), 813.12 (4) (a) (intro.), 813.12 (4) (a) 3, 813.12 (4) (b), 813.12 (4) (c) 1, 2 and 4, 813.12 (6) (a), 813.12 (7) (b), 813.12 (9) (a) 3, 814.61 (1) (a) 1, 814.61 (1) (a) 2, 814.61 (1) (b), 814.70 (1), 814.70 (3) (intro.), 968.075 (1) (a) (intro.), 971.37 (1m) (a) 3 and 973.055 (1) (b); and *to create* 813.12 (3) (d), 813.12 (5) (am), 813.12 (5) (c), 813.12 (7m), 813.12 (8) (b) and 814.61 (1) (d) of the statutes, **relating to:** domestic abuse restraining orders.

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

SECTION 1. 46.95 (1) (a) of the statutes is amended to read:

46.95 (1) (a) “Domestic abuse” means physical abuse, including a violation of s. 940.225 (1), (2) or (3), or any threat of physical abuse between adult family or adult household members ~~or~~ by a minor family or minor household member against an adult family or adult household member. ~~“Domestic abuse” does not mean physical abuse, including a violation of s. 948.02 or 948.03, or any threat of physical abuse against a minor family or household member by an adult family or household member, by an adult against his or her adult former spouse or by an adult against an adult with whom the person has a child in common.~~

SECTION 5. 801.50 (5r) of the statutes is amended to read:

801.50 (5r) Venue of an action under s. 813.12 growing out of domestic abuse, shall be in the county in which the cause of action arose ~~or~~ where the petitioner or the respondent resides or where the petitioner is temporarily living.

SECTION 6m. 813.12 (1) (a) (intro.) of the statutes is amended to read:

813.12 (1) (a) (intro.) “Domestic abuse” means any of the following engaged in by an adult family member

or adult household member against another adult family member or adult household member, by an adult against his or her adult former spouse or by an adult against an adult with whom the person has a child in common:

SECTION 8. 813.12 (2) of the statutes is renumbered 813.12 (2) (a) and 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. If the judge or family court commissioner extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit with the court stating that personal service by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the petitioner may serve the respondent by publication of the petition as a class 1 notice, under ch. 985, and by mailing if the respondent’s post-office address is known or can with due diligence be ascertained. The mailing may be omitted if the post-office address cannot be ascertained with due diligence.

(b) A petition may be filed in conjunction with an action affecting the family commenced under ch. 767, but commencement of an action affecting the family or any other action is not necessary for the filing of a petition

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or the issuance of a temporary restraining order or an injunction. A judge or family court commissioner may not make findings or issue orders under s. 767.23 or 767.24 while granting relief requested only under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

SECTION 9. 813.12 (3) (a) (intro.) of the statutes is amended to read:

813.12 (3) (a) (intro.) A judge or family court commissioner shall issue a temporary restraining order ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, ~~and~~ or to avoid contacting or causing any person other than a party's attorney to contact the petitioner unless the petitioner consents in writing, or any combination of these remedies requested in the petition, if all of the following occur:

SECTION 10. 813.12 (3) (a) 2. of the statutes is amended to read:

813.12 (3) (a) 2. The judge or family court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner. In determining whether to issue a temporary restraining order, the judge or family 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 family court commissioner may grant only the remedies requested or approved by the petitioner.

SECTION 11. 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 family court commissioner shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for ~~7~~ 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 12. 813.12 (3) (d) of the statutes is created to read:

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

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

SECTION 13. 813.12 (4) (a) (intro.) of the statutes is amended to read:

813.12 (4) (a) (intro.) A judge or family court commissioner may grant an injunction ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, ~~and~~ or to avoid contacting or causing any person other than a party's attorney to contact the petitioner unless the petitioner consents to that contact in writing, or any combination of these remedies requested in the petition, if all of the following occur:

SECTION 14. 813.12 (4) (a) 3. of the statutes is amended to read:

813.12 (4) (a) 3. After hearing, the judge or family court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner. In determining whether to issue an injunction, the judge or family 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 family court commissioner may grant only the remedies requested by the petitioner.

SECTION 15. 813.12 (4) (b) of the statutes is amended to read:

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

SECTION 16. 813.12 (4) (c) 1., 2. and 4. of the statutes are amended to read:

813.12 (4) (c) 1. An injunction under this subsection is effective according to its terms, for the period of time that the petitioner requests, but for not more than 2 years. An injunction granted under this subsection is not voided by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid.

2. When an injunction ~~in effect~~ granted for less than ~~6 months~~ 2 years expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until ~~6 months~~ 2 years after the date the court first entered the injunction.

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

SECTION 17. 813.12 (4) (c) 3. of the statutes is repealed.

SECTION 18. 813.12 (5) (am) of the statutes is created to read:

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

SECTION 19. 813.12 (5) (c) of the statutes is created to read:

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

SECTION 20. 813.12 (6) (a) of the statutes is amended to read:

813.12 (6) (a) If an order is issued under this section, upon request by the petitioner the court or family 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 21. 813.12 (7) (b) of the statutes is amended to read:

813.12 (7) (b) The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4) by any circuit court in this state or a tribal order or injunction issued against the person ~~which~~ that has been filed with a any circuit court in this state in accordance with sub. (9) (a).

SECTION 22. 813.12 (7m) of the statutes is created to read:

813.12 (7m) TRANSCRIPTS. The judge or family court commissioner shall record the temporary restraining order or injunction hearing upon the request of the petitioner.

SECTION 23. 813.12 (8) of the statutes is renumbered 813.12 (8) (a).

SECTION 24. 813.12 (8) (b) of the statutes is created to read:

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

SECTION 25. 813.12 (9) (a) 3. of the statutes is amended to read:

813.12 (9) (a) 3. The tribal order or injunction includes notice to the respondent that the tribal order or injunction is being filed in the circuit court and that a violation of the tribal order or injunction may result in arrest and imposition of criminal penalties under sub. (8) (a).

SECTION 26. 814.61 (1) (a) 1. of the statutes is amended to read:

814.61 (1) (a) 1. Except as provided under subd. 2 and pars. (c) and (d), at the commencement of all civil actions and special proceedings not specified in ss. 814.62 to 814.66, \$60. Of the fees received by the clerk under this subdivision, the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

SECTION 27. 814.61 (1) (a) 2. of the statutes is amended to read:

814.61 (1) (a) 2. ~~Beginning~~ Except as provided under pars. (c) and (d), beginning with fees imposed on September 1, 1989, and ending with fees imposed on December 31, 1993, at the commencement of all civil actions and special proceedings not specified in ss. 814.62 to 814.66, \$75. Of the fees received by the clerk under this subdivision, the county treasurer shall pay \$45 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$15 of the \$45 to the appropriation under s. 20.680 (2) (j).

SECTION 28. 814.61 (1) (b) of the statutes is amended to read:

814.61 (1) (b) ~~In~~ Except as provided in pars. (c) and (d), in addition to the fee under par. (a), at the commencement of an action affecting the family as defined in s. 767.02, a fee of \$20 to be deposited by the county treasurer in a separate account to be used by the county exclusively for the purposes specified in s. 767.11.

SECTION 29. 814.61 (1) (d) of the statutes is created to read:

814.61 (1) (d) No fee charged under this subsection in any action commenced under s. 813.12 may be collected from a petitioner under s. 813.12. The fee charged under this subsection for petitions filed and granted under s. 813.12 shall be collected from the respondent under s. 813.12 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4) or a tribal order or injunction filed under s. 813.12 (9).

SECTION 30. 814.70 (1) of the statutes is amended to read:

814.70 (1) 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 defen-

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dant 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 may be collected from a petitioner under s. 813.12. The fee charged under this subsection in any action commenced under s. 813.12 shall be collected from the respondent under s. 813.12 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4) or a tribal order or injunction filed under s. 813.12 (9).

SECTION 31. 814.70 (3) (intro.) of the statutes is amended to read:

814.70 (3) TRAVEL; CIVIL PROCESS. (intro.) For travel in serving any summons, writ or other process, except criminal warrants, and except that a fee under this subsection in any action commenced under s. 813.12 may not be collected from a petitioner but shall be collected from the respondent if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12

(3) or (4) or a tribal order or injunction filed under s. 813.12 (9):

SECTION 33. 968.075 (1) (a) (intro.) of the statutes is amended to read:

968.075 (1) (a) (intro.) "Domestic abuse" means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has ~~created~~ a child in common:

SECTION 34. 971.37 (1m) (a) 3. of the statutes is amended to read:

971.37 (1m) (a) 3. A person accused of or charged with a violation of s. 813.12 (8) (a).

SECTION 35. 973.055 (1) (b) of the statutes is amended to read:

973.055 (1) (b) The court convicts a person under s. 813.12 (8) (a) or a conforming municipal ordinance.

SECTION 36. Initial applicability. This act first applies to actions commenced on the effective date of this SECTION.