

**1979 Assembly Bill 169**

Date published: February 29, 1980

**CHAPTER 111, Laws of 1979**

AN ACT to repeal 15.197 (16) and 46.95 (4); to renumber 813.025 (1) and (2); to amend 50.01 (1), 59.20 (5) (b), 59.395 (5), 165.85 (4) (b), 973.05 and 973.07; and to create 15.197 (16), 20.435 (8) (c) and (h), 46.95, 767.23 (1m), 813.025 (2), 940.19 (1m), 940.33, 969.02 (2m), 971.37 and 973.055 of the statutes, relating to

domestic abuse, creating a council on domestic abuse, creating an appropriation, granting rule-making authority and providing penalties.

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

**SECTION 1. Legislative findings.** The legislature finds that:

(1) Domestic abuse is a serious social problem which requires a comprehensive, informed and determined response by a concerned society.

(2) There is a need to promote public understanding of domestic abuse and to provide specialized training for persons who must deal directly with the problem.

(3) There is a critical need for specialized assistance to victims of domestic abuse, as well as their abusers, and the state should share in supplying this assistance.

(4) Domestic abuse poses unusual challenges to government agencies and the legal system and additional methods and resources are necessary to meet these challenges.

**SECTION 2.** 15.197 (16) of the statutes is created to read:

15.197 (16) **COUNCIL ON DOMESTIC ABUSE.** There is created in the department of health and social services a council on domestic abuse. The council shall consist of 9 members nominated by the governor and appointed, with the advice and consent of the senate, for staggered 3-year terms. Persons appointed shall have with a recognized interest in and knowledge of the problems and treatment of victims of domestic abuse. This subsection does not apply on or after July 1, 1985.

**SECTION 2m.** 15.197 (16) of the statutes, as created by chapter .... (this act), laws of 1979, is repealed.

**SECTION 3.** At the appropriate place in the schedule of section 20.005 of the statutes, insert the following amounts for the purposes indicated:

	1979-80	1980-81
<b>20.435 Health and social services, department of</b>		
(8 ) GENERAL ADMINISTRATION		
(c ) Domestic abuse grants	GPR A -0-	1,000,000

**SECTION 4.** 20.435 (8) (c) and (h) of the statutes are created to read:

20.435 (8) (c) *Domestic abuse grants.* The amounts in the schedule for the purposes of s. 46.95, except that the total expenditures under par. (h) and this paragraph shall not exceed \$1,000,000 in any fiscal year.

(h) *Domestic abuse assessment.* All moneys received from the domestic abuse assessment surcharge on court fines, as authorized under s. 973.055, for the purposes of s. 46.95.

**SECTION 5.** 46.95 of the statutes is created to read:

**46.95 Domestic abuse grants.** (1) **DEFINITIONS.** In this section:

(a) "Domestic abuse" means physical abuse or threats of physical abuse between persons living in a spousal relationship or persons who formerly lived in a spousal relationship.

(b) "Organization" means a nonprofit corporation or a public agency which provides or proposes to provide any of the following domestic abuse services:

1. Shelter facilities or private home shelter care.
2. Advocacy and counseling for victims.
3. A 24-hour telephone service.
4. Community education.

(c) "Spousal relationship" means either a marital relationship or 2 persons of the opposite sex who share one place of abode with minor children and live together in a relationship which is similar to a marital relationship, except that the 2 persons are not married to each other.

(2) DISTRIBUTION OF FUNDS. (a) The secretary shall make grants from the appropriations under s. 20.435 (8) (c) and (h) to organizations for the provision of any of the services specified in sub. (1) (b). Grants may be made to organizations which have provided domestic abuse services in the past or to organizations which propose to provide services in the future.

(b) In reviewing applications for grants, the department shall consider:

1. The need for domestic abuse services in the specific community in which the applicant provides services or proposes to provide services.
2. Coordination of the organization's services with other resources in the community and the state.
3. The need for domestic abuse services in the areas of the state served by each sub-state health planning agency as defined in s. 150.001 (13).
4. The needs of both urban and rural communities.

(c) No grant may be made to an organization which provides or will provide shelter facilities unless the department of industry, labor and human relations determines that the physical plant of the facility will not be dangerous to the health or safety of the residents when the facility is in operation. No grant may be given to an organization which provides or will provide shelter facilities or private home shelter care unless the organization ensures that the following services will be provided either by that organization or by another organization, person or agency:

1. A 24-hour telephone service.
2. Temporary housing and food.
3. Advocacy and counseling for victims.
4. Referral and follow-up services.
5. Arrangements for education of school-age children.
6. Emergency transportation to the shelter.

(d) No organization may receive more than 70% of its operating budget or \$100,000 annually, whichever is less, under this section. If the organization is not or will not be providing shelter facilities or private home shelter care, it shall not receive more than 70% of its operating budget or \$50,000 annually, whichever is less, under this section.

(e) Of the funds distributed under this section, 40% shall be for shelter facilities that are providing services on the date of application for the grant and 40% shall be for shelter facilities that will begin to provide services after the date of application for the grant or for private home shelter care, and 20% shall be for the services listed in sub. (1) (b) 2 to 5 that will not be provided in connection with shelter care programs with preference given to organizations in areas of the state where those services are not otherwise available. Any funds that are not spent under this formula at the end of a fiscal year may be reallocated by the department to one of the other categories. The expenditure of reallocated funds shall not be counted for the purpose of determining the percentages of fund distribution by category under this paragraph.

(3) REPORT BY DEPARTMENT. In addition to the biennial report of the secretary under s. 15.04 (1) (d), the department shall annually prepare and transmit to the governor and legislature a report of activities under this section, including names and locations of organizations receiving grants, the amounts of grants, services provided by grantees and the number of persons served. The report may also include recommendations for changes in the formula specified in sub. (2) (e).

(4) **ADVICE FROM COUNCIL.** The council on domestic abuse shall review applications for grants under this section and shall advise the secretary as to whether the applications should be approved or denied. The council shall consider the criteria under sub. (2) (b) when reviewing the applications. This subsection does not apply on or after July 1, 1985.

SECTION 5m. 46.95 (4) of the statutes, as created by chapter .... (this act), laws of 1979, is repealed.

SECTION 6. 50.01 (1) of the statutes is amended to read:

50.01 (1) "Community-based residential facility" means a place where 3 or more unrelated adults reside in which care, treatment or services above the level of room and board but not including nursing care are provided to persons residing in the facility as a primary function of the facility, except that the department may approve an application from a nursing home which serves fewer than 20 residents and which otherwise meets the definition of this subsection to be licensed and regulated as a community-based residential facility. The reception and care or treatment of a person in a convent or facility owned or operated exclusively by and for members of a religious order shall not constitute the premises to be a "community-based residential facility". "Community-based residential facility" does not include a facility or private home that provides care, treatment and services only for victims of domestic abuse, as defined in s. 46.95 (1) (a), and their children.

SECTION 6g. 59.20 (5) (b) of the statutes, as affected by chapter 34, laws of 1979, is amended to read:

59.20 (5) (b) For all court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 165.87 for the penalty assessment surcharge, the amounts required by s. 973.055 for the domestic abuse assessment surcharge, the amounts required by s. 29.997 for the natural resources assessment surcharge and the amount required by s. 29.998 for natural resources restitution payments, transmit to the state treasurer a statement of all moneys required by law to be paid on the actions so entered during the preceding month on or before the first day of the next succeeding month, certified by personal affidavit endorsed upon or attached thereto, and at the same time pay to the state treasurer the amount thereof.

SECTION 6r. 59.395 (5) of the statutes, as affected by chapter 34, laws of 1979, is amended to read:

59.395 (5) Pay monthly to the county treasurer for the use of the state the state tax required to be paid on each civil action, cognovit judgment and special proceeding filed during the preceding month and pay monthly to the county treasurer for the use of the state the amount for court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 165.87 (2) (b) for the penalty assessment surcharge, the amounts required by s. 973.055 for the domestic abuse assessment surcharge, the amounts required under s. 29.997 (1) (d) for the natural resources assessment surcharge and the amounts required under s. 29.998 (1) (d) for the natural resources restitution payments. The payments shall be made by the 15th day of the month following receipt thereof.

SECTION 7. 165.85 (4) (b) of the statutes is amended to read:

165.85 (4) (b) No person ~~shall~~ may be appointed as a law enforcement officer, except on a temporary or probationary basis, unless ~~such~~ the person has satisfactorily completed a preparatory program of law enforcement training approved by the board and has been certified by the board as being qualified to be a law enforcement officer. The program shall include at least 240 hours of training. The specific curriculum of the 240-hour preparatory program shall be promulgated by the board as a rule under ch. 227. The rule shall ensure that there is an adequate amount of training to enable the person to deal effectively with domestic abuse incidents. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than

one year for an officer lacking the training qualifications required by the board. The total period during which a person may serve as a law enforcement officer on a temporary or probationary basis without completing a preparatory program of law enforcement training approved by the board shall not exceed 2 years, except that the board shall permit part-time law enforcement officers to serve on a temporary or probationary basis without completing a program of law enforcement training approved by the board to a period not exceeding 6 years. For purposes of this section, a part-time law enforcement officer is a law enforcement officer who routinely works not more than one-half the normal annual work hours of a full-time employe of the employing agency or unit of government. Law enforcement training programs including municipal, county and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

SECTION 8. 767.23 (1m) of the statutes is created to read:

767.23 (1m) If a family court commissioner believes that a temporary restraining order or injunction under s. 813.025 (2) is appropriate in an action, the court commissioner shall inform the parties of their right to seek the order or injunction and the procedure to follow. On a motion for such a restraining order or injunction, the family court commissioner shall submit the motion to the court within 5 working days.

SECTION 9. 813.025 (1) and (2) of the statutes are renumbered 813.025 (1) (a) and (b).

SECTION 10. 813.025 (2) of the statutes is created to read:

813.025 (2) (a) A judge may issue a temporary restraining order requiring a person to avoid premises occupied by someone with whom the person is living or has lived in a spousal relationship, as defined in s. 46.95 (1) (c), or not to contact that person or both. Such an order may only be issued if the judge has reasonable grounds to believe that a violation of s. 940.19 has occurred or, based on the prior conduct of the parties, may occur. The order may only be issued to the person whom the judge believes has violated or may violate s. 940.19. A petition for the order may be filed by the alleged or potential victim of the violation of s. 940.19. Violation of an order issued under this subsection is punishable under s. 940.33.

(b) Notice need not be given to the defendants prior to the issuance of a temporary restraining order under this subsection. The court may grant the temporary restraining order at any time before the hearing and determination of the application for an interlocutory injunction. The temporary restraining order shall be effective only for 5 days unless extended after notice and hearing thereon, or upon written consent of the parties or their attorneys. The temporary restraining order shall not remain in force beyond the time of the determination of the application for an interlocutory injunction. The order or injunction under this subsection may be issued only by a judge and not by a court commissioner. An injunction under this subsection shall not be effective for more than 2 years.

SECTION 11. 940.19 (1m) of the statutes is created to read:

940.19 (1m) Whoever causes great bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class E felony.

SECTION 12. 940.33 of the statutes is created to read:

**940.33 Violation of certain restraining orders or injunctions.** Whoever knowingly violates an order or injunction issued under s. 813.025 (2) is guilty of a Class C misdemeanor.

SECTION 14. 969.02 (2m) of the statutes is created to read:

969.02 (2m) In addition to or in lieu of the alternatives under subs. (1) and (2), the judge may:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him or her.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

SECTION 15. 971.37 of the statutes is created to read:

**971.37 Deferred prosecution programs.** (1) The district attorney may enter into a deferred prosecution agreement under this section with a person accused of, or charged with, a violation of s. 940.19 (1) or (1m) if the alleged victim lives with or has lived with the person in a spousal relationship, as defined in s. 46.95 (1) (c). The agreement shall provide that the prosecution will be suspended for a specified period, not to exceed one year from the date of the agreement, if the person complies with conditions specified in the agreement. The agreement shall be in writing, signed by the district attorney or his or her designee and the person, and shall provide that the person waives his or her right to a speedy trial and that the agreement will toll any applicable civil or criminal statute of limitations during the period of the agreement, and, furthermore, that the person shall file with the district attorney a monthly written report certifying his or her compliance with the conditions specified in the agreement.

(2) The written agreement shall be terminated and the prosecution may resume upon written notice by either the person or the district attorney to the other prior to completion of the period of the agreement.

(3) Upon completion of the period of the agreement, if the agreement has not been terminated under sub. (2), the court shall dismiss, with prejudice, any charge or charges against the person in connection with the crime specified in sub. (1), or if no such charges have been filed, none may be filed.

(4) Consent to a deferred prosecution under this section is not an admission of guilt and the consent may not be admitted in evidence in a trial for the crime specified in sub. (1), except if relevant to questions concerning the statute of limitations or lack of speedy trial. No statement relating to the crime, made by the person in connection with any discussions concerning deferred prosecution or to any person involved in a program in which the person must participate as a condition of the agreement, is admissible in a trial for the crime specified in sub. (1).

(5) This section does not preclude use of deferred prosecution agreements for other crimes.

SECTION 15g. 973.05 of the statutes, as affected by chapter 34, laws of 1979, is amended to read:

**973.05 Fines and penalty assessments.** (1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment of the fine, of the penalty assessment imposed by s. 165.87, any applicable domestic abuse assessment imposed by s. 973.055, any applicable natural resources assessment imposed by s. 29.997 and any applicable natural resources restitution payment imposed by s. 29.998 to be made within a period not to exceed 60 days. If no such permission is embodied in the sentence, the fine, the penalty assessment, any applicable domestic abuse assessment, any applicable natural resources assessment and any applicable natural resources restitution payment shall be payable immediately.

(2) When a defendant is sentenced to pay a fine and is also placed on probation, the court may make the payment of the fine, the penalty assessment, any applicable domestic abuse assessment, any applicable natural resources assessment and any applicable natural resources restitution payments a condition of probation. When the payments are made a condition of probation by the court, payments thereon shall be applied first to payment of the penalty assessment until paid in full, shall then be applied to payment of the domestic abuse assessment until paid in full, shall then be applied to payment of the natural resources assessment if applicable until paid in full, shall then be applied to payment of the natural resources restitution payment until paid in full and shall then be applied to payment of the fine.

SECTION 15m. 973.055 of the statutes is created to read:

**973.055 Domestic abuse assessments.** (1) On or after the effective date of this act (1979), if a court imposes a fine, the court shall determine whether the criminal conduct involved domestic abuse, as defined in s. 46.95 (1) (b). If the court makes the finding, it shall impose a domestic abuse assessment, in addition to the fine and penalty assessment, in an amount of 10% of the fine imposed. If multiple offenses are involved, the domestic abuse assessment shall be based on the total fine for all offenses which involved domestic abuse. If a fine is suspended, the domestic abuse assessment shall be reduced in proportion to the suspension.

(2) After the court determines the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.395 (5). The county treasurer shall then make payment to the state treasurer as provided in s. 59.20 (5) (b).

(3) All moneys collected from domestic abuse assessments shall be deposited by the state treasurer in s. 20.435 (8) (h) and utilized in accordance with s. 46.95.

SECTION 15r. 973.07 of the statutes, as affected by chapter 34, laws of 1979, is amended to read:

**973.07 Failure to pay fine or costs.** If the fine, costs, penalty assessment, applicable domestic abuse assessment payment, applicable natural resources assessment or applicable natural resources restitution payment are not paid as required by the sentence, the defendant may be committed to the county jail until the fine, costs, penalty assessment, applicable domestic abuse assessment payment, applicable natural resources assessment or applicable natural resources restitution payment are paid or discharged for a period fixed by the court not to exceed 6 months.

SECTION 16. **Council on domestic abuse; initial appointments.** The terms of the initial members of the council on domestic abuse shall expire, as designated at the time of appointment, as follows: 3 terms on July 1, 1980, 3 terms on July 1, 1981, and 3 terms on July 1, 1982.

SECTION 17. **Program responsibility.** (1) In the list of program responsibilities specified for the department of industry, labor and human relations in section 15.221 (intro.) of the statutes, reference to section "46.95 (2) (c)" is inserted.

(2) In the list of program responsibilities specified for the department of justice in section 15.251 (intro.) of the statutes, reference to section "813.025" is deleted and reference to section "813.025 (1) (b)" is inserted.

SECTION 18. **Effective date.** (1) Except as provided in sub. (2), this act takes effect on the first day of the 3rd month commencing after its publication.

(2) The repeal of sections 15.197 (16) and 46.95 (4) of the statutes by SECTIONS 2m and 5m of this act takes effect July 1, 1985.

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