

**1983 Assembly Bill 698**

Date of enactment: **April 18, 1984**  
Date of publication: **April 23, 1984**

**1983 Wisconsin Act 204**

AN ACT *to repeal 46.95 (3), 813.025 (2) and 940.33; to renumber 46.95 (1) (b) and 813.025 (1); to renumber and amend 46.95 (2) (d) and 46.95 (4); to amend 15.197 (16), 46.95 (1) (a), 46.95 (2) (a), 46.95 (2) (e), 813.06 and 971.37 (1m) (a); to repeal and*

recreate 46.95 (1) (c); and to create 46.95 (1) (b), 46.95 (2) (c) 7, 46.95 (2) (d) 2, 46.95 (3) (b) and (c), 801.50 (11m) and 813.12 of the statutes, relating to domestic abuse grants, temporary restraining orders and injunctions against domestic abuse and providing a penalty.

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

SECTION 1. 15.197 (16) of the statutes is amended 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~~ 13 members ~~nominated by the governor and appointed, with the advice and consent of the senate, appointed~~ for staggered 3-year terms. Of those 13 members, 9 shall be nominated by the governor and appointed with the advice and consent of the senate, and one each shall be designated by the speaker of the assembly, the senate majority leader and the minority leader in each house of the legislature and appointed by the governor. Persons appointed shall have 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 2. 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 threats any threat of physical abuse between persons living in a spousal relationship or persons who formerly lived in a spousal relationship adult family or household members or by a minor family or household member against an adult family or household member. "Domestic abuse" does not mean physical abuse, including a violation of s. 940.225 (1), (2) or (3), or any threat of physical abuse against a minor family or household member by an adult family or household member.

SECTION 3. 46.95 (1) (b) of the statutes is renumbered 46.95 (1) (d).

SECTION 4. 46.95 (1) (b) of the statutes is created to read:

46.95 (1) (b) "Family member" means a spouse, a parent, a child or a person related by consanguinity to another person.

SECTION 5. 46.95 (1) (c) of the statutes is repealed and recreated to read:

46.95 (1) (c) "Household member" means a person currently or formerly residing in a place of abode with another person.

SECTION 6. 46.95 (2) (a) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

46.95 (2) (a) The secretary shall make grants from the appropriations under s. 20.435 (4) (cb) and (hh) to organizations for the provision of any of the services specified in sub. (1) ~~(b) (d)~~. Grants may be made to organizations which have provided those domestic abuse services in the past or to organizations which propose to provide those services in the future. No grant may be made to fund services for child abuse or abuse of elderly persons.

SECTION 7. 46.95 (2) (c) 7 of the statutes is created to read:

46.95 (2) (c) 7. Community education.

SECTION 8. 46.95 (2) (d) of the statutes is renumbered 46.95 (2) (d) 1 and amended to read:

46.95 (2) (d) 1. 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.~~

SECTION 9. 46.95 (2) (d) 2 of the statutes is created to read:

46.95 (2) (d) 2. Not more than 33 1/3% of the 30% of an organization's operating budget not funded by a grant under subd. 1 may consist of the value of in-kind contributions. The department shall establish guidelines regarding which contributions qualify as in-kind contributions.

SECTION 10. 46.95 (2) (e) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

46.95 (2) (e) Of the funds distributed under this section for fiscal year 1983-84, not less than ~~75%~~ 90% shall be used to continue funding domestic abuse services that currently receive state funds under this section ~~and not more than 25% shall be for other domestic abuse services.~~ Of the funds distributed under this section for fiscal year 1984-85, not less than ~~90%~~ 95% shall be used to continue funding domestic abuse services that received state funds under this section during the previous fiscal year ~~and not more than 10% shall be for other domestic abuse services.~~ For new domestic abuse services, the department shall give preference to services in areas of the state where these services are not otherwise available. Any funds that are not spent under one category of this formula may be reallocated by the department to the other category.

SECTION 11. 46.95 (3) of the statutes is repealed.

SECTION 12. 46.95 (3) (b) and (c) of the statutes are created to read:

46.95 (3) (b) Advise the secretary and the legislature on matters of domestic abuse policy.

(c) Develop with the judicial conference and provide without cost simplified forms for filing petitions for domestic abuse restraining orders and injunctions under s. 813.12.

SECTION 13. 46.95 (4) of the statutes is renumbered 46.95 (3) and amended to read:

46.95 (3) (title) COUNCIL ON DOMESTIC ABUSE. The council on domestic abuse shall review:

(a) 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 15. 801.50 (11m) of the statutes is created to read:

801.50 (11m) DOMESTIC ABUSE ACTION. Of an action under s. 813.12 growing out of domestic abuse, the county in which the cause of action arose or where the petitioner or the respondent resides.

SECTION 16. 813.025 (1) of the statutes is renumbered 813.025.

SECTION 17. 813.025 (2) of the statutes is repealed.

SECTION 18. 813.06 of the statutes is amended to read:

**813.06 Security for damages.** In proceedings under s. 767.23 the court or judge may, and in all other proceedings except proceedings under s. 813.12 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 ~~shall finally decide~~ 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 19. 813.12 of the statutes is created to read:

**813.12 Domestic abuse restraining orders and injunctions.** (1) DEFINITIONS. In this section:

(a) "Domestic abuse" means any of the following engaged in by an adult:

1. Intentional infliction of physical pain, physical injury or illness.

2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).
4. A threat to engage in the conduct under subd. 1, 2, or 3.

(b) "Family member" means a spouse, a parent, a child or a person related by consanguinity to another person.

(c) "Household member" means a person currently or formerly residing in a place of abode with another person.

(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 serving a petition described under sub. (5) (a) upon the respondent and promptly filing a copy of it. 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 or the issuance of a temporary restraining order or an injunction. 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.

(2m) TWO-PART PROCEDURE. 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.

(3) TEMPORARY RESTRAINING ORDER. (a) A judge or family court commissioner shall issue a temporary restraining order ordering the respondent to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, and to avoid contacting or causing any person other than a party's attorney to contact the petitioner unless the petitioner consents in writing, if all of the following occur:

1. The petitioner submits to the judge or family court commissioner a petition alleging the elements set forth under sub. (5) (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.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or family court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4). 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 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.

(4) INJUNCTION. (a) A judge or family court commissioner may grant an injunction ordering the respondent to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, and 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, if all of the following occur:

1. The petitioner has filed a petition alleging the elements set forth under sub. (5) (a).
2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.
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.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or family court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) The injunction may be entered only against the respondent named in the petition.

(c) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years.

2. When an injunction in effect for less than 6 months 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 after the date the court first entered the injunction.

3. If the petitioner states that an extension is necessary to protect him or her, the court may extend the injunction for up to 2 years after the date the court first entered the injunction.

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.

(5) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and that the petitioner is the alleged victim.
2. The name of the respondent and that the respondent is an adult.
3. That the respondent engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(b) The clerk of circuit court shall provide the simplified forms provided under s. 46.95 (3) (c) to help a person file a petition.

(6) ENFORCEMENT ASSISTANCE. (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.

(b) Within 24 hours after request by the petitioner, the clerk of the circuit court shall send a copy of any order issued or provide notice of any order extended under this section to the sheriff or to any other local law enforcement agency which is the central repository for orders and which has jurisdiction over the petitioner's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order issued under this section. The information need not be maintained after the order is no longer in effect.

(7) **ARREST.** A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) A petitioner under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4).

(8) **PENALTY.** Whoever knowingly violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned not more than 9 months or both.

**SECTION 20.** 940.33 of the statutes is repealed.

**SECTION 21.** 971.37 (1m) (a) of the statutes is amended to read:

971.37 (1m) (a) The district attorney may enter into a deferred prosecution agreement under this section with a person accused of, or charged with, child sexual abuse or a violation of s. 813.12 (8) or 940.19 (1) or (1m) if the ~~alleged victim lives with or has lived with the person in a spousal relationship,~~ violation constitutes domestic abuse as defined in s. 46.95 (1) (e) (a).

**SECTION 21m. Nonstatutory provisions; health and social services.** The 4 terms of the council on domestic abuse created by the treatment of section 15.197 (16) of the statutes by this act shall expire, as designated at the time of appointment, as follows:

- (1) Two terms on July 1, 1985.
- (2) One term on July 1, 1986.
- (3) One term on July 1, 1987.

**SECTION 22. Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
15.251 (intro.)	813.025 (1)(b)	813.025 (2)
767.23 (1m)	813.025 (2)	813.12

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