



## 1995 SENATE BILL 475

January 3, 1996 – Introduced by Senator WINEKE, cosponsored by Representatives BOYLE, NOTESTEIN, PLACHE, TURNER, COGGS, KRUSICK and BALDWIN. Referred to Committee on Judiciary.

1     **AN ACT** *to renumber* 48.981 (6); *to amend* 48.981 (2), 48.981 (3) (c) 1., 48.981  
2           (3) (c) 2., 48.981 (7) (a) (intro.), 813.122 (1) (d), 813.122 (2), 813.122 (3) (b) 1.,  
3           813.122 (3) (bm), 813.122 (3) (c), 813.122 (4) (a) (intro.), 813.122 (4) (a) 2.,  
4           813.122 (5) (a) (intro.), 813.122 (5) (a) 3., 813.122 (5) (d) 1., 813.122 (5) (d) 2.,  
5           813.122 (5) (d) 3., 813.122 (6) (a) 1., 813.122 (6) (a) 3. and 813.122 (7); and *to*  
6           **create** 48.981 (1) (bm), 48.981 (3) (c) 4m., 48.981 (6) (b), 48.981 (7) (cd), 48.981  
7           (7) (cg), 813.122 (1) (ar) and 813.122 (1) (g) of the statutes; **relating to:** the re-  
8           porting and investigation of child abuse or neglect that occurs out of a child's  
9           home, restraining and enjoining child abuse that takes place in a care or ser-  
10          vices setting and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, certain persons, such as physicians, teachers, social workers and child care workers, who have reasonable cause to believe that a child seen in the course of professional duties has been abused or neglected, or that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect will occur, must report that suspected or threatened abuse or neglect to a local law enforcement agency or to the county department of human services or social services (county department). This bill requires an intake worker of the court assigned to exercise jurisdiction under the children's code (juvenile court) and a person who provides care and supervision or other services for a child in a child welfare agency, foster home, treatment foster home, group home, shelter care facility or day care setting, as defined in the bill, to report any suspected or threatened abuse

or neglect of a child seen in the course of professional duties. The bill defines “day care setting” as a location, other than a child’s dwelling, in which a day care provider, including a person who cares for less than 4 children and therefore is not required to be licensed, provides care and supervision for children under 7 years of age for less than 24 hours a day.

Under current law, a county department that receives a report of suspected or threatened child abuse or neglect by a caregiver must investigate that report by observing or interviewing the child, or both, and by visiting the child’s dwelling, if possible, and interviewing the child’s parent, guardian or legal custodian. Currently, if the person making the investigation determines that any child in the home requires immediate protection, the county department must take the child into custody and deliver the child to the juvenile court intake worker. This bill requires a county department that is investigating a report of suspected or threatened child abuse or neglect in a day care setting to visit the day care setting and interview any person who had access to the child in the day care setting, if possible. The bill also requires the county department to do all of the following if the report is substantiated:

1. Take into custody and deliver to the juvenile court intake worker any child in the day care setting who requires immediate protection (the juvenile court intake worker must then notify the child’s parent, guardian or legal custodian of the report and of the child being taken into custody).

2. Require the person responsible for the day care setting to ameliorate immediately and permanently the circumstances or conditions that placed the child at risk of abuse or neglect.

3. Require the person responsible for the day care setting to provide the county department with the name of every child who currently is receiving care in the day care center, or who was receiving care in the day care center when the report was made, and who may have had direct contact with the suspected perpetrator of the abuse or neglect and to provide the county department with the name and address of the parent, guardian or legal custodian of each of those children.

4. Ensure that the parents, guardians or legal custodians specified in item 3, above, are informed as soon as possible of all of the following:

- a. That the county department received and investigated a report of suspected or threatened abuse or neglect in the day care setting and that the report was substantiated.

- b. The nature or type of abuse or neglect that occurred and when it occurred.

- c. Whether the suspected perpetrator of the abuse or neglect is an adult or a child.

- d. Whether the circumstances or conditions that caused or contributed to the abuse or neglect have been ameliorated.

5. Advise the parent, guardian or legal custodian of every child who is removed from the day care setting whether the circumstances or conditions that placed their child at risk of abuse or neglect have been ameliorated and provide those persons with the name of a person at the county department whom they may contact with any concerns relating to their child.

Under current law, on the petition of a child who is the victim or alleged victim of child abuse (child victim) or of the parent, stepparent or legal guardian of a child victim, a court must issue a temporary restraining order and may issue an injunction ordering a person to avoid the residence of the child victim and to avoid contact with the child victim if the court finds reasonable grounds to believe that the person has engaged or, based on prior conduct, may engage in abuse of the child victim. Currently, a child abuse injunction may remain in effect for not more than 2 years or until the child victim attains 18 years of age, whichever occurs first, unless the injunction is extended for an additional 2 years or until the child victim attains 18 years of age, whichever occurs first. This bill permits the legal custodian of a child victim to petition for a child abuse restraining order and injunction.

The bill also creates special provisions relating to restraining and enjoining child abuse in a care or services setting, which is defined in the bill as a place, other than a child's dwelling, in which a child receives any type of care or services. Under the bill, on the petition of a child victim, a potential child victim (defined in the bill as a child who is receiving care or services in the same care or services setting as a child victim), a parent, stepparent, legal guardian or legal custodian of a child victim or a potential child victim, the district attorney or the county department, a court must issue a temporary restraining order and may issue an injunction ordering a person to stop providing care or services for children, to avoid the residence of the child victim, a potential child victim or any other child and to avoid contact with the child victim, a potential child victim or any other child if the court finds reasonable grounds to believe that the person has engaged in abuse of the child victim or, based on prior conduct, may engage in abuse of the child victim, a potential child victim or any other child. Under the bill, an injunction restraining child abuse in a care or services setting may remain in effect and may be extended for such time as the court considers appropriate, based on the evidence.

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

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

- 1           **SECTION 1.** 48.981 (1) (bm) of the statutes is created to read:
- 2           48.981 (1) (bm) "Day care setting" means a place, other than a child's dwelling,
- 3           in which a day care provider that holds a license under s. 48.65 or a probationary li-
- 4           cense under s. 48.69, that is certified under s. 48.651 or that is established or con-
- 5           tracted for under s. 120.13 (14) or any other person, including a person who provides
- 6           care and supervision for less than 4 children, provides care and supervision for chil-
- 7           dren under 7 years of age for less than 24 hours a day.

1           **SECTION 2.** 48.981 (2) of the statutes, as affected by 1993 Wisconsin Act 443, is  
2 amended to read:

3           48.981 (2) PERSONS REQUIRED TO REPORT. A physician, coroner, medical examin-  
4 er, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental  
5 health professional, social worker, marriage and family therapist, professional coun-  
6 selor, public assistance worker, school teacher, administrator or counselor, mediator  
7 under s. 767.11, ~~child care worker in a day care center~~ intake worker, person who pro-  
8 vides care and supervision or other services for a child in a child welfare agency, fos-  
9 ter home, treatment foster home, group home, shelter care facility, day care setting  
10 or child caring institution, ~~day care provider~~, alcohol or other drug abuse counselor,  
11 member of the treatment staff employed by or working under contract with a county  
12 department under s. 46.23, 51.42 or 51.437, physical therapist, occupational thera-  
13 pist, dietitian, speech-language pathologist, audiologist, emergency medical techni-  
14 cian or police or law enforcement officer having reasonable cause to suspect that a  
15 child seen in the course of professional duties has been abused or neglected or having  
16 reason to believe that a child seen in the course of professional duties has been  
17 threatened with abuse or neglect and that abuse or neglect of the child will occur  
18 shall, except as provided under sub. (2m), report as provided in sub. (3). Any other  
19 person, including an attorney, having reason to suspect that a child has been abused  
20 or neglected or reason to believe that a child has been threatened with abuse or ne-  
21 glect and that abuse or neglect of the child will occur may make such a report. No  
22 person making a report under this subsection may be discharged from employment  
23 for so doing.

24           **SECTION 3.** 48.981 (3) (c) 1. of the statutes is amended to read:

1           48.981 (3) (c) 1. Within 24 hours after receiving a report under par. (a), the  
2 county department or licensed child welfare agency under contract with the county  
3 department shall, in accordance with the authority granted to the county depart-  
4 ment under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child  
5 is in need of protection or services. The investigation shall be conducted in accor-  
6 dance with standards established by the department for conducting child abuse and  
7 neglect investigations. If the investigation is of a report of abuse or neglect or threat-  
8 ened abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues  
9 to have access to the child or a caregiver specified in sub. (1) (am) 1. to 4., or of a report  
10 that does not disclose who is suspected of the abuse or neglect and in which the inves-  
11 tigation does not disclose who abused or neglected the child, the investigation shall  
12 also include observation of or an interview with the child, or both, and, if possible,  
13 an interview with the child's parents, guardian or legal custodian. If the investiga-  
14 tion is of a report of ~~abuse or neglect~~ suspected or threatened abuse or neglect by a  
15 caregiver who continues to reside in the same dwelling as the child, the investigation  
16 shall also include, if possible, a visit to that dwelling. If the investigation is of a report  
17 of suspected or threatened abuse or neglect in a day care setting, the investigation  
18 shall also include, if possible, a visit to the day care setting and an interview with any  
19 person who had access to the child in the day care setting. At the initial visit to the  
20 child's dwelling or day care setting, the person making the investigation shall identi-  
21 fy himself or herself and the county department or licensed child welfare agency in-  
22 volved to the child's parents, guardian or legal custodian or to the person responsible  
23 for the child's care in the day care setting. The county department or licensed child  
24 welfare agency under contract with the county department may contact, observe or  
25 interview the child at any location without permission from the child's parent, guard-

1     ian or legal custodian if necessary to determine if the child is in need of protection  
2     or services, except that the person making the investigation may enter a child's  
3     dwelling or a day care setting only with permission from the child's parent, guardian  
4     or legal custodian or the person responsible for the child's care in the day care setting  
5     or after obtaining a court order to do so.

6           **SECTION 4.** 48.981 (3) (c) 2. of the statutes is amended to read:

7           48.981 (3) (c) 2. a. If the person making the investigation is an employe of the  
8     county department and he or she determines that it is consistent with the child's best  
9     interest in terms of physical safety and physical health to remove the child from his  
10    or her ~~home~~ dwelling or day care setting for immediate protection, he or she shall  
11    take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to  
12    the intake worker under s. 48.20.

13          b. If the person making the investigation is an employe of a licensed child wel-  
14    fare agency which is under contract with the county department and he or she deter-  
15    mines that any child in the ~~home~~ dwelling or day care setting requires immediate  
16    protection, he or she shall notify the county department of the circumstances and to-  
17    gether with an employe of the county department shall take the child into custody  
18    under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s.  
19    48.20.

20           **SECTION 5.** 48.981 (3) (c) 4m. of the statutes is created to read:

21           48.981 (3) (c) 4m. If a report under par. (a) of suspected or threatened abuse  
22    or neglect in a day care setting is substantiated under subd. 4., the county depart-  
23    ment shall do all of the following:

24          a. Determine whether any child who is receiving care and supervision in the  
25    day care setting is at risk of abuse or neglect and, if a child in the day care setting

1 is at risk of abuse or neglect and requires immediate protection, remove the child  
2 from the day care setting under subd. 2. and require the person responsible for the  
3 day care setting to ameliorate immediately and permanently the circumstances or  
4 conditions that placed the child at risk of abuse or neglect.

5 b. Require the person responsible for the day care setting to provide to the  
6 county department the name of every child who is currently, or was at the time the  
7 report under par. (a) was made, receiving care and supervision in the day care setting  
8 and who may have had direct contact while in the day care setting with the person  
9 who is suspected of the abuse or neglect or who has been determined to have abused  
10 or neglected a child.

11 c. Require the person responsible for the day care setting to provide to the  
12 county department the name and address of the parent, guardian or legal custodian  
13 of every child identified under subd. 4m. b.

14 d. Ensure that the information specified in sub. (7) (cg) is provided to the par-  
15 ents, guardians or legal custodians specified in subd. 4m. c. as soon as possible.

16 e. Advise the parent, guardian or legal custodian of any child who is removed  
17 from the day care setting under subd. 2. whether the person responsible for the day  
18 care setting has ameliorated the circumstances or conditions that placed the child  
19 at risk of abuse or neglect and provide the parent, guardian or legal custodian with  
20 the name of a person at the county department whom the parent, guardian or legal  
21 custodian may contact if the parent, guardian or legal custodian has any concerns  
22 relating to his or her child.

23 **SECTION 6.** 48.981 (6) of the statutes is renumbered 48.981 (6) (a).

24 **SECTION 7.** 48.981 (6) (b) of the statutes is created to read:

1           48.981 (6) (b) Any person responsible for a day care setting who fails to provide  
2 the information required under sub. (3) (c) 4m. b. may be required to forfeit not more  
3 than \$1,000.

4           **SECTION 8.** 48.981 (7) (a) (intro.) of the statutes is amended to read:

5           48.981 (7) (a) (intro.) All reports made under this section, notices provided un-  
6 der sub. (3) (bm) and records maintained by the department, county departments or  
7 licensed child welfare agencies under contract with the county departments and oth-  
8 er persons, officials and institutions shall be confidential. Reports Subject to any  
9 conditions specified in subs. 1. to 14., reports and records may shall be disclosed  
10 only to the following persons on request:

11           **SECTION 9.** 48.981 (7) (cd) of the statutes is created to read:

12           48.981 (7) (cd) Notwithstanding par. (a), if following a report under sub. (3) (a)  
13 of suspected or threatened abuse or neglect in a day care setting a child who is receiv-  
14 ing care and supervision in the day care setting is taken into custody under s. 48.08  
15 (2) or 48.19 (1) (c) or (d) 5. and delivered to the intake worker under s. 48.20, the in-  
16 take worker shall inform the parent, guardian or legal custodian of the child that a  
17 report under sub. (3) (a) was received and that the child was taken into custody under  
18 s. 48.08 (2) or 48.19 (1) (c) or (d) 5., whichever is applicable. An intake worker may  
19 disclose no other information under this paragraph relating to a report except as per-  
20 mitted under this paragraph.

21           **SECTION 10.** 48.981 (7) (cg) of the statutes is created to read:

22           48.981 (7) (cg) Notwithstanding par. (a), if a report under sub. (3) (a) of sus-  
23 pected or threatened abuse or neglect in a day care setting is substantiated under  
24 sub. (3) (c) 4., the county department shall ensure that the parent, guardian or legal

1       custodian of every child identified under sub. (3) (c) 4m. b. is informed as soon as pos-  
2       sible of all of the following:

3             1. That the county department received and investigated a report of suspected  
4       or threatened abuse or neglect in the day care setting and that, based on a preponder-  
5       ance of evidence produced by the investigation, the report was substantiated.

6             2. The nature or type of abuse or neglect that occurred at the day care setting  
7       and when that abuse or neglect occurred.

8             3. Whether the person who is suspected of the abuse or neglect is an adult or  
9       a child.

10            4. Whether the circumstances or conditions that caused or contributed to the  
11       abuse or neglect have been ameliorated.

12            **SECTION 11.** 813.122 (1) (ar) of the statutes is created to read:

13            813.122 (1) (ar) "Care or services setting" means a place, other than a child's  
14       dwelling, in which a child receives any type of care or services.

15            **SECTION 12.** 813.122 (1) (d) of the statutes is amended to read:

16            813.122 (1) (d) "Child victim advocate" means any person who counsels child  
17       victims or potential victims, assists child victims or potential victims in coping with  
18       the impact of the crime or otherwise acts in support of child victims or potential vic-  
19       tims.

20            **SECTION 13.** 813.122 (1) (g) of the statutes is created to read:

21            813.122 (1) (g) "Potential child victim" means a child who is receiving care or  
22       services in the same care or services setting as a child who is the victim or the alleged  
23       victim of abuse in that care or services setting.

24            **SECTION 14.** 813.122 (2) of the statutes is amended to read:

1           813.122 (2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this sec-  
2 tion may be commenced by complaint and summons. An action under this section  
3 may be commenced only by a petition described under sub. (6) (a). The action com-  
4 mences with service of the petition upon the respondent if a copy of the petition is  
5 filed before service or promptly after service. The For abuse that is alleged to have  
6 occurred in a place other than a care or services setting, the child victim or a parent,  
7 stepparent or, legal guardian or legal custodian, as defined in s. 48.02 (11), of the  
8 child victim may be a petitioner under this section. For abuse that is alleged to have  
9 occurred in a care or services setting, the child victim, a potential child victim, the  
10 parent, stepparent, legal guardian or legal custodian, as defined in s. 48.02 (11), of  
11 the child victim or a potential child victim, the district attorney, or the county depart-  
12 ment under s. 46.215, 46.22 or 46.23 may be a petitioner under this section. Section  
13 813.06 does not apply to an action under this section. The respondent may respond  
14 to the petition either in writing before or at the hearing on the issuance of the injunc-  
15 tion or orally at that hearing.

16           **SECTION 15.** 813.122 (3) (b) 1. of the statutes is amended to read:

17           813.122 (3) (b) 1. That a guardian ad litem be appointed for the child victim or  
18 a potential child victim in accordance with s. 48.235.

19           **SECTION 16.** 813.122 (3) (bm) of the statutes is amended to read:

20           813.122 (3) (bm) The court or court commissioner shall appoint a guardian ad  
21 litem if the respondent is a parent of the child victim or a potential child victim.

22           **SECTION 17.** 813.122 (3) (c) of the statutes is amended to read:

23           813.122 (3) (c) An action under this section may pertain to more than one child  
24 victim or potential child victim.

25           **SECTION 18.** 813.122 (4) (a) (intro.) of the statutes is amended to read:

1           813.122 (4) (a) (intro.) A judge or court commissioner shall issue a temporary  
2           restraining order ordering the respondent to avoid the child victim's residence or any  
3           premises temporarily occupied by the child victim or both, and to avoid contacting  
4           or causing any person other than a party's attorney to contact the child victim unless  
5           the petitioner consents in writing and the judge or court commissioner agrees that  
6           the contact is in the best interests of the child victim; and, if the petition alleges that  
7           the abuse occurred in a care or services setting, to stop providing care or services for  
8           children, to avoid the residence of or any premises temporarily occupied by the child  
9           victim, a potential child victim or any other child and to avoid contacting or causing  
10          any person other than a party's attorney to contact the child victim, a potential child  
11          victim or any other child unless the petitioner consents in writing and the judge or  
12          court commissioner agrees that the contact is in the best interests of the child victim,  
13          the potential child victim or the other child; if all of the following occur:

14           **SECTION 19.** 813.122 (4) (a) 2. of the statutes is amended to read:

15           813.122 (4) (a) 2. The judge or court commissioner finds reasonable grounds  
16           to believe that the respondent has engaged in, or based on prior conduct of the child  
17           victim and the respondent may engage in, abuse of the child victim or, if the alleged  
18           abuse occurred in a care or services setting, the judge or court commissioner finds  
19           reasonable grounds to believe that the respondent has engaged in abuse of the child  
20           victim or, based on prior conduct of the child victim and the respondent, may engage  
21           in abuse of the child victim, a potential child victim or any other child.

22           **SECTION 20.** 813.122 (5) (a) (intro.) of the statutes is amended to read:

23           813.122 (5) (a) (intro.) A judge may grant an injunction ordering the respon-  
24           dent to avoid the child victim's residence or any premises temporarily occupied by the  
25           child victim or both, and to avoid contacting or causing any person other than a

1 party's attorney to contact the child victim unless the petitioner consents to that con-  
2 tact in writing and the judge agrees that the contact is in the best interests of the  
3 child victim; and, if the petition alleges that the abuse occurred in a care services  
4 setting, to stop providing care or services for children, to avoid the residence of or any  
5 premises temporarily occupied by the child victim, a potential child victim or any oth-  
6 er child and to avoid contacting or causing any person other than a party's attorney  
7 to contact the child victim, a potential child victim or any other child unless the peti-  
8 tioner consents in writing and the judge or court commissioner agrees that the con-  
9 tact is in the best interests of the child victim, the potential child victim or the other  
10 child; if all of the following occur:

11 **SECTION 21.** 813.122 (5) (a) 3. of the statutes is amended to read:

12 813.122 (5) (a) 3. After hearing, the judge finds reasonable grounds to believe  
13 that the respondent has engaged in, or based upon prior conduct of the child victim  
14 and the respondent may engage in, abuse of the child victim or, if the alleged abuse  
15 occurred in a care or services setting, after hearing, the judge finds reasonable  
16 grounds to believe that the respondent has engaged in abuse of the child victim or,  
17 based on prior conduct of the child victim and the respondent, may engage in abuse  
18 of the child victim, a potential child victim or any other child.

19 **SECTION 22.** 813.122 (5) (d) 1. of the statutes is amended to read:

20 813.122 (5) (d) 1. An injunction under this subsection is effective according to  
21 its terms, but except that an injunction restraining abuse in a place other than a care  
22 or services setting is effective for not more than 2 years or until the child victim at-  
23 tains 18 years of age, whichever occurs first and an injunction restraining abuse in  
24 a care or services setting is effective for such time as the court may consider appropri-  
25 ate, based on the evidence.

1           **SECTION 23.** 813.122 (5) (d) 2. of the statutes is amended to read:

2           813.122 (5) (d) 2. When an injunction in effect for less than 6 months expires,  
3 the court shall extend the injunction if the petitioner states that an extension is nec-  
4 essary to protect the child victim. This An extension of an injunction restraining  
5 abuse in a place other than a care or services setting shall remain in effect until 6  
6 months after the date the court first entered the injunction or until the child attains  
7 18 years of age, whichever occurs first. An extension of an injunction restraining  
8 abuse in a care or services setting shall remain in effect for such time as the court  
9 considers appropriate, based on the evidence.

10           **SECTION 24.** 813.122 (5) (d) 3. of the statutes is amended to read:

11           813.122 (5) (d) 3. If the petitioner states that an extension of an injunction re-  
12 straining abuse in a place other than a care or services setting is necessary to protect  
13 the child victim, the court may extend the injunction for not more than 2 years or un-  
14 til the child victim attains 18 years of age, whichever occurs first. If the petitioner  
15 states that an extension of an injunction restraining abuse in a care or services set-  
16 ting is necessary to protect the child victim, a potential child victim or any other  
17 child, the court may extend the injunction for such time as the court considers ap-  
18 propriate, based on the evidence.

19           **SECTION 25.** 813.122 (6) (a) 1. of the statutes is amended to read:

20           813.122 (6) (a) 1. The name of the petitioner and the child victim or, if the peti-  
21 tion alleges that the abuse occurred in a care or services setting, the name of the peti-  
22 tioner, the child victim and any potential child victim.

23           **SECTION 26.** 813.122 (6) (a) 3. of the statutes is amended to read:

24           813.122 (6) (a) 3. That the respondent engaged in, or, based on prior conduct  
25 of the respondent and the child victim, may engage in, abuse of the child victim or,

1 if the petition alleges that the abuse occurred in a care or services setting, that the  
2 respondent engaged in abuse of the child victim or, based on prior conduct of the child  
3 victim and the respondent, may engage in abuse of the child victim, a potential child  
4 victim or any other child.

5 **SECTION 27.** 813.122 (7) of the statutes is amended to read:

6 813.122 (7) CONTACT. Any order under this section directing a person to avoid  
7 contact with a child victim, a potential child victim or any other child prohibits the  
8 person from knowingly touching, meeting, communicating or being in visual or audio  
9 contact with the child victim, potential child victim or other child except as provided  
10 in any modifications of the order under sub. (5) (b).

11 **SECTION 28. Initial applicability.**

12 (1) This act first applies to abuse, as defined in sections 48.981 (1) (a) and  
13 813.122 (1) (a) of the statutes, and neglect, as defined in section 48.981 (1) (d) of the  
14 statutes, that occur on the effective date of this subsection.

15 (END)